

2. These Well-Founded Concerns About the Secretary’s Testimony and the Facts and Circumstances Surrounding the Casino Decision Led to the Appointment of an Independent Counsel

The Department of Justice began an initial inquiry under the Independent Counsel Act shortly before the Secretary testified before the Senate Committee, based on the allegation that his letter to Sen. McCain was false or misleading. After the hearing, the Justice Department’s review was broadened to encompass the Secretary’s testimony about the Eckstein discussion and some of the facts and circumstances surrounding the Hudson casino decision. At the conclusion of that inquiry, the Attorney General identified the prospect of underlying corruption of the casino application process as a “hypothetical motive” for Secretary Babbitt’s alleged perjury.⁷²² In requesting the Special Panel of the D.C. Circuit Court of Appeals to appoint an Independent Counsel, the Attorney General noted that such an Independent Counsel might conclude that to thoroughly investigate the false testimony allegations, the Independent Counsel must investigate the underlying casino decision to determine if it had been “criminally corrupted.”⁷²³ The Special

⁷²²Application to the Court Pursuant to 28 U.S.C. § 592(c)(1) for the Appointment of an Independent Counsel, In re Bruce Edward Babbitt (Feb. 11, 1998), at 8.

⁷²³Of the preliminary investigation, Attorney General Reno wrote:

We did not, however, attempt to resolve conclusively whether the underlying decision was criminally corrupted. The Independent Counsel might conclude that a thorough evaluation of the prosecutorial merit of the perjury and false statement allegations against Secretary Babbitt requires an investigation of the underlying decision for evidence of a possible motive to lie. Although our preliminary investigation uncovered no evidence of criminal misconduct by Secretary Babbitt in the underlying matter, a hypothetical motive to lie might arise not just from the Secretary’s own conduct but also from the conduct of others within

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