

*This is a PDF of the separately accessible version of [Section B.7](#) of the main [Prosecutorial Misconduct](#) page (PMP) of [jpscanlan.com](#). 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).*

## **7. The Independent Counsel's Response in the Supreme Court Concerning the Andrew Sankin Receipts [b7]**

In opening argument Associate Independent Counsel Robert E. O'Neill described alleged co-conspirator Andrew Sankin as someone who was "wining and dining" Dean and "buying her gifts." Later he would seek to introduce a number of receipts of Sankin into evidence to substantiate this allegation. Ultimately the district court would excoriate O'Neill for failing to disclose Sankin's off-the-stand statement that certain receipts, which were being introduced into evidence as if they reflected meals or gifts Sankin purchased for Dean, may not have applied to her. But the court's criticism missed the point. As discussed in the December 1, 1994 narrative appendix styled "The Andrew Sankin Receipts" ([AS](#)) and many other places (including the [O'Neill profile](#)), O'Neill knew with virtual certainty that a number of the receipts he sought to lead the jury to believe applied to Dean in fact did not apply to her. Thus, O'Neill did not regard Sankin's statement as telling him anything he (O'Neill) did not already know.

In defending his actions, and while expressing considerable annoyance that his ethics were being questioned, O'Neill made clear that he believed it was permissible to introduce the receipts that did not apply to Dean into evidence in a manner to lead the jury to believe they did apply to Dean so long as the "Government did not say" they applied to Dean. Tr. 1203. In the same place he made clear that he believed it was for the defense to show that the receipts did not apply to Dean. The Sankin narrative appendix also shows that, in defending itself against the use of the Sankin receipts, the Independent Counsel sought to lead the court falsely to believe that Independent Counsel attorneys believed that all the receipts in fact applied to Dean.

To the extent that such matter was not already clear to Thompson from his files in the case, this was made clear to him in materials I brought to his attention in September 1995. Nevertheless, Independent Counsel attorneys then went on to address the Sankin matter in the Supreme Court as follows:

That Sankin denied knowledge of a link between some of the charge slips and petitioner does not mean, of course, that there was no nexus. Sankin acknowledged entertaining and giving gifts to petitioner. Tr. 2701-2704. Moreover, virtually all the receipts referenced petitioner by name or by her HUD title. See, e.g., GX 11f, 11j, 11k, 11l, 11m, 11n, 11o, 11p, 11u, 11w, 11q, 11v. Finally, Sankin's alleged inability to link the slips to petitioner may well have been affected by other factors. As the trial court observed, many of the witnesses the government was required to call were adverse, as they were either unindicted

coconspirators or individuals who had been given immunity and required to testify. Pet. App. A-1 55.

[Independent Counsel Opp. Cert.](#) 14.

Certainly the authors of this opposition had reason to know, and presumably did know, the Independent Counsel had in fact intended to lead the jury to believe that the receipts applied to Dean even when the Independent Counsel knew for a fact that they did not. Nevertheless, each element of the response is crafted to suggest, not only that Independent Counsel attorneys believed that all receipts applied to Dean (something the drafters of the opposition knew to be false), but that the receipts in fact all applied to Dean but Sankin had been unwilling to relate them to her (something those drafters also knew to be false). The response actually goes a step beyond the efforts undertaken by Independent Counsel attorneys under Arlin M. Adams to deceive the district court and the court of appeals regarding the Independent Counsel's use of the Sankin receipts. The observations in [Section B.6](#) regarding the drafters of the certiorari opposition seem to apply just as well here.

Various documents make reference to the discussion at the end of this section of the Independent Counsel's concealment of Sankin's Harvard Business School application that contained certain exculpatory information. The matter is now separately treated in [Section B.7a](#). This paragraph will be retained until those references are adjusted to refer to Section B.7a rather than the end of Section B.7.