

the scheme.⁷⁷⁸ In the Hudson matter, a violation of the statute could be shown if one or more White House or Interior officials agreed with the opponents to use their positions to deny the application without regard to the merits based on the promise of campaign contributions.⁷⁷⁹ There is insufficient evidence to prove such conduct on the part of any White House or Interior official.⁷⁸⁰

C. There Is Insufficient Evidence to Prove that Secretary Babbitt Perjured Himself Before Congress

In her application for appointment of an independent counsel, the Attorney General recounted that the Justice Department focused its initial inquiry and subsequent preliminary investigation on the conflict between Secretary Babbitt's testimony before the Senate Committee on Governmental Affairs⁷⁸¹ about his July 14, 1995, conversation with Paul Eckstein, and Eckstein's statements on that subject. The Attorney General concluded that this conflict "warranted further investigation into whether Secretary Babbitt may have made material false

⁷⁷⁸18 U.S.C. §§ 1341, 1343 & 1346. See *United States v. Sawyer*, 85 F.3d 713, 723-24 (1st Cir. 1996); *United States v. Madeoy*, 912 F.2d 1486, 1492 (D.C. Cir. 1990), *cert. denied*, 498 U.S. 1105 (1991). A violation could be established by showing that a public or non-public official was involved in such a scheme. See *Sawyer*, 85 F.3d at 725.

⁷⁷⁹Any such agreement would also constitute a conspiracy to defraud the United States. See 18 U.S.C. § 371.

⁷⁸⁰As with the other criminal statutes canvassed above, where a case is based on an implied inducement to take particular official actions in exchange for the promise or receipt of campaign contributions, successful prosecution is problematic under 18 U.S.C. § 1346. See, e.g., *United States v. Martin*, 1999 U.S. App. LEXIS 28128 at *8-11 (7th Cir. Nov. 1, 1999).

⁷⁸¹Secretary Babbitt also testified before the House Committee on Government Reform and Oversight on Jan. 29, 1998. Although we have examined Babbitt's testimony before the House Committee, we do not discuss it specifically because of its substantial overlap with the potentially perjurious testimony before the Senate Committee.