

### 3. **There Is Insufficient Evidence to Support a Finding that Any Other Federal Criminal Corruption Statutes Were Violated in the Hudson Matter**

In compliance with Department of Justice practice, we evaluated the evidence in light of all other potentially applicable criminal corruption statutes. Our evaluation included the federal criminal corruption statutes concerning extortion,<sup>769</sup> honest services fraud,<sup>770</sup> and promise of federal benefit in consideration for political activity.<sup>771</sup> As with our analysis of the bribery statute, we found the evidence insufficient to warrant or sustain a prosecution. The same absence of sufficient evidence to establish a violation of the bribery statute – the actions, if any, that DNC or White House officials offered or agreed to take for the Hudson casino opponents, and whether those actions were taken in exchange for campaign contributions – precludes establishing violations of the extortion, honest services fraud and other corruption statutes.

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<sup>768</sup>(...continued)

Although, by its terms, the statute criminalizes the offering or receipt of anything of value "for or because of" any official act performed or to be performed by a public official, the Supreme Court's recent decision in *United States v. Sun-Diamond Growers*, 526 U.S. 398 (1999), narrowed the range of conduct subject to the statute by requiring proof of a connection between the payment to be made and a specific official act. The same deficiency of proof that led us to forego commencing a prosecution for bribery counsels us to forego a prosecution for gratuities as well. *See United States v. Brewster*, 506 F.2d 62, 81 (D.C. Cir. 1974) (stating that a *bona fide* campaign contribution cannot constitute a gratuity if it does not inure to the recipient's personal benefit); *see also DOJ Criminal Resource Manual* 2046 (cautioning prosecutors that gratuity prosecutions for campaign contributions are "problematical," and that there appears to be "substantial judicial reluctance to extend the Federal crime of gratuities under section 201(c) to *bona fide* campaign donations").

<sup>769</sup>18 U.S.C. § 1951.

<sup>770</sup>18 U.S.C. § 1346.

<sup>771</sup>18 U.S.C. § 600.