the hearing at which Babbitt testified on Oct. 30, 1997, was to determine what Babbitt said at the July 14, 1995, Babbitt-Eckstein meeting in order to better understand whether Ickes influenced – or even communicated with – Babbitt about the Hudson application at the request of the DNC and campaign contributors. In short, Babbitt's testimony was material because it was clearly capable of influencing lines of inquiry and further investigation into the conduct of Babbitt, Ickes and Interior in the Hudson matter. In reaching this conclusion, we are mindful that an argument could be made that the divergence between Babbitt's and Eckstein's accounts of their conversation, and the importance of those distinctions in the broader context of the Senate Committee's inquiry, rendered slight the impact of any false testimony on the Committee's efforts. Although we are of the view that this argument fails when measured against the applicable legal standard, we are cognizant of its potential jury appeal.

c. There Is Insufficient Evidence to Prove that Babbitt Possessed the Requisite Intent to Provide False Testimony

The law of perjury requires that the material false statement be made with the willful intent to provide false testimony. There is insufficient evidence to prove beyond a reasonable doubt that Secretary Babbitt intended to provide false testimony in making the false statements described above.

Secretary Babbitt arguably had a motive to testify falsely about the words used in his conversation with Paul Eckstein. Even if there was no corrupt influence on the Hudson decision, Babbitt was embarrassed by his remarks to Eckstein and had placed himself in a dilemma by sending inconsistent letters on this matter to Senators McCain and Thompson. In his letter to Sen. McCain, Babbitt created the impression that he had not even mentioned Ickes to Eckstein