

a. Evidence Relating to Whether Babbitt's Testimony About His Conversation with Eckstein Was True or False

The law of perjury requires that the statement made in testimony under oath be false.⁷⁹⁷

The evidence indicates that Babbitt's testimony about the Eckstein conversation was not an accurate account. The evidence supports Eckstein's account of the conversation. The Secretary's account is internally inconsistent and at variance with Eckstein's account on the central question of whether he told Eckstein that Ickes had called and directed that the Hudson casino decision had to be issued "that day."⁷⁹⁸ Eckstein's account, in contrast, is entirely consistent with prior statements he made about the conversation to others, at a time when his recollection of the conversation was fresh. As set forth below, however, the evidence does not definitively demonstrate whether Babbitt's inaccurate testimony was based on a faulty recollection or whether it was knowingly false testimony.⁷⁹⁹

⁷⁹⁶(...continued)

no recollection of doing so or of discussing any such contributions with anyone from the White House, the DNC, or anyone else.

Id. at 239. Babbitt conceded in subsequent questioning by Sen. Bob Smith (R-N.H.) that it was "conceivable" that he made the statement about campaign contributions to Eckstein. *Id.* at 277. Our investigation did not uncover sufficient evidence to prove that the Secretary's claimed lack of recollection was false.

⁷⁹⁷The first element of perjury is that the statement at issue be made under oath. Babbitt took an oath to tell the truth, the whole truth and nothing but the truth when he testified before the Committee on Governmental Affairs. *Id.* at 236.

⁷⁹⁸Eckstein Affidavit at 6.

⁷⁹⁹The issue here is what Babbitt told Eckstein and not whether what Babbitt told Eckstein was true. Accordingly, this evidence does not impeach Babbitt's assertion that he did not talk to Ickes about the Hudson decision. As reflected in the Review of Evidence, Section II.,
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