

**b. Babbitt's Testimony about His Conversation with Eckstein Was Material to the Senate Committee on Governmental Affairs**

Perjury requires that the false statement provided under oath be material to the proceeding in which the statement was provided. Babbitt's false testimony about his conversation with Eckstein was material to the Senate Committee on Governmental Affairs. A material statement is one that has a natural tendency to influence or was capable of influencing the tribunal on the issue before it.<sup>818</sup> The testimony at issue need not have actually influenced, misled or hampered the proceeding,<sup>819</sup> and may relate even to only a subsidiary issue under consideration<sup>820</sup> or to an issue of credibility.<sup>821</sup> An important fact on which to base a materiality finding is the nature of the questions posed by the inquiring body – *i.e.*, what did it want to know? Notably, materiality is assessed as of the time the potentially perjurious statement was made; the materiality of the statement is not assessed in hindsight. Accordingly, a “false statement can be material even if

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<sup>818</sup>*United States v. Barrett*, 111 F.3d 947, 953 (D.C. Cir. 1997); DOJ Manual at 9-1497.

<sup>819</sup>*United States v. Harrison*, 671 F.2d 1159, 1162 (8th Cir. 1982); *United States v. Brown*, 666 F.2d 1196, 1200 (8th Cir. 1981); *United States v. Wimpey*, 531 F.2d 768, 770 (5th Cir. 1976); DOJ Manual at 9-1497.

<sup>820</sup>*United States v. Percell*, 526 F.2d 189, 190 (9th Cir. 1975).

<sup>821</sup>*United States v. Nacrelli*, 543 F. Supp. 798, 800 (E.D. Pa. 1982); DOJ Manual at 9-1497. Sen. Lieberman's comments at the hearing on Oct. 30, 1997, are interesting to note in this regard: "You have given a series of answers regarding what you have said to Mr. Eckstein on that meeting on July 14, 1995, that I find puzzling and disconcerting, and to some extent, they may affect your credibility before the Committee. I want to give you another chance to explain what you have said here, beginning in the colloquy that you had with Chairman Thompson." Babbitt Senate Test. at 263.