

## 5) The “Two-Witness Rule” Is Satisfied

To prove the crime of perjury, the prosecution must meet the requirements of the common law “two-witness rule.” This rule maintains that a conviction cannot rely upon the uncorroborated testimony of a single witness to prove the falsity of the statement at issue in the perjury charge.<sup>812</sup> Though fashioned to prevent establishing the falsity of one person’s oath by presenting another person’s oath without more,<sup>813</sup> the rule does not require that a second independent witness be available; rather, it may be satisfied through other independent corroborating evidence, including circumstantial evidence.<sup>814</sup> Where the rule is applicable, the jury must be instructed on its requirements and meaning.<sup>815</sup>

The only direct evidence indicating that Babbitt’s testimony may have been false concerning the specific disputed elements of his conversation with Eckstein – the issue of “wants” versus “told” and the issue of timing – is the testimony of Eckstein. Nonetheless, there is in this matter independent corroborating evidence that would satisfy the two-witness rule as a matter of law, including the following facts and inferences:

- Babbitt admitted during both his Senate Committee and Grand Jury testimony that he was motivated to terminate his meeting with Eckstein and attempted to do so by creating an impression that the application decision was overdue and was being

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<sup>812</sup>*Hammer v. United States*, 271 U.S. 620, 626 (1926), cited in *Haldeman*, 559 F.2d at 97 n. 185.

<sup>813</sup>*Doto v. United States*, 223 F.2d 309, 310 (D.C. Cir. 1955).

<sup>814</sup>See *Haldeman*, 559 F.2d at 97-98; *Doto*, 223 F.2d at 310; *United States v. Chaplin*, 25 F.3d 1373, 1377 (7<sup>th</sup> Cir. 1994).

<sup>815</sup>See e.g., *Haldeman*, 157 F.2d at 97-98; *United States v. DeZarn*, 157 F.3d 1042, 1053 (6<sup>th</sup> Cir. 1998).