

Chairman Thompson: . . . Are you saying that you were not correcting the record, more or less, with the letter to me?

Secretary Babbitt: *Senator, I believe those statements are consistent. They both reflect my best recollection of what I said and what I didn't say.*⁸³¹

By stating in his opening statement that he did not intend to mislead either Sen. McCain or Sen. Thompson, Babbitt actually went further than adopting the letter to McCain as literally true and correct; he affirmed under oath that the statement was not merely literally true (if perhaps misleading), but was not intended to mislead at all.

a. Evidence Relating to Whether Babbitt's Testimony That He Did Not Intend to Mislead McCain Was True or False

The law of perjury requires that the statement made under oath be false.⁸³² The evidence indicates that Babbitt may have intended to mislead McCain in his Aug. 30, 1996, letter, and that Babbitt's testimony that he did not intend to mislead McCain may not have been truthful. There is no dispute that the letter itself misled by giving the impression that the Secretary had not mentioned Ickes to Eckstein. In the Grand Jury, Babbitt admitted as much;⁸³³ prior to the Senate hearing, he also apologized to McCain for misleading him. The element of falsity at issue here, however, pertains to the falsity of Babbitt's testimony before the Senate Committee – *i.e.*, his

⁸³¹*Id.* (emphasis added).

⁸³²The 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. *See* Babbitt Senate Test. at 236.

⁸³³*See* Babbitt G.J. Test., July 7, 1999, at 222.