



U.S. Department of Justice

Criminal Division

Office of Enforcement Operations

Washington, D.C. 20530

CRM 201100515F

AUG 17 2011

Mr. Mike McGraw
The Kansas City Star
1729 Grand Boulevard
Kansas City, Missouri 64108

Dear Mr. McGraw:

This letter responds to your July 25, 2011, Freedom of Information Act (FOIA) request to the Department of Justice (DOJ) Criminal Division. Your request seeks "the entire investigative report authored by John Cox of the DOJ's Criminal Division and Pam McCabe of the Office of Inspector General into the 1995-1997 prosecution of five defendants convicted in a 1988 explosion in Kansas City that killed six firefighters."

We conducted a search of the appropriate indices to Criminal Division records and located one file that is responsive to your request. We have enclosed the 20 page report. Please be advised that we are withholding portions of the records pursuant to following FOIA exemptions set forth in 5 U.S.C. § 552(b):

- (6) which permits the withholding of personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (7) which permits the withholding of records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . .
 - (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy.
 - (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the

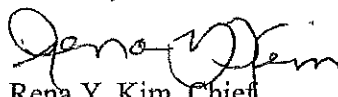
They came to
Kc for one week
19/11/11
People never can
back 1

course of a criminal investigation or
by an agency conducting a lawful
national security intelligence
investigation, information furnished
by a confidential source;

The individuals, whose names and personally identifying information have been withheld, have a substantial privacy interest in the fact that they participated in the Department's review of the trial, United States v. Sheppard et.al. (The Kansas City Firefighters Case) that outweighs the public interest in knowing who the Department interviewed. We segregated non-identifying information, and released the conclusions of the Department's review team to further the public interest in knowing the results of the review.

You have a right to an administrative appeal of this partial denial of your request. Your appeal should be addressed to: The Office of Information Policy, United States Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, DC 20530-0001. Both the envelope and the letter should be clearly marked with the legend "FOIA Appeal." Department regulations provide that such appeals must be received by the Office of Information Policy within sixty days (60) of the date of this letter. 28 C.F.R. § 16.9 (2010). If you exercise this right and your appeal is denied, you also have the right to seek judicial review of this action in the federal judicial district (1) in which you reside, (2) in which you have your principal place of business, (3) in which the records denied are located, or (4) for the District of Columbia. If you elect to file an appeal, please include in your letter to the Office of Information Policy, the Criminal Division file number that appears above your name in this letter.

Sincerely,



Rena Y. Kim, Chief
Freedom of Information/Privacy Act Unit
Office of Enforcement Operations
Criminal Division



U.S. Department of Justice


Criminal Division


Washington, D.C. 20530

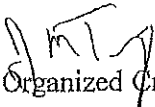
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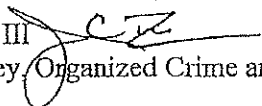
MEMORANDUM

TO: Lanny A. Breuer
Assistant Attorney General

THROUGH: Jason M. Weinstein 
Deputy Assistant Attorney General

FROM: P. Kevin Carwile 
Chief, Capital Case Unit (former Chief, Gang Unit)

James Trusty 
Acting Chief, Organized Crime and Gang Section

John F. Cox III 
Trial Attorney, Organized Crime and Gang Section

SUBJECT: Review of *Kansas City Star* Allegations Regarding the Prosecution of
United States v. Sheppard, et al. (The Kansas City Firefighters Case)

Summary

On November 29, 1988, one or more arsonists set fire to a truck and to a construction trailer parked at a highway construction site in Kansas City, Missouri. One fire was set in a small pickup truck belonging to Deborah Riggs, a security guard at the construction site. A second fire engulfed a storage trailer and an adjoining pickup parked hundreds of yards away over the ridge of a large hill. Trial Transcript ("Tr.") at 445, 469-74, 2259, 3047-48, 3054-55. The storage trailer contained volatile chemicals. As a team of firefighters tried to extinguish the trailer flames, the trailer exploded, killing all six responders.

In 1996, in United States v. Sheppard, et al., five defendants – Darlene Edwards, Richard Brown, Earl "Skip" Sheppard,¹ his brother George "Frank" Sheppard (hereinafter "Frank Sheppard"), and their nephew Bryan Sheppard – were indicted in the United States District Court for the Western District of Missouri on federal arson charges concerning the incident. Tr. 3979-80. Trial began on January 13, 1997. Guilty verdicts for all defendants were returned on February 26, 1997. Each defendant was sentenced to life imprisonment. Tr. 3936, 4064-65.

¹ Earl Sheppard died of cancer July 25, 2009, at a federal correction center in Butner, North Carolina.

Beginning in 2007 and continuing through 2009, the *Kansas City Star* (the “*Star*”) published a series of investigative articles alleging government misconduct in the Sheppard case. Based on interviews conducted by a *Star* reporter, the articles asserted that several government witnesses lied at trial, that government representatives used coercive tactics for the purpose of seeking to fabricate inculpatory evidence or to dissuade witnesses from testifying about exculpatory evidence, and that suppressed and/or newly-discovered evidence indicated that persons other than the convicted defendants carried out the arson.

In July 2008, the United States Attorney for the Western District of Missouri asked the Department of Justice to review the *Star* allegations, so as to avoid any appearance of partiality. The Office of the Deputy Attorney General assigned the Criminal Division to conduct the review.

The Criminal Division’s review of the prosecution focused on whether the allegations raised in the *Star* are supported by evidence. The review was not, and was not intended to be, a re-investigation of the arsons. Rather, the review was intended to address the *Star*’s assertions that the defendants may have legitimate claims of actual innocence.² Based on the information obtained during its review, the review team did not find any credible support for the *Star*’s allegations. Specifically, the review team found the following:

1. Alleged False Trial Testimony. The *Star* identified five trial witnesses who allegedly admitted giving false trial testimony due to coercion by the government. Two of those witnesses agreed to speak to the review team. Both stated that their trial testimony was truthful.
2. Alleged Undue Pressure or Coercion. The *Star* identified numerous individuals who did not testify at trial, but who contended that the government engaged in coercive tactics to persuade them to inculcate the defendants or to dissuade them from exculpating the defendants. The review team interviewed each of the individuals it could locate and who would consent to an interview, as well as numerous law enforcement officers involved in the case. The review team has concluded that the government did not engage in conduct intended to improperly coerce those individuals to inculcate the defendants or to dissuade them from exculpating the defendants, and that the individuals either possessed no relevant information or, in those instances in which they did, the Sheppard defense team had the information prior to trial.

² See Bousley v. United States, 523 U.S. 614, 623 (1998) (“‘actual innocence’ means factual innocence, not mere legal insufficiency.”). A defendant bears the burden of establishing “actual innocence” on collateral review -- the government can rebut the defendant’s showing “by presenting any admissible evidence” of guilt, even if it was not used in the criminal trial or plea proceeding. Id. at 623-24.

3. Allegedly Withheld Exculpatory Information. The *Star* asserted that the government suppressed exculpatory evidence provided by four individuals. The review team has concluded that the information from one of these individuals was disclosed in discovery, while information from the other three appears not to have been included among the voluminous amounts of potentially exculpatory material produced by the government in this case. The review team has concluded that the information that appears not to have been previously provided would not have called into question the defendants' guilt of the crimes charged.

4. Allegations Regarding Information [REDACTED] (b)(6), (b)(7)(C)

The *Star* asserted that it had uncovered evidence [REDACTED] in the arson. The review team found that the government disclosed substantial potentially exculpatory information prior to trial, including information suggesting that [REDACTED] others may have been involved in the arson, and that several of the witnesses identified by the *Star* either testified at trial or were otherwise known to the defense prior to trial. Moreover, the review team has concluded that the information provided by these witnesses would not have called into question the defendants' guilt of the crimes charged.

5. Newly-Discovered Information. The review team identified several newly-developed pieces of information, not previously known to the prosecution, that suggests that [REDACTED] may have been involved in the arsons in addition to — and not to the exclusion of — the defendants. The review team has concluded that this newly-developed information would not have called into question the defendants' guilt of the crimes charged.

Background

I. The Arson

At approximately 3:30 a.m. on November 29, 1988, a pickup truck and a construction trailer burned on opposite sides of a highway expansion construction site in southeast Kansas City. Tr. 398. One fire was set in a small pickup truck belonging to Deborah Riggs, a security guard at the construction site. Id. A second fire engulfed a construction trailer and an adjoining pickup truck parked hundreds of yards away over the ridge of a large hill. Tr. 445, 469-74, 2259, 3047-48, 3054-55. That trailer contained approximately 25,000 pounds of a volatile mixture of ammonium nitrate and fuel oil ("ANFO") used for blasting rock during the highway construction. Tr. 356. The pickup belonged to the Mountain Plains Construction Company, the construction company responsible for blasting at the site. Tr. 1767-68, 1773-74, 1787.

Responding firefighters successfully extinguished the fire in Riggs' pickup, and then moved their pump equipment over the hill to the construction trailer and second truck. Tr. 471-72. The firefighters moved the second truck away from the ANFO-filled trailer. Tr. 476. As the responders began trying to douse the trailer flames, the trailer unexpectedly exploded with massive concussive force. Tr. 478-79. All six firefighters in the vicinity were immediately killed, and one of their fire trucks, parked next to the trailer, was disintegrated. Tr. 357, 482, 923, 2898. Approximately forty minutes later, yet another ANFO-filled trailer, which had been ignited by the first trailer fire/explosion, also exploded, in an even larger blast heard miles away. Tr. 404-05, 482, 918, 1634.

II. The Investigations and Charges

Separate state and federal investigations followed. Tr. 363, 383-84. The state investigation focused on several individuals with criminal histories who resided in the area, including Bryan Sheppard, who lived in a neighborhood near the construction site. Id. This effort was abandoned after a jailhouse informant who had implicated Sheppard was found to have fabricated his information and several other witnesses refused to testify after being housed with Sheppard in prison. Tr. 3294. Meanwhile, the initial federal investigation, which focused on potential involvement of organized crime in the arson pertaining to labor unrest, became dormant.

In 1994, the federal investigation was revived when a task force led by the agency then known as the Bureau of Alcohol, Tobacco and Firearms (ATF) was formed to look again at this unsolved crime. As part of the revived effort, *Unsolved Mysteries* in 1995 broadcast a reenactment of the crime and announced a \$50,000 reward. Ultimately, the renewed federal investigation led to the identification of dozens of individuals who had heard one or more of the five defendants make admissions about their involvement in the arson. The investigation also resulted in defendant Darlene Edwards making a recorded confession to law enforcement that she, Bryan Sheppard and Richard Brown had driven together to the construction site on the night of the arson.

In June 1996, a federal grand jury returned an indictment against the defendants, charging them with arson, in violation of 18 U.S.C. §§ 844(i) and 2.

III. Pre-Trial Disclosures

Prior to the trial, the government produced voluminous discovery, including hundreds of pages of potentially exculpatory information. Tr. at 502. Among the documents produced to the defendants were reports of interviews of individuals who implicated [REDACTED]

(b)(6),
(b)(7)(C)

[REDACTED] and other reports suggesting that [REDACTED] committed the arson.

IV. The Trial

In January 1997, a seven-week trial commenced against all five defendants. The prosecution's evidence was entirely circumstantial. There were no eyewitnesses or physical evidence linking the defendants to the fire that caused the explosion. Tr. 3872, 3900, 3915. Testimony about the motive for the arson varied among witnesses, but the basic theme was that the defendants had set the fires to divert security guards at the site and/or to cover up evidence of their planned theft of items from the construction site. Tr. 354. The government called 80 witnesses, 59 of whom testified to having heard one or more of the defendants admit their guilt. For each defendant, there were at least half a dozen witnesses, and in some cases more than a dozen witnesses, who testified to admissions by that defendant.

The government's evidence against Darlene Edwards included her taped confession to investigators in 1995 [REDACTED]

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(b)(7)(C)

[REDACTED]³ – buttressed by her post-arson admissions to three inmates, as well as testimony by her daughter Becky Edwards that she heard her mother and the four other defendants planning to rob the construction site during the week before the arson. As the Eighth Circuit observed, fifteen witnesses testified to admissions by Richard Brown. This testimony included recollections that Brown “went down there to steal and on the way down there they were out of gas and had to get some gas”; that Brown became angry when trying to get into the trailer and lit a fire with gas; and that they set a pickup truck and then a trailer on fire. United States v. Edwards, 159 F.3d 1117, 1122-23 (8th Cir. 1998). Seven witnesses testified to admissions by Earl Sheppard, for example, that he and others had been at the site to steal; that “they were stealing tools from the construction site”; that they “set fire to cover up the stuff they had taken”; and that the “gas came from the Quik Trip station on 71 Highway.” Id. Thirteen witnesses testified that Bryan Sheppard said, for example, that “they went to steal batteries and they set the fire to cover their tracks and they saw two security guards and they ran,” and that “he set a fire as a diversion to go steal some explosives.” Id. Moreover, one witness overheard Bryan Sheppard say to Frank Sheppard, “I’m not like you and the other guys. I can’t live with myself because of the death of them firemen, and it’s eating me up.” Finally, twelve witnesses testified that Frank Sheppard said, for example, that “the fire was set as a diversion and that they didn’t know explosives were in the dump truck”; that “someone had drove him and someone else to get some gas that they had used to start the fire”; and that “they were down there trying to get

³ Pursuant to Bruton, Edwards’ confession was redacted to eliminate the two co-defendants’ names. Tr. 2129.

into the trucks and they weren't able to get anything and decided to pour gasoline on them and get them on fire." Id.

The government argued that the large number of post-event admissions should be believed because "you don't tell people you cause[d] six men to die unless you did it." Tr. at 3769. Numerous witnesses also testified to various other inculpatory facts, including seeing the defendants congregated together in various groups shortly before and after the explosions, and seeing Bryan Sheppard several hours after the explosions smelling of gasoline and smoke and appearing to have several abrasions. Tr. 2946, 3042.

The defense called 16 witnesses at trial, including alibi witnesses and two local detectives who impeached some government witnesses by recounting that during the initial local investigation, those witnesses had denied knowing who carried out the arson.

The jury returned a guilty verdict as to each defendant. Tr. 3980. On appeal, the defendants' convictions and sentences were affirmed. See Edwards, 159 F.3d 1117. Petitions for rehearing and rehearing en banc were denied in December 1998, and a petition for *certiorari* was denied in October 1999. The defendants subsequently filed collateral attacks on their convictions, all of which were dismissed and as to which certificates of appealability were denied. In their petitions, the defendants alleged, among other things, that newly-discovered evidence in the form of an [REDACTED]

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[REDACTED] The court rejected the defendants' claim because the government established that it had disclosed this information to each defendant's lawyer prior to trial.

V. The Star Articles

In a series of articles beginning in 2007 and continuing through 2009, the *Star* reported that civilian witnesses connected to the investigation had been pressured by law enforcement to provide false testimony, that others had in fact lied, and that new evidence showed that [REDACTED] not the defendants, set the fire that led to the fatal blast. The

(b)(6),
(b)(7)(C)

Security Guards

VI. The Criminal Division Review

In July 2008, the United States Attorney for the Western District of Missouri asked the Department of Justice to investigate the *Star* allegations, so as to avoid any appearance of partiality. The Office of the Deputy Attorney General assigned the Criminal Division, which assembled a team comprised of a Criminal Division prosecutor and a Special Agent from the Department of Justice Office of Inspector General. A Special Agent from the ATF was assigned to act as a liaison with ATF, providing assistance in obtaining relevant reports and other information. From 2008 to 2011, the team conducted an extensive investigation, interviewing individuals identified in the *Star* articles, numerous other civilians and law enforcement officers, and [REDACTED] In addition, the team secured the files of the assigned AUSA, Paul Becker, and reviewed those materials along with the 4,000 page trial transcript. The review

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team also reviewed post-trial affidavits by several individuals who either recanted their trial testimony or asserted that they had other information regarding the arson.

Analysis

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(b)(7)(C) Set forth below is the review team's analysis, divided into five sections: (1) alleged false trial testimony; (2) alleged undue pressure or coercion; (3) allegedly withheld exculpatory evidence; (4) alleged [REDACTED]; and (5) newly-discovered information. As described below, based on the information obtained during its review, the review team found no credible support for the *Star*'s allegations that witnesses had recanted, given false testimony or were subjected to undue pressure, and found no evidence that would have called into question the defendants' guilt of the crimes charged.

I. Alleged False Trial Testimony

(b)(6),
(b)(7)(C) The *Star* identified five trial witnesses who allegedly falsely implicated the defendants: Joe Denyer, Becky Edwards, Carie Neighbors, Shannon Reimers, and Jerry Rooks. Two of these individuals [REDACTED] were located and agreed to be interviewed.⁴ Notwithstanding the reporting in the *Star*, both of these witnesses confirmed that they had testified truthfully.

(b)(6),
(b)(7)(C) [REDACTED]

(b)(6),
(b)(7)(C) During [REDACTED] interview with the review team, [REDACTED] stated that [REDACTED] trial testimony was true. [REDACTED] also disclosed several previously-unreported facts implicating Bryan Sheppard and Richard Brown in the charged crime. [REDACTED]

[REDACTED]

⁴ As to the remaining witnesses, [REDACTED]

(b)(6),
(b)(7)(C) [REDACTED]

(b)(6),
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██████████ stated that ██████████ had recanted to the *Star*, ██████████ because ██████████ feared retaliation ██████████ and out of sympathy for ██████████

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This information about [REDACTED] which the review team does not consider material to claims of actual innocence, does not appear to have been provided to the defense.

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In sum, [REDACTED] has reaffirmed the accuracy of [REDACTED] trial testimony and provided additional inculpatory information.

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[illegible]

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(b)(7)(C)

When interviewed by the review team, [REDACTED] stated that [REDACTED] trial testimony was truthful. [REDACTED]

██████████ The review team found no evidence to suggest that ██████████ conduct went beyond traditional law enforcement investigative techniques or methods or was otherwise inappropriate.

II. Alleged Undue Pressure or Coercion

The *Star* reported that the government, and in particular Special Agent True, attempted to coerce numerous individuals who did not testify at trial, allegedly for the purpose of persuading them falsely to implicate the defendants or to dissuade them from exculpating the defendants.

In addition to defendant Darlene Edwards and [REDACTED] – Joe Denyer, Becky Edwards, Carie Neighbors, Shannon Reimers, and Jerry Rooks – and a sixth, Ella Hutton, [REDACTED] – the *Star* identified the following 12 other individuals – none of whom testified at trial – as allegedly having been pressured in this manner: Allen Bethard, Jack Clark, Dixie Cloughley, Dave Dawson, Michael DeMaggio, Johnny Driver, Ronnie Edwards, Buster Hower, Chuck Jennings, [REDACTED] Valerie Rocha, and Larry Summers. The review team interviewed 8 of these 12 individuals, namely: [REDACTED]

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[REDACTED]⁵ The team also interviewed numerous current or former law enforcement officers who had worked at various times on the investigation – all of whom reported that neither Special Agent True nor AUSA Becker placed undue pressure on witnesses or otherwise strayed from the bounds of professional conduct during the investigation and prosecution.

The review team found no credible instance of undue pressure by law enforcement officials to have any witnesses alter their factual accounts or otherwise testify falsely. Moreover, several of the individuals identified by the *Star* as having been coerced denied any such coercion. Additionally, most of the individuals interviewed who claimed to have been coerced either possessed no relevant information or possessed potentially relevant information that was known or available to the Sheppard defense team prior to trial.

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(b)(7)(C)

[REDACTED] did not testify at trial. [REDACTED]

[REDACTED] advised the review team that [REDACTED] stated that [REDACTED] believed Bryan Sheppard was innocent, but did not suggest [REDACTED] had any information supporting this. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(b)(6),
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⁵ [REDACTED] declined to be interviewed. Despite indicating a willingness to be interviewed, [REDACTED] did not answer or return repeated calls seeking an interview. [REDACTED] was not located despite a diligent search.

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(b)(7)(C)

[REDACTED]
[REDACTED] did not testify at trial. [REDACTED]
[REDACTED]
[REDACTED] When interviewed by the review team, [REDACTED] stated that, [REDACTED]
[REDACTED]

Based on a number of factors, including [REDACTED] demeanor during [REDACTED] interview and [REDACTED] claims of having been [REDACTED], the review team found [REDACTED] claims of inappropriate law enforcement pressure or conduct not to be credible.
[REDACTED]
[REDACTED]

(b)(6),
(b)(7)(C)

[REDACTED]
[REDACTED] did not testify at trial. [REDACTED]
[REDACTED] When interviewed by the review team, [REDACTED] stated that [REDACTED] had no information concerning the arson. [REDACTED]
[REDACTED]
[REDACTED]

The review team does not credit [REDACTED] account of the events. In any event, [REDACTED] did not testify at trial.

(b)(6),
(b)(7)(C)

[REDACTED]
[REDACTED] did not testify at trial.
[REDACTED]
[REDACTED] During [REDACTED] interview,
[REDACTED]
[REDACTED]

(b)(6),
(b)(7)(C)

⁷ Records indicate that [REDACTED] and [REDACTED]
[REDACTED] interviewed [REDACTED] on [REDACTED]

(b)(6),
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[REDACTED] told the review team, in substance, that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] told the review team that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] story - [REDACTED]
[REDACTED]
[REDACTED] - is not, in
the review team's view, credible.

(b)(6),
(b)(7)(C)

[REDACTED]
[REDACTED] did not testify at trial. [REDACTED]
[REDACTED]
[REDACTED] told the review team that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Sometime thereafter, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] belief that [REDACTED] was
being intimidated was therefore based on nothing more than [REDACTED] own speculation, and the review
team therefore does not credit it.

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[REDACTED] did
not testify at trial. [REDACTED]
[REDACTED]
[REDACTED] told the review team that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(b)(6),
(b)(7)(C)

[REDACTED] In addition, even assuming *arguendo* that [REDACTED] had made such statements to [REDACTED] it is not apparent what probative value [REDACTED] trial testimony would have had, given that [REDACTED] denied having any knowledge of the arson.

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(b)(7)(C)

[REDACTED]
[REDACTED] did not testify at trial. [REDACTED]
[REDACTED] told the review team that [REDACTED] informed the *Star* reporter that no one pressured [REDACTED] to provide incriminating information against the defendants or to change [REDACTED] account.

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(b)(7)(C)

[REDACTED]
[REDACTED] did not testify at trial. [REDACTED]
[REDACTED]
[REDACTED] told the review team that [REDACTED]
[REDACTED]
[REDACTED] stated, however, that the law enforcement officer interviewing [REDACTED] acted professionally and did not threaten [REDACTED] in any way, and [REDACTED] did not in fact falsely implicate the defendants.

(b)(6),
(b)(7)(C)

[REDACTED] believed, based on the reporting in the *Star*, that [REDACTED]
[REDACTED] However, when the review team interviewed [REDACTED] [REDACTED] had no recollection of [REDACTED] Documents do indicate that a Kansas City Police Department detective had been seeking to interview [REDACTED] but there is no record of an interview having occurred.

I. Conclusion

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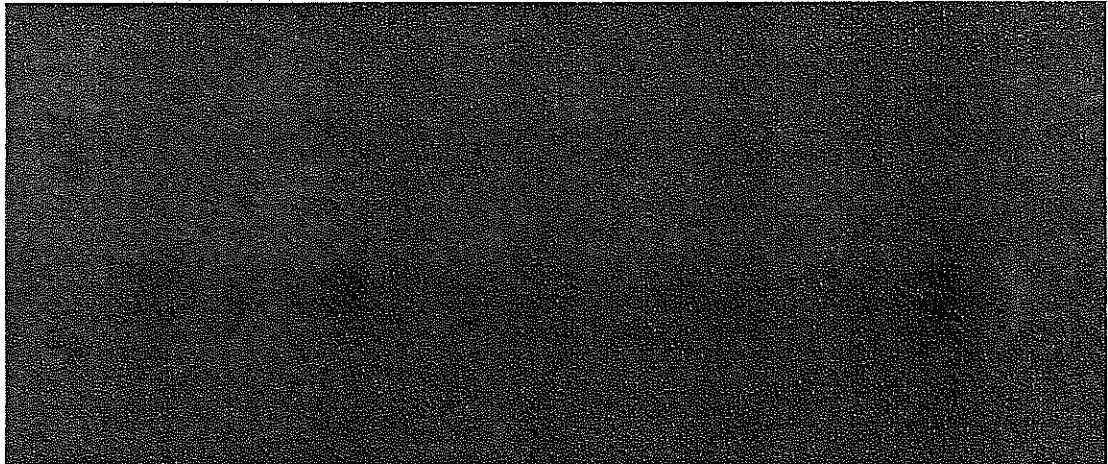
In sum, of the foregoing eight individuals identified by the *Star* as having been coerced, one - [REDACTED] - denied ever having told the *Star* that [REDACTED] had been pressured, while three others - [REDACTED] - offered no factual basis for their claims and/or described Special Agent True or the other investigators as professional; at most, these three individuals described conduct that is not inconsistent with legitimate law enforcement interview techniques. Of the four individuals who purported to offer facts underlying their claims of coercion - [REDACTED] - three provided stories that were contradicted by the particular agents involved, as well as by statements of other agents and officers about the manner in which the investigation was conducted; one, [REDACTED] provided an account that is unsupported and simply unbelievable; and one, [REDACTED] was so lacking in credibility that [REDACTED]

(b)(6),
(b)(7)(C)

Moreover, most of these individuals either had no information about the arson, provided information implicating the defendants in response to the alleged coercion, or provided information that was available to the defense. Only [REDACTED] claimed that law enforcement manufactured their statements implicating one or more of the defendants, but for the set forth above, the review team found their claims not to be credible.

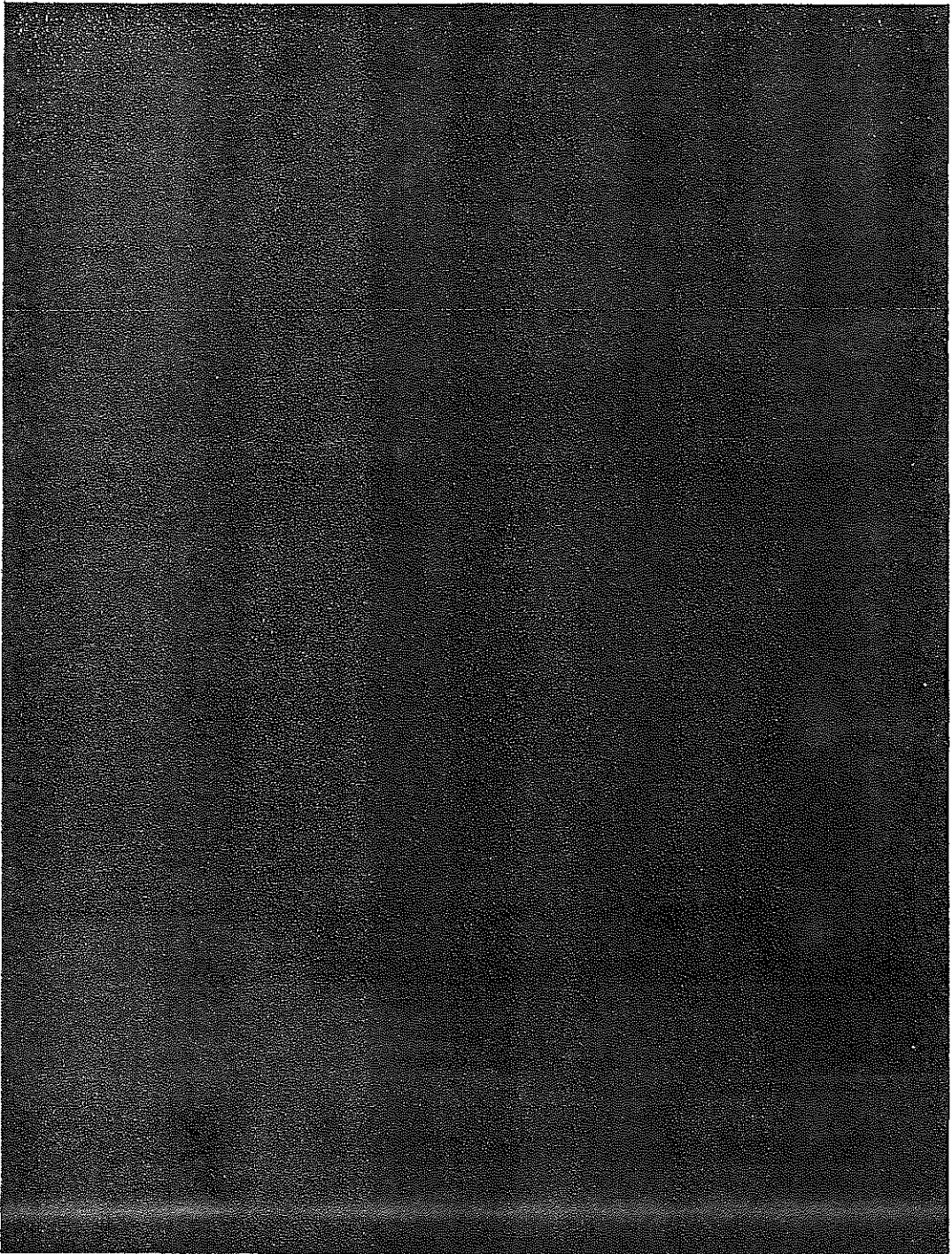
Allegedly Withheld Exculpatory Information

The *Star* reported that the government may have ignored or suppressed information relevant to the defense provided by the following individuals: Debra Cearley, Ella Hutton, [REDACTED] and Patti Smith. Having interviewed [REDACTED] these individuals, the review team concluded that the information provided by [REDACTED] did not appear to have been produced prior to trial, while the information provided by [REDACTED] was provided to the defense prior to trial. The review team concluded that none of this information would have called into question the defendants' guilt of the crimes charged.⁸

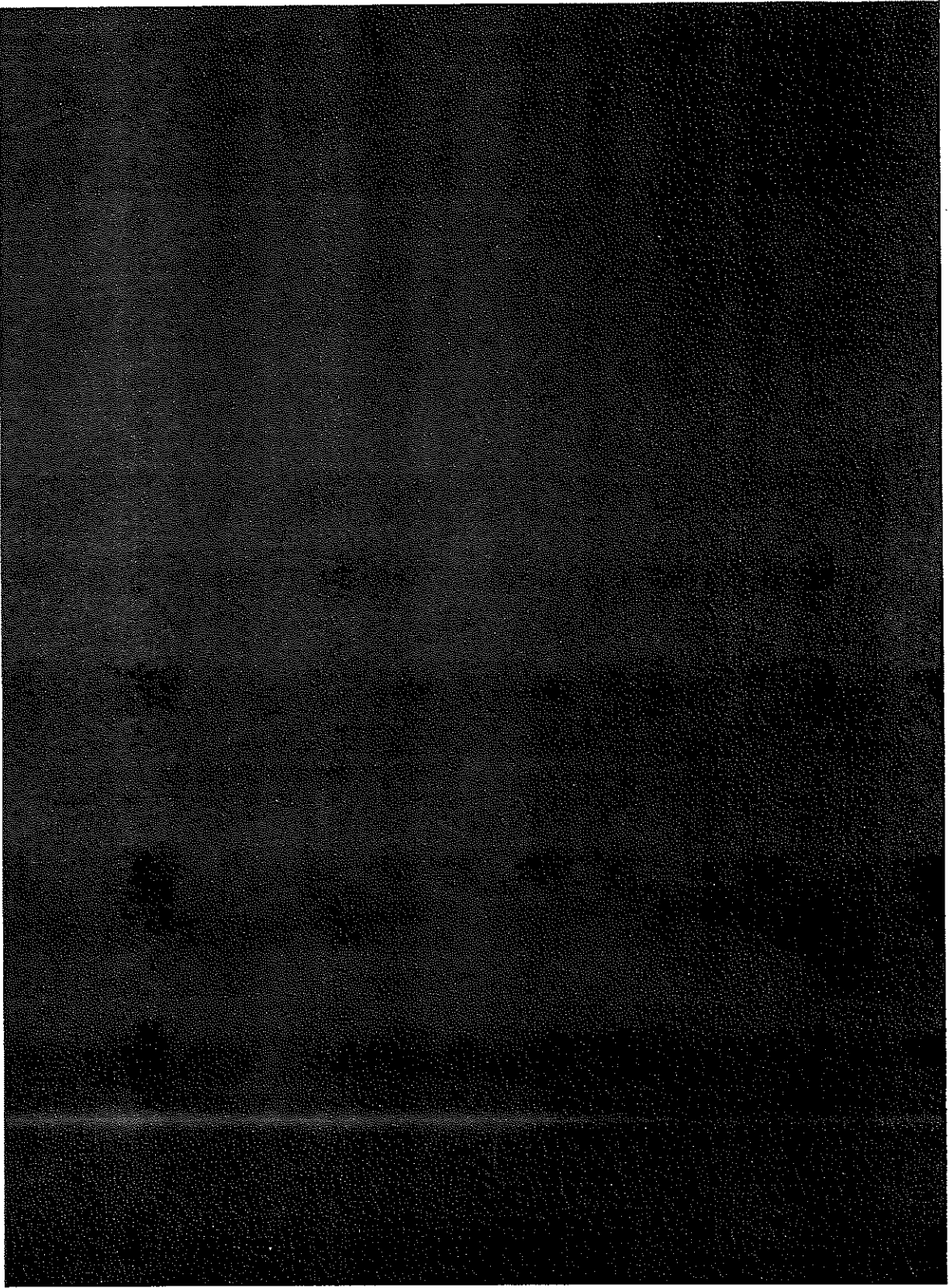


⁸ The *Star* also reported that John Barchers – a government witness who testified at trial regarding admissions made by Frank Sheppard and Earl Sheppard about their involvement, along with [REDACTED] in the explosions – had assisted federal investigators by wearing a recording device in an unsuccessful attempt to record incriminating statements. The *Star* reported that transcripts of the admissions, which Barchers said contained no admissions, were not provided to the defense. The review team located three tapes in Barchers' ATF file, which appear to be conversations between Barchers and [REDACTED]. The review team was unable to determine whether the tapes and/or transcripts were provided to the defense, and the review team was unable to interview Barchers before his death in November 2008. However, the review team did determine that a written statement made by Barchers recounting (1) admissions made by Frank Sheppard, Earl Sheppard, and [REDACTED] and (2) statements by [REDACTED] to the effect that she thought Frank and Earl had something to do with the explosion, as well as Barchers' grand jury testimony, were provided in discovery.

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[REDACTED]

(b)(6),
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[REDACTED]

(b)(6),
(b)(7)(C)

When interviewed by the review team, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(b)(6),
(b)(7)(C)

During the review team's interview of [REDACTED] made statements similar to those made by [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(b)(6),
(b)(7)(C)

The review team has determined that both [REDACTED] were known to the defense.
[REDACTED]
[REDACTED]
[REDACTED]

(b)(6),
(b)(7)(C)

IV. Allegations Regarding Information [REDACTED]

In its reports, the *Star* identified information from a number of witnesses [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The review team interviewed [REDACTED]
[REDACTED] retained counsel and declined to be interviewed;
[REDACTED] did not return calls seeking an interview. However,
substantial potentially exculpatory material was disclosed prior to trial, including information
from [REDACTED] and others suggesting that [REDACTED]

¹⁰ Moreover, several of the witnesses identified by the *Star* either testified at trial or were
otherwise known to the defense prior to trial. In any event, the review team has concluded, as set
forth below, that the information provided by these witnesses would not have called into
question the defendants' guilt of the crimes charged.

(b)(6),
(b)(7)(C)

[REDACTED]
[REDACTED] During the
review team interview, [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] This information, which was not previously known
to the prosecution, was consistent with other information produced to the defense prior to trial
that suggested that [REDACTED]

(b)(6),
(b)(7)(C)

¹⁰ See, e.g., [REDACTED]
[REDACTED]
[REDACTED]

see also [REDACTED]
[REDACTED]
[REDACTED]

(b)(7)(D)

[REDACTED] In addition, the government [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(b)(6),
(b)(7)(C)

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

(b)(6),
(b)(7)(C)

[REDACTED]

(b)(6),
(b)(7)(C)

During the review team interview, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(b)(6),
(b)(7)(C)

Although there are some apparent differences as to whether [REDACTED]
[REDACTED] the statements [REDACTED] made to the review team are substantially
similar to those made during [REDACTED] interview which, as noted above, were promptly
provided to the defense.

(b)(6),
(b)(7)(C)

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] When interviewed by the review team [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED] As noted above, a statement by [REDACTED]
[REDACTED] arson was produced to the defense in discovery prior to trial. The review

(b)(6),
(b)(7)(C) team found that [REDACTED] statements to the review team are substantially similar to [REDACTED] prior statement [REDACTED] that was provided in discovery.¹¹

V. Newly-Developed Information

(b)(6),
(b)(7)(C)

During its review, the review team identified several newly-developed pieces of information that were not previously known to the prosecution. Significantly, this newly-developed information suggests that [REDACTED] may have been involved in the arsons in addition to – and not to the exclusion of – the defendants. The review team has concluded that this newly-developed information would not have called into question the defendants' guilt of the crimes charged.

(b)(6),
(b)(7)(C)



(b)(6),
(b)(7)(C)

¹¹ Last, although not reported in the *Star*, [REDACTED]

[REDACTED] The review team does not credit [REDACTED] claim, given [REDACTED] and given that none of the many other civilian and law enforcement witnesses (and non-witnesses) the review team interviewed suggested that [REDACTED] comported [REDACTED] on any occasion in such a manner.

(b)(6),
(b)(7)(C)

¹² Although this information does not appear to have been provided by [REDACTED] to law enforcement prior to the review team's interview, the defense appears to have been aware of this information during the trial and made reference to it [REDACTED]

(b)(6),
(b)(7)(C)

[REDACTED]
[REDACTED]
[REDACTED]
During [REDACTED] review team interview, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

VI. Conclusion

Based on its inquiry, the review team found no credible evidence to support the *Star's* allegations and no evidence that would have called into question the defendants' guilt of the crimes charged.