

statements during his testimony, in possible violation of 18 U.S.C. § 1621 (perjury) and 18 U.S.C. § 1001 (false statements).⁷⁸² In particular, the Attorney General focused on Babbitt's assertion that in his conversation with Eckstein, the Secretary referred to what Ickes "wanted" or "expected" – as contrasted with Eckstein's recollection that Babbitt said Ickes had "called" and "directed" that a decision be made "that day."⁷⁸³

After a careful review of Secretary Babbitt's testimony and the surrounding facts and circumstances, we focused on two areas as potentially perjurious: (1) Babbitt's testimony about what he said on July 14, 1995, to Paul Eckstein about Harold Ickes's involvement in the Hudson casino proposal; and (2) Secretary Babbitt's testimony about whether he intended to mislead Sen. John McCain in a letter to McCain dated Aug. 30, 1996.

With respect to each area of Secretary Babbitt's potentially perjurious testimony, in order to obtain a conviction for perjury, an unbiased jury would have to be convinced beyond a reasonable doubt of the following elements of the offense: (1) Babbitt testified under oath; (2) Babbitt made a false statement during that testimony; (3) the false statement was material to the proceeding in which it was made; and (4) Babbitt made the false statement knowingly with the willful intent to provide false testimony.⁷⁸⁴ In addition, the courts have noted at least two other

⁷⁸²Application to the Court Pursuant to 20 U.S.C. § 592(c)(1) for the Appointment of an Independent Counsel, *In re Bruce Edward Babbitt* (Feb. 11, 1998), at 3.

⁷⁸³*Id.* at 4-5. Attorney General Reno concluded that "no further investigation [was] warranted with respect to potential perjury in connection with Secretary Babbitt's stated failure to recall his alleged comment about political contributions by Indian tribes." *Id.* at 7-8.

⁷⁸⁴*See* 18 U.S.C. § 1621 ("Whoever . . . having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, . . . willfully and contrary to (continued...)