This is a PDF of the separately accessible version of Section B.7a of the main Prosecutorial Misconduct page (PMP) of jpscanlan.com. The endnote has been changed to a footnote. This version reflects the section as it appeared when a link to it was provided in a January 2010 letter to Judith B. Wish, Deputy Director of the Office of Professional Responsibility (which may be found on the Letters (Misconduct) sub-page of PMP).

7a. The Failure to Disclose and Hiding of the Sankin Harvard Business School Application [b7a]

It does not seem possible to dispute that Independent Counsel attorneys made a number of false representations with regard to their failure to disclose exculpatory information in witness statements (as discussed, *inter alia*, in Part I of the DC Bar materials or the Paula A. Sweeney profile) and with regard to the failure to make a *Brady* disclosure of documents containing exculpatory information (as discussed, *inter alia*, in Section B.3 and the Bruce C. Swartz profile). In the case of documents, it should be kept in mind that, despite maintaining that would have made a *Brady* disclosure of exculpatory material if they found it, Independent Counsel attorneys never actually produced a single document as *Brady* material.

But the issue originally addressed in the courts merely went to the failure to segregate documents containing exculpatory information, not to any actual hiding of such materials. But Dean's February 1997 motion (see Mem., Section IV.C) presented evidence that Independent attorneys actually withheld and hid exculpatory materials. The materials related to Andrew Sankin, the persons whose receipts are the subject of Section B.7.

Sankin had been a childhood friend of Silvio DeBartolomeis. DeBartolomeis was the Deputy Assistant Secretary for Multi-Family Housing , General Deputy Assistant Secretary for Housing, or Acting Assistant Secretary for Housing during the periods relevant to the first four of the five projects involved in Count Two of the Superseding Indictment, the count as to which Dean's alleged co-conspirators included Sankin and Richard Shelby. DeBartolomeis has been elsewhere discussed with regard to Count One, both in connection with Robert E. O'Neill's efforts to lead the jury to believe that a conspiratorial reference to Richard Shelby's "contact at HUD" pertained to Deborah Dean even though immunized witness Shelby had stated that the reference pertained to DeBartolomeis (*see, inter alia*, the O'Neill profile) and in connection with Bruce C. Swartz's efforts subsequently to deceive the court about several matters, including the thinking of Independent Counsel attorneys when they attempted lead the jury to believe that the reference pertained to Dean (*see, inter alia*, the Swartz profile).

Sankin sought the assistance of DeBartolomeis on HUD matters, but became sensitive to the appearance of impropriety in his doing so. In August 1985, he wrote to Berel Altman, the developer of the Foxglenn project for which Sankin would later secure funding, apologizing for the indiscretion in his discussing with Altman his (Sankin's) earlier discussion with DeBartolomeis concerning the possible conversion of vouchers to developer contracts. Att. 45 to Dean Feb. 1997 Mem.

Ultimately, DeBartolomeis authorized the Foxglenn funding that was a subject of Count Two, with the funding documents signed by a subordinate because, according to DeBartolomeis, he was out of the country. As discussed in the Dean February 1997 memorandum, there was disputed testimony regarding the extent of the contacts of Shelby and Sankin with DeBartolomeis funding.

In a 1988 application to Harvard Business Schoo1, Sankin responded to a question concerning an ethical dilemma he had dealt with by making the following statements regarding the actions he took with regard to securing the Foxglenn mod rehab units. Noting that a childhood friend (DeBartolomeis) was the HUD official who had authority over the allocation he was seeking, Sankin indicated that, because of that relationship, it was "a fait accompli that my client's request would be approved." Att. 46 to Dean Feb. 1997 Mem.

In the application, Sankin then noted that there could be an appearance of impropriety if his friend signed the documents authorizing the allocation. He went on to describe actions he took to secure Dean's support for the allocation, in order to avoid the appearance of impropriety. One might debate the exact meaning of the steps he described as they bear on the merits of the charged conspiracy or as they might be considered consistent or inconsistent with Sankin's testimony in court. In a context where there existed an issue as to whether Dean or DeBartolomeis was responsible for the funding decision, however, there can be no doubt that Sankin's initial statement – that because of DeBartolomeis' position it was a foregone conclusion that the request would be funded – was exculpatory of Dean. As discussed in Section IV.C.2, the document was also exculpatory as to the other projects in Count Two where issues existed as to whether Dean or DeBartolomeis was responsible for HUD actions that benefited Sankin.

Therefore, the Independent Counsel should have provided the application form to the defense as part of a Brady disclosure. Sankin had evidently faxed the document to the Independent Counsel on May 29, 1992, five days before Sankin testified before the grand jury. That the document was specifically faxed to the Independent Counsel suggests that it received individual attention from Independent Counsel attorneys, in contrast to the situation where a document was included in a large mass of documents secured by investigators. However, following the July 7, 1992 issuance of the Superseding Indictment that included the allegation that Dean has caused the Foxglenn funding to benefit Sankin and Shelby, the Independent Counsel failed to provide the document in a *Brady* disclosure. Further, Independent Counsel attorneys also failed even to include the document among the Sankin materials provided to the defense as part of the discovery process in the summer of 1992.

The document would only be made available to the defense at all when, in December 1992, the Independent Counsel turned over approximately 3700 unindexed pages of material identified as the Independent Counsel's preliminary exhibit production. At that time, the two-page document was placed as the 510th and 511th items in a 562-page grouping of documents related to the Stanley Arms, an apartment building Sankin managed for Dean's family, something to which the document obviously was entirely unrelated. Markings on the documents indicated that the Harvard Business School

application had been inserted into a group of documents secured from Sankin at another time.

The Stanley Arms documents were inconsequential materials related to the management of the property, which the defense would have little reason to review in any detail. There is little reason to doubt that the failure to include the document in the initial Sankin production was precisely because of a concern that the defense would find it. There similarly seems little room for doubt that the document was calculated hidden in the preliminary exhibit production, with the hope that the defense would not discover it (which the defense in fact did not do). That one exculpatory document was hidden means that others may also have been hidden and never discovered.[1]

[1] *See also* Section IV.B of Dean's February 1997 Memorandum regarding the *Brady* issues related to the Sankin receipts that are the subject of Section B.7. As shown there, the Independent Counsel almost certainly possessed a variety of documents indicating that certain of the Sankin receipts did not pertain to Dean, including calendar entries of the persons to whom the receipts did pertain and the calendars of Dean's boyfriend. None of this material was made available to the defense, much less made part of a *Brady* disclosure. In the case of Dean's boyfriend's receipts, the Independent Counsel subpoenaed the receipts in 1991 or 1992 and never returned them. Thus, not only did the Independent Counsel fail to produce material in its possession that would be useful to the defense, but it deprived Dean such material that would otherwise have been available to her.