

THE HUDSON, WISCONSIN CASINO PROPOSAL

INTRODUCTION

This chapter of the report focuses on the events surrounding the application by three impoverished bands of Wisconsin Indian tribes to open a casino in Hudson, Wisconsin. After being approved in November 1994 by the regional office of the Department of Interior's Bureau of Indian Affairs (BIA), the application was forwarded to Washington D.C. for final review. On July 14, 1995, the Department reversed course and formally rejected the tribes' application.¹

Prompted by allegations that the Interior decision was dictated by political and fundraising considerations, the Committee initiated an investigation into the circumstances surrounding the rejection. As part of the investigation, the Committee deposed various White House and DNC officials, as well a number of current or former officials at Department of Interior. The Committee also subpoenaed documents from a variety of sources, including the White House and DNC. Moreover, the Committee received relevant documents and sworn testimony from federal and state lawsuits relating to this application.

On October 30, 1997, the Committee held public hearings on this issue. While the hearing covered some of the background to the Hudson application, its focus was primarily on a private meeting between Secretary of Interior Bruce Babbitt and Paul Eckstein, a lawyer representing the applicant tribes, and Secretary Babbitt's varying recollections of the meeting.

During the meeting, held on July 14, 1995, the same day Interior announced the rejection, Secretary Babbitt made comments suggesting that Interior had come under political pressure to

¹ Letter from Michael Anderson to Honorable Rose M. Gurnoe, et al., July 14, 1995 (Ex. 1).

deny the application. Specifically, according to Eckstein, Babbitt said that Harold Ickes had directed Babbitt to make a decision on the matter quickly, and Babbitt also alluded to sizeable contributions to Democrats from gaming tribes. Later, when asked about the July 14 meeting, Secretary Babbitt provided the Senate with contradictory accounts of what occurred.

In many ways, the Hudson casino story confirms the public's worst suspicions about how things seem to work in Washington. The BIA area office approved the casino application in November 1994 over the objections of the wealthy, neighboring tribes whose nearby gambling casinos would face competition from a new casino of the applicants. At the same time the area office decision was sent to Washington for final approval, on a separate track began a full-tilt lobbying effort against the decision, which involved the DNC and the White House.

Interior's reversal of the area office recommendation, when viewed in the context of the lobbying effort and through the prism of Secretary Babbitt's comments to Eckstein, raises questions regarding whether the final decision was made for the right reasons and by the right people. There is strong circumstantial evidence that the Interior Department's decision to deny the Hudson application was caused in large part by improper political considerations, including the promise of political contributions from opposition tribes. At a minimum, it is clear that the opposition tribes and their lobbyists activated the DNC and, to some extent, the White House, to take action on their behalf. Financial support -- both past and future -- was crucial to this effort.

The following discussion describes some background on the casino application and the lobbying effort put on by the opposition tribes. It addresses the July 14, 1995 Babbitt/Eckstein conversation, and Babbitt's subsequent representations about it. Finally, it sets forth what can be

gleaned about the actual decision-making process at Interior, noting the inconsistencies and other troubling aspects of it.

THE EVENTS LEADING TO THE DENIAL

In late 1993, three small, poor² bands of Wisconsin Chippewa Indians — the Sokaogon Chippewa Community, the Lac Courte Oreille Band of Lake Superior Chippewa Indians, and the Red Cliff Band of Lake Superior Chippewa Indians -- applied to have the Department of Interior take land in Hudson, Wisconsin into trust for gaming purposes.³ The applicant tribes planned to convert a failing dog track into a casino.

Concerned about losing their market share, other tribes with nearby lucrative casinos lined up against the Hudson application. The opposition tribes included most notably the Shakopee Mdewakanton Sioux, the Mille Lacs, the St. Croix Chippewas, and the Oneida.

Following the standard practice, the applicant tribes submitted their application to the Minneapolis Area Office of BIA. In November 1994, after an exhaustive review, including consultation with local officials and the opposition tribes, the area office recommended approval of the application in a 32 page memorandum.⁴ The area office found that the application met both standards imposed by Section 20 of IGRA: (1) the proposed casino was in the best interests of the applicant tribes; and (2) it was not detrimental to the surrounding community. Along with

² According to George Newago, the Chairman of the Red Cliff Chippewas, the unemployment rate for his tribe is over 50 percent, and the average household income is approximately \$5,300 per year.

³ Section 20 of IGRA creates the mechanism for such “off reservation” trust acquisitions. See 25 U.S.C. section 2719.

⁴ Memorandum from Department of Interior Area Office to Assistant Secretary - Indian Affairs, Nov. 15, 1994 (Ex. 2).

four volumes of documentary support, the area office transmitted its analysis to Washington D.C. in accordance with Interior Department procedures for a final decision.

The Pressure Builds

Once the application arrived in Washington D.C., the political pressure started. In early 1995, the opposition tribes hired Patrick O'Connor, a prominent lobbyist as well as a former DNC Treasurer. O'Connor was a partner in the Minneapolis based law firm of O'Connor & Hannan. As will be described below, O'Connor and his lobbying partners became a persistent presence in this story, blanketing the DNC, White House, and Interior.

On February 8, 1995, O'Connor arranged a meeting between the opposition tribes, members of the Minnesota congressional delegation, and two Interior officials. Interior was represented at the meeting by John Duffy, Counselor to Secretary Babbitt, and George Skibine, head of the Indian Gaming Management Staff. Skibine was the top career official who dealt with Indian gaming; Duffy, a high ranking political appointee, and Secretary Babbitt's point man for the Hudson application. While Duffy testified in his deposition that he did not have a "clear recollection of the [February 8] meeting," he believed that Department of Interior Chief of Staff Tom Collier had asked him to go, probably because Secretary Babbitt had been asked to attend and could not.⁵ Skibine, who had been head of the Indian gaming office only a few days at the time of the meeting, said that his role as head of the Indian gaming office was simply to accompany Duffy and take notes.⁶ As for what happened at the meeting, Skibine testified that the

⁵ Deposition of John Duffy, Sept. 29, 1997, pp. 11-13.

⁶ Deposition of George Skibine, Nov. 17, 1997, p. 15.

opposition tribes complained that they had not been adequately consulted by the area office, and Duffy agreed to allow them to supplement the record.⁷

Reopening the administrative record was an unusual step. The opposition tribes had already been permitted many months to comment on the application and submit materials for the record. No Interior official with whom the Committee spoke with could recall another instance where such a record had been reopened.

O'Connor came to the realization that he could leverage the DNC to help persuade Interior and the White House to support his clients' position. On March 15, 1995, O'Connor had David Mercer, the Deputy Finance Director of the DNC, arrange a meeting with Don Fowler, the DNC chairman. O'Connor brought his partner and fellow lobbyist, Larry Kitto.⁸ According to O'Connor's date book, Fowler was accompanied by DNC Finance Chair Truman Arnold.⁹ As for the purpose of the meeting, Mercer explained in a memorandum to Fowler that O'Connor and Kitto would be coming from a meeting with Tom Collier and that the lobbyists' "issue" had to do with Hudson casino proposal.¹⁰ Collier recalls that he, not Duffy, made the determination to reopen the administrative record. Moreover, Collier remembers reopening the record after the meeting with O'Connor.¹¹

⁷ Id., pp. 17-18.

⁸ Memorandum from David Mercer to Chairman Fowler, Mar. 15, 1997 (Ex. 3).

⁹ Excerpts of Patrick O'Connor's 1995 Date book (Ex. 4).

¹⁰ Ex. 3.

¹¹ Deposition of Thomas Collier, Sept. 29, 1997, p.13.

Shortly after his meetings with DNC officials and Collier, O'Connor began trying to contact officials at the White House. In April 1995, O'Connor left numerous phone messages at the White House for Loretta Avent, a member of Harold Ickes's staff who handled Indian issues. Avent ducked O'Connor's initial calls, consistent with the standing advice of counsel that White House staffers should not speak to lawyers or lobbyists on Indian issues.¹² Undeterred, O'Connor faxed Avent a memorandum, asking to talk to her about intervening on the Hudson application.¹³

Meanwhile, on Monday, April 24, 1995, during a Presidential visit to Minneapolis, O'Connor was able to go right to the top. At a small reception, O'Connor brought up the Hudson application with President Clinton. In his state court deposition, O'Connor described the situation:

When he [the President] got to me, I said, "Mr. President, the Indian tribes that I represent are concerned about a possible casino going in near Hudson, Wisconsin, which is across the river." And that's what I said. At that juncture, he said, "Bruce." And Bruce [Lindsey] came over. . . . [The President] said, "Bruce, talk to O'Connor here about his concerns about tribes that he represents." That was it.¹⁴

O'Connor explained to Lindsey that the proposed casino would have a serious economic impact on his clients. After O'Connor indicated he wanted to make sure this view got communicated to Interior, Lindsey said that he would have someone call O'Connor. When O'Connor commented that he "hadn't been able to get anywhere with Loretta [Avent]", Lindsey

¹² Memorandum from Loretta Avent to Harold Ickes, Apr. 24, 1995 (Ex. 5).

¹³ E-mail from Michael Schmidt to Cheryl Mills, Apr. 24, 1995 (Ex. 6).

¹⁴ Excerpts of State Court Deposition of Patrick O'Connor, Apr. 29, 1997, p. 61 (Ex. 7).

simply repeated he would have someone call O'Connor.¹⁵

Lindsey quickly followed through. The same day, he called Avent from Air Force One to check into the Hudson matter.¹⁶ Avent agreed to call O'Connor, but only after cautioning that White House counsel had advised her not to speak directly to lobbyists on Indian issues.¹⁷

Before calling O'Connor, Avent also wrote a strongly worded memo to Ickes.¹⁸ In the memo, Avent described her reluctance to get involved in the Hudson matter: "This is such a hot potato . . . -- too hot to touch. The legal and political implications of our involvement would be disastrous." Avent then cautioned that some tribal leaders have "already gone ballistic about

other tribal governments who have greater access to the Administration because of their ability to pay hired guns (as they call them) and their belief that this unfairly gets things to happen."¹⁹

¹⁵ A White House memo described the O'Connor conversation with the President as follows: "Pat bumped into the President today in Minneapolis and mentioned to him that Loretta never returned his calls." Ex. 6. See also Ex. 7, p. 62.

¹⁶ Ex. 6.

¹⁷ Ex. 5.

¹⁸ Id. Even before the Committee received the memoranda attached as Exhibits 5 and 6, Avent's name had surfaced. Accordingly, Committee staff contacted Avent by telephone in early October 1997 and asked her about her involvement with the Hudson matter. Avent explained that she really could not remember anything about it. Interview of Loretta Avent, Oct. 14, 1997.

¹⁹ Ex. 5 Undeterred by Avent's April 24 memo, Ickes telephoned O'Connor on April 25 and 26, leaving messages both times. O'Connor apparently returned the calls and spoke to an assistant in Ickes' office. Ickes could not explain why he called

Avent also called O'Connor on April 24. According to a memorandum of the conversation, O'Connor was agitated that Avent still resisted meeting with him on the Hudson matter. Before abruptly hanging up, O'Connor warned Avent that he would discuss her resistance later in the week when he met with Don Fowler at the DNC.²⁰

The Opposition Tribes Activate the DNC

On April 28, 1995, O'Connor, along with other lobbyists and opposition tribal leaders, met with Don Fowler at DNC headquarters. The purpose of the meeting, succinctly stated in a lobbyist's memo, was "to discuss our position on the [Hudson application] with influential Democrats in Washington. The people we will be meeting with are very close to President Clinton and can get the job done."²¹

If, as the saying goes, time is money, Fowler judged this meeting to be important. He spent two hours with the lobbyists and their tribal clients. The lobbyists, impressed by how much time Fowler gave them, thanked Mercer after the meeting: "Thank you for your note regarding our recent meeting with Chairman Fowler on the Indian gaming issue. I was amazed and pleased that he would devote so much of his time to the issue."²²

According to one meeting participant, money was a topic of the meeting. Lewis Taylor, the

O'Connor on those dates. In response to questions, Ickes testified at his deposition that he could not recall any discussion with Lindsey or the President about this issue and that he "doubted" that he had a discussion with either one. Deposition of Harold Ickes, Sept. 22, 1997, pp. 31-32.

²⁰ Ex. 6.

²¹ Memorandum from John McCarthy to All Tribal Leaders, Apr. 25, 1995 (Ex. 8).

²² Letter from Franklin Ducheneaux to David Mercer, May 4, 1995 (Ex. 9).

head of the St. Croix tribe, has testified in a state court deposition that he discussed making contributions to the DNC. Asked whether he “specifically recollect[ed] discussing campaign contributions during that [April 28] meeting with Don Fowler,” Taylor recounted, “I believe I did.”²³ Taylor also testified that he told Fowler, “We support our friends. St. Croix supports their friends” and “[The St. Croix] have got a number of heavy duty issues that we needed help on and our friends are the Democrats and therefore I think we should donate to assist in some of these causes.”²⁴ When Fowler testified before the Committee, he did not rule out the possibility that contributions were discussed but repaired to the defense of “no memory” when asked directly: “If such a comment was made, I do not remember it.”²⁵

Memoranda about the April 28 meeting illuminate its purpose quite clearly. Larry Kitto explained in a memorandum that “the purpose of the meeting was to request the DNC and the Committee to re-elect the President, to help communicate with the White House and the President about why the Department of the Interior should not approve [the Hudson application].”²⁶ Kitto also wrote about what he and his clients told Fowler: “The message was quite simple: all of the people against this project, both Indian and non-Indian are Democrats who have substantially

²³ State Court Deposition of Lewis Taylor, Dec. 17, 1996, pp. 75-76 (Ex. 10).

²⁴ Id. at pp. 69-71.

²⁵ Testimony of Don Fowler, Sept. 9, 1997 p. 108. Fowler said in his deposition, “I’m aware that some of them [the opposition tribes] contributed. I was not aware that they had contributed when I talked with them, nor was I concerned with the possibility that they would or would not contribute.” Deposition of Don Fowler, May 21, 1997 p. 266.

²⁶ Minnesota Legislative Update [lobbying report prepared by Larry Kitto], April 24-28, 1995 (Ex. 11). The report mistakenly dates the Fowler meeting as April 18, 1995.

large blocks of votes and who contribute heavily to the Democratic party. In contrast, all of the people for this project are Republican.”²⁷ Another memo summed up Fowler’s demeanor during the meeting: “He [Fowler] listened. He took notes. He asked questions. He got the message: ‘It’s politics and the Democrats are against it and the people for it are Republicans.’”²⁸

According to a lobbyist’s report, “Fowler assured the group that he would take this issue up with high ranking officials in the White House and, if necessary, would arrange a meeting with Tribal officials and the White House, and that he would do this in a very timely manner.”²⁹

Fowler may have been even more specific in whom he would contact. One opposition lobbyist summarized in a memo, “Mr. Fowler stated that he would speak with the President’s assistant, Harold Ickes. He would urge Mr. Ickes to urge Secretary Babbitt to make a closer examination of impact of the proposed operation.”³⁰

Fowler was true to his word. Within days, Fowler called Ickes and someone at the Department of Interior. Fowler testified, “I called Mr. Ickes, explained to him the nature of the situation, and I called someone at the Department of Interior. I do not recall the name of the person with whom I spoke at the Department of the Interior. I just simply don’t recall that person’s name. I simply asked that situation and the facts in that situation be reviewed.”³¹ The

²⁷ Ex. 11 (emphasis added).

²⁸ Memorandum from Tom Krajewski to JoAnn Jones, May 3, 1995 (Ex. 12).

²⁹ Ex. 11.

³⁰ Memorandum from Carl Artman to Scott Dacey, May 1, 1995 (Ex. 13).

³¹ Fowler testimony, p. 107.

Committee was never able to identify who precisely Fowler called at the Interior.³² Fowler followed his phone call to Ickes with a memorandum describing the opposition tribes as “our supporters,” and soliciting Ickes’s advice on “how we might proceed.”³³

After Fowler contacted Ickes, O’Connor followed up with Ickes directly.³⁴ In a May 8, 1995 letter, O’Connor described the Hudson application, including the fact that he had already discussed the issue with President Clinton, Lindsey, and Fowler. O’Connor then wrote candidly about “the politics involved in this situation.” O’Connor explained, “all of the representatives of the tribes that met with Chairman Fowler are Democrats and have been so for years. I can testify to their previous financial support to the DNC and the 1992 Clinton/Gore Campaign Committee.”³⁵

During this same time period, O’Connor and his partner Kitto were having numerous conversations with fund-raising officials of the DNC and the Clinton/Gore Campaign that related to the Hudson matter. According to relevant excerpts from their date books, O’Connor and Kitto met or spoke frequently with Fowler, David Mercer, the DNC Deputy Finance Director, and Terry McAuliffe, the Finance Chair of the Clinton/Gore Campaign.³⁶ Most of the entries, which

³² In Committee depositions, no current or former Interior official admitted to speaking with Fowler. However, Tom Collier, former Interior Chief of Staff, indicated that he would have been the most likely person for Fowler to call, and that is “absolutely possible that he may have called me and I don’t remember.” Collier deposition, p.25.

³³ Memorandum from Don Fowler to Harold Ickes, May 5, 1995 (Ex.14).

³⁴ Letter from Patrick O’Connor to Harold Ickes, May 8, 1995 (Ex. 15).

³⁵ Id.

³⁶ See Ex. 4 and Excerpts of Larry Kitto 1995 Date book (Ex.16).

begin in early 1995 and continue through the date of the Interior decision, simply show meetings or conversations between the lobbyists and the fund-raisers.

However, some of the entries are more telling. In somewhat cryptic notes, for example, Kitto wrote, “25 people at \$1,000 each” and also “DNC, Committee to Reelect - 50 grand.”³⁷ O’Connor had a similar entry. According to his date book, on May 24, 1995, O’Connor also mentioned the Hudson matter to Peter Knight, Chairman of the Clinton/Gore Campaign, and David Strauss, Vice-President Gore’s Deputy Chief of Staff.³⁸ On June 19, 1995, O’Connor wrote, “Disc[ussion] re support to be given to Committee to Reelect and DNC.”³⁹

It is clear that these conversations and meetings were related to the Hudson matter. O’Connor and Kitto were permitted to redact unrelated entries from the date books they were required to produce during litigation. Even more importantly, O’Connor billed the opposition tribes for all of the above-referenced contacts.⁴⁰

Meanwhile, on May 14, 1995, another of O’Connor’s partners, Tom Schneider, ran into Ickes at a Democratic fund-raising event, and asked Ickes about the Hudson casino matter. Ickes acknowledged that he told O’Connor that he would look into the Hudson matter.⁴¹ When

³⁷ See Ex. 16.

³⁸ See Ex. 4.

³⁹ Id.

⁴⁰ Letters from Thomas Corcoran to Lewis Taylor, May 9, June 27, July 11, Sept. 15, and Oct. 18, 1995 (enclosing O’Connor and Hannan bills)(Ex. 17).

⁴¹ State Court Deposition of Thomas J. Schneider, Sept. 8, 1997, p. 17 (Ex. 18). In his deposition testimony, Ickes said he could not recall talking to O’Connor. Ickes

Schneider reiterated the importance of Ickes's direct involvement in the matter, Ickes confirmed to Schneider, "I'll follow through on it." Schneider explained, "[Harold Ickes and I] had a relationship that if he said he was going to do something he'd do it."⁴²

On May 16, 1995 O'Connor wrote Ickes again, and forwarded some materials favorable to the opposition tribes.⁴³ Sometime in the next 24 to 48 hours, there is the first documented contact between Ickes' staff and Secretary Babbitt's staff at Interior about the Hudson matter.

The White House Contacts Interior

On May 18, 1995, Jennifer O'Connor, an assistant to Ickes (and no relation to lobbyist Patrick O'Connor), wrote Ickes a memorandum about the Hudson matter.⁴⁴ After referencing Patrick O'Connor's interest in the matter, Jennifer O'Connor provided an update. She wrote that the Interior staff had met "last night" and had come up with a preliminary decision to deny the application. After cautioning that the information was not yet public, Jennifer O'Connor listed some reasons for the rejection, including opposition from the local community. She then wrote, "Some [Interior] Department staff think the bottom line here is the Minnesota and Wisconsin

testified, "I don't recall ever talking to O'Connor about this. Again, I'm not saying I did, but as a deputy chief of staff, I talk to a lot of people in the course of a day, week, months and years. So I have no specific recollection. I may have, but I don't have any recollection, a specific conversation with him." Deposition of Harold Ickes, Sept. 22, 1997, p. 31.

⁴² Ex. 18, p. 25.

⁴³ Facsimile from Patrick O'Connor to Harold Ickes and John Sutton, May 16, 1995 (Ex. 19).

⁴⁴ Memorandum from Jennifer O'Connor to Harold Ickes, May 18, 1995 (Ex. 20).

tribes who are benefiting enormously from gaming don't want the competition, and are able to hire bigger lobbyists than the three very poor tribes who want the casino.”⁴⁵

Without being able to cite a precise date, Jennifer O'Connor testified that she first became involved in the Hudson matter when Ickes handed her a letter from Patrick O'Connor and asked her to find out the status.⁴⁶

She testified that in response to Ickes' request, she called officials at Interior. She said that she may have spoken to Collier or John Duffy, but if so, she was quickly pointed in the direction of Secretary Babbitt's special assistant, Heather Sibbison.⁴⁷ Much like Avent, Jennifer O'Connor apparently recognized the implications of White House involvement in agency decisions. Asked what she and Sibbison talked about, O'Connor volunteered that she began their conversation with

⁴⁵ Id.

⁴⁶ Deposition of Jennifer O'Connor, Oct. 6, 1997, p. 37. In both his hearing and deposition testimony, Ickes stated that he could not recall much about the Hudson application. Ickes testified at the hearing, "I recall--as I stated in my deposition, I was not--to the best of my recollection, I was very peripherally involved in that. I think that Jennifer O'Connor on my staff was the primary point person on it. I recall having one discussion. I think it was a telephone discussion with Don Fowler--he and I talked constantly so it is hard to separate all of this out--in which he raised the issue. I told him I would check on it, and I think I had Ms. O'Connor check on it, on the status of it." Testimony of Harold Ickes, Oct. 8, 1997, pp. 46-47.

Later in his testimony, when asked if he recalled talking to Secretary Babbitt or any other political appointees at Interior about this issue, Ickes again responded that he could not recall. He stated, "No. As I said before, I don't have any recollection of it, and of talking to Interior about this. I think that this--I had given this to Jennifer O'Connor to check on the status." Ickes testimony, p. 55.

⁴⁷ Jennifer O'Connor deposition, p. 39.

a disclaimer -- that she was only looking for a status and that she did not want to influence anything or learn anything that she was “not supposed to know.”⁴⁸

Documents reflect additional contacts between Ickes’ staff and Interior during the next few weeks. Jennifer O’Connor continued to call Duffy. According to Duffy’s phone logs, Jennifer O’Connor called him on May 25, 1995, and left a message. Duffy or someone from his office apparently called O’Connor back again, because on May 31, there is another message from Jennifer O’Connor to Duffy, with the notation, “returned your call.” Duffy likely called O’Connor back because the same telephone log records the disposition as “done.”⁴⁹ Duffy was shown these telephone logs and asked if they helped him remember whether he spoke to her about the Hudson matter. Duffy replied, “It does not. I don’t have any recollection of talking to Jennifer about the Hudson casino. But I can’t tell you I never talked to her because I just don’t recall one way or the other.”⁵⁰

In early June, Ickes’s office again telephoned Interior. It is unclear what prompted this contact, though the record shows that on June 1, 1995, Patrick O’Connor faxed another note to Ickes.⁵¹ In any event, Jennifer O’Connor testified that she asked an intern, David Meyers, to see if Interior had already announced its decision.⁵² Meyers followed through and spoke to Sibbison.

⁴⁸ Id., pp. 40-41.

⁴⁹ Interior Department Telephone log, May 25, 1995 (Ex. 21).

⁵⁰ Duffy deposition, p. 60.

⁵¹ Facsimile from Patrick O’Connor to Harold Ickes and John Sutton, June 1, 1995 (Ex. 22).

⁵² Jennifer O’Connor deposition, p. 53.

According to a June 6, 1995 memorandum of his conversation, which preceded Interior's announcement of the rejection by five weeks, Sibbison told Meyers that it is "95% certain that the application will be turned down" and that Interior will make a decision in the next two weeks.⁵³ Sibbison also described Interior's reasoning to Meyers and indicated Interior was aware of the intense lobbying by the opposition tribes. "She [Sibbison] explained that there is significant local opposition. Much of the opposition, however, is a by-product of wealthier tribes lobbying against the application. . . . Nonetheless, she stated that they will probably decline, without offering much explanation, because of their 'discretion' in this matter."⁵⁴ Besides cautioning that this information was not yet public, Sibbison apparently solicited the views of the White House. Meyers wrote to Jennifer O'Connor, "She asked that if you have any feedback please call her with your thoughts."⁵⁵

In her deposition, Sibbison acknowledged speaking to Meyers but took issue with his characterization of her comments. As for the local opposition, she testified, "we were hearing those rumors, and I must have told this guy that, and he's written it as if it's fact instead of rumor."⁵⁶ As for the feedback comment, Sibbison denied that she ever asked for Jennifer

⁵³ Memorandum from David Meyers to Jennifer O'Connor, June 6, 1995 (Ex. 23).

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Deposition of Heather Sibbison, Sept. 26, 1997, p. 94. Regardless of whether the claim of manufactured local opposition is characterized as rumor or fact, it appears that Interior officials did not take any steps to inquire further. Sibbison testified that no one at Interior conducted any further exploration into the issue of lobbyists generating local opposition. Sibbison deposition, pp. 97-98. Moreover, Michael Anderson, the Interior official who signed the denial letter, testified in his deposition that "if someone ginned that [the local opposition] up by wealthier

O'Connor's opinion nor was she concerned with Jennifer O'Connor's views on the application.⁵⁷

At some point in time, Jennifer O'Connor reported to Fowler about what she had learned.

Jennifer O'Connor testified:

A: Mr. Fowler called me. He said roughly--this is, again, it's vague and hazy in my memory, but he said something along the lines of can you tell me what the status is of this issue because I really want to be able to get back to some people when it's finished.

And I said to him--I can't remember exactly when he called, but the Department had not yet finished its deliberations, and I said, here's the status, they're not done yet. There's nothing we can tell anybody. All you can say to whoever it is you're talking to--I don't think he told me who he was talking to --but I said to him the only thing he could say to them was that Interior was moving along and would have a decision at some point soon.

And I made clear to him he couldn't tell them anything other than that. So-

Q: So, Mr. Fowler called you, he merely inquired into the status of the pending application?

A: Yes. My recollection of the conversation was that he was very interested in being able to be responsive to some set of people who wanted to know when the decision was going to be made.

Q: Did you understand that set of people were donors to the Democratic National Committee or prospective donors to the DNC?

A: He never told me who they were.⁵⁸

It is unclear whether Fowler or anyone else reported back to Patrick O'Connor or his

tribes lobbying, I didn't look behind that." Anderson deposition, Sept. 19, 1997, pp. 82-83.

⁵⁷ Sibbison deposition, p. 99.

⁵⁸ Jennifer O'Connor deposition, pp. 62-63.

opposition tribe clients. Nevertheless, a June 12, 1995 entry in O'Connor's date book shows that he received a report on White House "new developments."⁵⁹

The Formal Decision

Against the backdrop of this full tilt lobbying push, the decision process at Interior moved forward. Briefly, the process unfolded as follows: On June 8, 1995, Tom Hartman, a career BIA employee with the Indian Gaming Management Staff, wrote a 17-page analysis, in which he recommended finding the necessary predicate for approving the application.⁶⁰ Apparently sometime after Skibine received Hartman's memo, a longer version of the memo, again favoring approval of the application, was prepared. Skibine is the author listed; the final decision maker listed is the Assistant Secretary for Indian Affairs.⁶¹

Despite these detailed staff analyses approving the application, Skibine testified that he prepared a draft letter rejecting the application, readied for Assistant Secretary Ada Deer's signature, on June 29, 1995.⁶² During the next two weeks, the Secretary's office at Interior coordinated the review and revisions of Skibine's June 29 draft letter. Somewhere in the process Assistant Secretary Deer quietly recused herself from the decision. On July 14, 1995, Michael Anderson, Deer's deputy, Michael Anderson, signed the denial letter and Interior formally issued its decision.

⁵⁹ Ex. 4.

⁶⁰ Memorandum from Indian Gaming Management Staff [signed by Tom Hartman] to Director, Indian Gaming Management Staff, June 8, 1995, (Ex. 24).

⁶¹ Memorandum from George Skibine to the Assistant Secretary - Indian Affairs, undated (Ex. 25).

⁶² Skibine deposition, p. 65.

The Payback?

On July 14, 1995 -- the day of Interior's decision and the meeting between Babbitt and Eckstein -- O'Connor and Kitto discussed fund-raising. This conversation, for which the opposition tribes were billed, is described in O'Connor's date book as follows: "Disc[ussion] re[garding] necessity to follow up with Harold Ickes at the White House, Fowler at the DNC and Terry Mac [McAuliffe] at the Committee to Reelect outlining fund-raising strategies."⁶³

The fund-raising strategies alluded to by O'Connor certainly worked well. According to FEC records, during the next four months, the DNC and the Democratic Senatorial Campaign Committee (DSCC) collected about \$53,000 from the opposition tribes. FEC records show that those same tribes contributed an additional \$230,000 to the DNC and DSCC during 1996. In addition, many of the same tribes contributed a total of over \$50,000 to the Minnesota Democratic Farmer Labor Party. These numbers do not include any contributions made by the lobbyists or individual tribal members to the Clinton/Gore campaign or donations to other state parties that might have been directed by the DNC.

After the July 14 decision, the opposition tribes and lobbyists showed who they thought was responsible for tilting the decision in their favor. Fowler received at least three thank you notes from opposition tribes and lobbyists. In a letter dated August 3, 1995, JoAnn Jones, the President of the Ho-Chunk Nation, wrote, "I want to thank you for your help in the successful effort to defeat the Hudson casino. Numerous people contributed to the Department of Interior decision. You were particularly instrumental in helping the Department understand the significance and

⁶³ Ex. 4.

importance of their decision.”⁶⁴ David Mercer at the DNC also received at least one note from a lobbyist. Franklin Ducheneaux wrote to Mercer on July 27, 1995, “The Minnesota Tribes are very grateful to you and the Chairman for your assistance in advising the President and the Secretary on this matter.”⁶⁵ JoAnn Jones of the Ho-Chunks even wrote to President Clinton, thanking him for his help in defeating the Hudson application.⁶⁶

O’Connor and Kitto also stated their belief that the White House had assisted the opposition tribes. In a September 14, 1995 fund-raising invitation for the Clinton/Gore Campaign, the two lobbyists wrote, “As witnessed in the fight to stop the Hudson Dog Track proposal, the Office of the President can and will work on our behalf when asked to do so.”⁶⁷

Paul Eckstein and Bruce Babbitt

By early July 1995, nine months after the area office’s approval, the Secretary’s office at the Department of Interior had still not formally acted on the application. At that time, according to Eckstein, “there were a lot of rumors flying around” that a decision was imminent.⁶⁸ Concerned because wealthy tribes with competing casinos had mounted an intense lobbying campaign against

⁶⁴ Letter from JoAnn Jones to Don Fowler, Aug. 3, 1995; Letter from Dallas Ross to Don Fowler, July 24, 1995; Letter from Franklin Ducheneaux to David Mercer, July 27, 1995; and Letter from Stanley Crooks to Don Fowler, July 27, 1995 (Ex. 26).

⁶⁵ Id.

⁶⁶ Letter from JoAnn Jones to President Clinton, Aug. 3, 1995 (Ex. 27).

⁶⁷ Fund-raising invitation letter, Sept. 14, 1995 (Ex. 28).

⁶⁸ Testimony of Paul Eckstein, Oct. 30, 1997, p. 18.

their application, the applicant tribes retained Paul Eckstein to “find out what [was] happening.”⁶⁹ Eckstein was retained in April 1995. Shortly after being hired, Eckstein secured a commitment from Secretary Babbitt that if the Department was going to deny the application, Babbitt would first have a face-to-face meeting with leaders of the applicant tribes.⁷⁰

Tasked with determining the status of the pending application, Eckstein called Secretary Babbitt on July 11, 1995. During their conversation, Secretary Babbitt directed Eckstein to meet with Babbitt’s counselor, John Duffy, indicating that Duffy would call him.⁷¹ Duffy was the Secretary’s point man on this application. Duffy called Eckstein that day from a plane, telling him that if Eckstein wanted a meeting, he needed to get to Washington D.C. immediately. When Eckstein asked to have the meeting the following Monday, Duffy said, “Well it’s got to be this

⁶⁹ Id. Eckstein is a prominent Phoenix, Arizona lawyer, and a partner in the firm of Brown and Bain. During his 32 years of law practice, Eckstein has handled a wide variety of matters, including various issues on behalf of Indian tribes. Id., p. 11-12. Eckstein is also a long time friend of Secretary Babbitt, as the two of them met at Harvard Law School in 1962. After law school, the two men took the Arizona bar exam together and then in 1967, Babbitt was hired by the same Phoenix law firm that Eckstein had joined two years earlier. At that time, the firm had less than 10 lawyers. Eckstein and Babbitt practiced law together through 1974, when Babbitt was elected Arizona Attorney General. Id., p. 13.

As Babbitt moved from Attorney General to Governor of Arizona in 1978, Eckstein continued to have regular contact with Babbitt. Eckstein, in fact, was a member of what was known at the time as then-Governor Babbitt’s “kitchen cabinet.” Id., p. 14. In 1982, Eckstein ran Secretary Babbitt’s reelection campaign for Governor. Eckstein, moreover, once represented then-Governor Babbitt in a defamation lawsuit. Id. Asked whether he considered Secretary Babbitt a friend, Eckstein responded simply, “yes.” Id.

⁷⁰ Deposition of Paul Eckstein, Sept. 30, 1997, pp 29-30.

⁷¹ Eckstein testimony, p. 19.

week, you've got to get here."⁷² Accordingly, they set the meeting for the morning of Friday, July 14.

The Friday morning meeting between Eckstein and Duffy lasted about 45 minutes. Eckstein described the meeting as follows:

We . . . began making the arguments in favor of granting the application, and thought that Mr. Duffy was agreeing with us. The nods seemed to be at the appropriate times, and rather abruptly, well into the presentation, a half-hour, 40 minutes into the presentation, he says, Wait a minute. He said the application is going to be denied. The decision of denial is going to be issued today, and the reasons are that the St. Croix Chippewas will be injured and their Turtle Lake facility will be hurt if they grant this application, and the local opposition that exists in the Hudson area. And we questioned him a little about that, and then left . . .⁷³

Shortly after finishing with Duffy, Eckstein called Babbitt and asked for a meeting. Babbitt agreed and the two men met alone later that afternoon in Babbitt's office at Interior. According to Eckstein, their meeting lasted for "a half-hour, conceivably 45 minutes."⁷⁴ Eckstein testified, "I went in and explained that we had just heard from Counselor Duffy that the decision was going to be issued that day and that it was going to be a denial, and reminded him of the commitment that had been made to make a presentation to him with my clients. And his response was that Harold Ickes had directed him to issue a decision that day."⁷⁵ Eckstein remembers clearly that this comment from Secretary Babbitt took place at the beginning of their meeting.⁷⁶

⁷² Id.

⁷³ Id., p. 20.

⁷⁴ Id., p. 21.

⁷⁵ Id.

⁷⁶ Eckstein deposition, pp. 52-54.

Their meeting continued with Eckstein arguing the merits of the Hudson application. After ten or fifteen minutes of Eckstein addressing the merits without any feedback, Secretary Babbitt stood up from the sofa. Eckstein also stood up. At that point, Eckstein brought up the May 8, 1995 letter that Patrick O'Connor had written to Ickes. The letter said of opposition tribes, "I can testify to their previous financial support to the DNC and the 1992 Clinton/Gore Campaign Committee."⁷⁷

Although Eckstein had seen the O'Connor letter a few months earlier, this was the first time he had mentioned it to any Department of Interior officials. He explained that until the Babbitt meeting he had considered it "so crude" and "so much in error" that he saw no need to dignify it with a response.⁷⁸ Asked what prompted him to bring it up then, Eckstein explained that hearing Babbitt mention Ickes may have triggered his reference.⁷⁹

Eckstein perceived Secretary Babbitt to be aware of the O'Connor letter, notwithstanding the fact that the letter was not addressed to Babbitt:⁸⁰ "Well, he certainly, — to me, he did. He didn't say what letter, what are you talking about. He seemed to nod when I mentioned it. To me -- and this is my interpretation -- the signs were that he had familiarity with it."⁸¹ Eckstein

⁷⁷ Ex. 15.

⁷⁸ Eckstein deposition, p. 59.

⁷⁹ Id.

⁸⁰ Id., p. 57.

⁸¹ Eckstein testimony, pp. 27-28.

also stated, “I was watching him pretty carefully, and it seemed to me just reading his eyes and his body language that he was aware of it.”⁸²

After explaining his clients were upset by the O’Connor letter, Eckstein addressed the letter’s various points. Eckstein recalled talking about the letter’s characterization of an applicant tribe’s chairman as a Republican and its description of the opposition tribes as significant supporters of President Clinton.⁸³ At that point, Babbitt brought up the topic of political contributions. Eckstein testified, “The Secretary asked me, Do you have any idea how much these Indians, Indians with gaming contracts -- it wasn’t exactly clear what Indians he was referring to, but Indians were certainly used -- have given to Democrats. I said I don’t have the slightest idea, and he said, Half a million dollars.”⁸⁴

Eckstein acknowledged that he is unclear whether Secretary Babbitt referred to “these tribes,” “Indian tribes,” or “Indian tribes with gaming facilities.”⁸⁵ Nevertheless, he testified, there is no doubt in his mind that Babbitt made the comment.⁸⁶ Eckstein explained, “But the rest of it, the rhetorical nature of the question, the fact that it was Indian tribes, the fact that they have given to Democrats, the fact that it was half a million dollars, all of that is absolutely clear to me.”⁸⁷

⁸² Eckstein deposition, p. 57.

⁸³ Eckstein testimony, p. 22.

⁸⁴ Id.

⁸⁵ Eckstein deposition, pp. 61-62.

⁸⁶ Id., p. 55.

⁸⁷ Id., p. 61.

After this comment from Secretary Babbitt, their meeting ended and Eckstein left the Interior Department. Disappointed, Eckstein recounted the substance of his conversation, including both the Ickes comment and the political contributions comment, to his colleagues immediately after it occurred.⁸⁸

The Aftermath -- Eckstein's Affidavit and Secretary Babbitt's Letters to the Senate

Shortly after Interior's denial of the Hudson application, the losing tribes filed a lawsuit in Wisconsin federal court against Babbitt and the Department of Interior. The lawsuit alleged improper political interference in the decision making process. As part of that litigation, Eckstein swore out an affidavit on January 8, 1996, in which he specifically recounted the Ickes comment Secretary Babbitt made to him on July 14, 1995: "Secretary Babbitt said that the decision could not be delayed because Presidential Deputy Chief of Staff Harold Ickes had called the Secretary and told him that the decision had to be issued that day."⁸⁹

However, Eckstein's affidavit did not include Secretary Babbitt's additional comments about political contributions. Asked why he did not include that comment, Eckstein responded that he made the decision partly because of the nature of the comment, and partly because he knew that whatever he put in his affidavit would become public information. Eckstein testified:

Well, first and foremost, I didn't want to put it in the affidavit. The affidavit was in support of a motion for discovery in an action, and I thought those points, the points that I made in the affidavit, were sufficient to obtain that request.

Secondly, it was a question. It was a rhetorical question, and I didn't know how to interpret it.

⁸⁸ Eckstein testimony, pp. 67, 104-105.

⁸⁹ Affidavit of Paul Eckstein, Jan. 8, 1996 (Ex. 29).

Thirdly, I saw the potential for more embarrassment [for Babbitt], and I didn't want to — didn't want to put it in.⁹⁰

In July 1996, the *Wall Street Journal* printed an article summarizing the allegations of political influence regarding the Hudson decision.⁹¹ The *Journal* article cited Eckstein's sworn statement, specifically Babbitt's comment about Ickes directing him to issue a decision that day.

In response to the *Journal* story, Senator John McCain, at that time the Chairman of the Senate Committee on Indian Affairs, wrote to Secretary Babbitt on July 19, 1996 and asked for an explanation about the Hudson application.⁹² After recounting the reported statements in Eckstein's affidavit about the Ickes' comment, McCain asked Secretary Babbitt directly, "Is this true?"⁹³

On August 30, 1996, Secretary Babbitt responded to Senator McCain.⁹⁴ After claiming that the *Journal* article "falsely insinuated that this Department has allowed campaign contributions to dictate Indian policy," Babbitt turned to his meeting with Eckstein. Babbitt wrote:

I met with Paul Eckstein, an attorney for the three tribes applying for the trust land acquisition, shortly before a decision was made on the application. Following this conversation, I instructed my staff to give Mr. Eckstein the opportunity to discuss the matter with John Duffy. I must regretfully dispute Mr. Eckstein's assertion that I told him that Mr. Ickes instructed me to issue a decision in this matter without delay. I

⁹⁰ Eckstein testimony, pp. 29-30. Eckstein further explained that the affidavit never purported to be a recollection of everything -- or even everything important — that was said during his July 14 meeting with Secretary Babbitt. *Id.*, p. 107.

⁹¹ Jill Abramson and Glenn Simpson, "Top Democratic Lobbyist Helped Kill Hudson Casino," *Wall Street Journal*, July 12, 1996, p. A1.

⁹² Letter from Senator John McCain to Secretary Babbitt, July 19, 1996 (Ex. 30).

⁹³ Id.

⁹⁴ Letter from Secretary Babbitt to Senator McCain, Aug. 30, 1996 (Ex. 31).

never discussed the matter with Mr. Ickes; he never gave me any instructions as to what this Department's decision should be, nor when it should be made.⁹⁵

Secretary Babbitt concluded his letter to Senator McCain with a somewhat indignant paragraph: "Over the years, you and I have worked together on a wide variety of issues affecting Native Americans . . . I regret that, relying solely on a newspaper article, you have chosen to so publicly call into question the integrity of our decision making on this matter. I am pleased to have the opportunity to set the record straight."⁹⁶

Meanwhile, in the ongoing federal lawsuit, the United States Attorney's Office used Secretary Babbitt's letter to Senator McCain to defend the position of the Department of Interior against the charges of improper political influence. In filing Babbitt's letter with the court, the government argued, "Thus, Secretary Babbitt conclusively lays to rest any claim that the Department bowed to improper influence when it denied the plaintiff Tribes' application to take St. Croix Meadows in trust."⁹⁷

Secretary Babbitt's recollection of the Eckstein conversation would soon change drastically, however. In October 1997, after the Committee deposed Eckstein and heard Babbitt's comment about Ickes and Babbitt's additional comment regarding campaign contributions, the Committee sought to interview Secretary Babbitt. The Committee made an informal request through the Interior's Office of Congressional and Legislative Affairs. When Interior indicated preliminarily

⁹⁵ Id. (emphasis added)

⁹⁶ Id. Senator McCain acknowledged Secretary Babbitt's letter, apologized for questioning Secretary Babbitt's integrity, and the matter went no further.

⁹⁷ Defendant's Motion to Supplement the Record, Oct. 15, 1997 (Ex. 32).

that Secretary Babbitt would not appear for a voluntary interview or deposition, the Committee wrote to Interior, seeking written confirmation.⁹⁸

Interior's response came from Secretary Babbitt himself, who wrote Chairman Thompson directly on October 9, 1997. Babbitt confirmed that he would not submit to a private interview, but stated that he would agree to answer questions in public. Secretary Babbitt then admitted that he may have said something to Eckstein about Ickes wanting a decision:

[W]hile I did meet with Mr. Eckstein on this matter shortly before the Department made a decision on the application, I have never discussed the matter with Mr. Ickes or anyone else in the White House. Mr. Ickes never gave me instructions as to what this Department's decision should be, or when it should be made.

I do believe that Mr. Eckstein's recollection that I said something to the effect that Mr. Ickes wanted a decision is correct. Mr. Eckstein was extremely persistent in our meeting, and I used this phrase simply as a means of terminating the discussion and getting him out the door. It is not the first time that I have dealt with lobbyists by stating that the Administration expects me to use my good judgment to resolve controversial matters in a timely fashion, nor do I expect it to be the last.⁹⁹

Babbitt did not address the political contributions comment Eckstein attributed to him.¹⁰⁰

The Committee called Secretary Babbitt to testify publicly on October 30, 1997.

⁹⁸ Letter from U.S. Senate Governmental Affairs Committee to Secretary Babbitt, Oct. 9, 1997 (Ex.33).

⁹⁹ Letter from Secretary Babbitt to Senator Thompson, Oct. 10, 1997 (Ex. 34)(emphasis added).

¹⁰⁰ By letter dated Oct. 15, 1997, Chairman Thompson responded to Secretary Babbitt, asking Babbitt to reconsider his refusal to appear for a voluntary interview with the Committee. Letter from Senator Thompson to Secretary Babbitt, Oct. 15, 1997 (Ex. 35). Chairman Thompson explained, "I firmly believe that as a Cabinet officer, you have an obligation to cooperate with Congress." A week later, Babbitt again confirmed that he would not agree to a deposition or private interview. Letter from Melanie Beller to Senator Thompson, Oct. 22, 1997 (Ex. 36).

In his opening statement, Secretary Babbitt stated that the Hudson application was decided solely on the merits and that there was no improper White House or DNC influence.¹⁰¹ After admitting that his letters to Senator McCain and Senator Thompson “muddied the waters somewhat,” Secretary Babbitt then described his version of what happened during the July 14 meeting with Eckstein:

On July 14th of 1995, Mr. Eckstein was visiting other offices at the Department to urge the Department to delay a decision in the Hudson case, which was ready to be made and released that day.

Mr. Eckstein then asked to meet with me. Against my better judgment, I acceded to that request. When he persistently pressed for a delay in the decision, I sought to terminate the meeting. I don’t recall exactly what was said, but on reflection, I probably said that Mr. Ickes, the Department’s point of contact on many Interior matters, wanted the Department or expected the Department to decide the matter promptly. If I said that, it was an awkward effort to terminate an uncomfortable meeting on a personally sympathetic note, but as I have said here today, I had no such communication with Mr. Ickes or anyone else from the White House.

It has been reported that Mr. Eckstein recently made the additional assertion that I also mentioned campaign contributions from Indian tribes in this context. I have no recollection of doing so or of discussing any such contributions with anyone from the White House, the DNC, or anyone else.

If my letters to Senator McCain and Senator Thompson have caused confusion, then I must and do apologize to them and to the Committee. I certainly had no intention of misleading anyone in either letter. My best recollection of the facts are as I have just stated them.¹⁰²

Under questioning from Senator Thompson, Secretary Babbitt testified that while he may have told Eckstein that Ickes “wants” or “expects” a decision, he “definitely” did not tell Eckstein that Ickes wanted a decision that same day. Therefore, Secretary Babbitt testified, his statement

¹⁰¹ Testimony of Bruce Babbitt, Oct. 30, 1997, p. 123.

¹⁰² Id., pp. 123-124.

in the McCain letter -- “I must regretfully dispute Mr. Eckstein’s assertion that I told him to issue a decision in this matter without delay” -- was still accurate.¹⁰³ Apparently focusing on the words “without delay,” Secretary Babbitt claimed that he did not misrepresent anything in his letter to Senator McCain.¹⁰⁴ He explained, “Senator, I believe those statements are consistent. They both reflect my best recollection about what I said and what I didn’t say.”¹⁰⁵ He attempted to square the differences when questioned about them:

Secretary Babbitt	I told--to the best of my recollection, I said something to Mr. Eckstein to the effect that Mr. Ickes expected or wanted a decision.
Chairman Thompson	Well, certainly that meant something more than just carrying out your duties. I mean, clearly, everybody-- I mean, a decision had to be made. I mean, clearly you were stating something more than just what the law required you to do as a--
Secretary Babbitt	No. That’s really all I was stating.
Chairman Thompson	Did Mr.--
Secretary Babbitt	That’s the whole point.
Chairman Thompson	In effect, Mr. Ickes wanted you to do your job?

¹⁰³ Id., p. 137.

¹⁰⁴ Id. pp. 130-131.

¹⁰⁵ Id., p. 139.

Secretary Babbitt That is correct. That is exactly correct.

Chairman Thompson Kind of like saying Mr. Ickes wanted you to pay your
Federal income taxes by April 15th.

Secretary Babbitt Yeah.¹⁰⁶

Later in his hearing testimony, Secretary Babbitt made a further distinction in an attempt to buttress his claim that he did not mislead Senator McCain, explaining that his McCain letter is “precise and correct.”¹⁰⁷ Secretary Babbitt explained his interpretation: “I think Senator McCain was asking in that letter . . . was there a communication between you and Ickes, and my response was, unequivocally, no, there was not.”¹⁰⁸

Secretary Babbitt’s contention that he did not mislead Senator McCain is belied by his actions. Sometime before his testimony, Secretary Babbitt spoke to Senator McCain, telling him, “To the extent [the letter] could be construed as misleading, I certainly owe you an apology.”¹⁰⁹

During his hearing testimony, Secretary Babbitt continued to repeat that he never actually spoke to Ickes on the Hudson matter. At the same time, however, he also maintained that his reference to Ickes during his discussion with Eckstein was not misleading, even to Eckstein. In his October 10, 1997 letter to Senator Thompson, Secretary Babbitt wrote that he used the Ickes phrase “simply as a means of terminating our discussion and getting him [Eckstein] out the

¹⁰⁶ Id., pp. 137-138.

¹⁰⁷ Id., p. 182.

¹⁰⁸ Id., p. 183.

¹⁰⁹ Id., p. 136.

door.”¹¹⁰ Nevertheless, in his hearing testimony, Secretary Babbitt would not concede that he deceived Eckstein. Asked by Senator Thompson whether he misled his old friend as a way to get him out of the office, Secretary Babbitt replied, “On the spur of the moment, I made that statement with the hope that I could end the discussion, express in a way some sympathy toward his point of view, and suggest that this decision had to be made.”¹¹¹ The following exchange then occurred between Senator Thompson and Secretary Babbitt:

Chairman Thompson So you mislead him?

Secretary Babbitt Well, Senator, I suspect that almost all of us here at one time or another have terminated a discussion by saying somebody is waiting for me on the telephone when maybe in not every single case there was somebody waiting on the other line.

Chairman Thompson I think you are getting in awfully deep water here, but that is up to you. Did you mislead him?

Secretary Babbitt I don’t think so.

Chairman Thompson Did you tell him the truth about that?

Secretary Babbitt Well, we’ve been through that before. I think it’s fair to say that my superiors expect me to make decisions.

Chairman Thompson But did Mr. Ickes tell you to make the decision?

Secretary Babbitt He did not.

* * *

Chairman Thompson And you told Mr. Eckstein that he told you to make the decision?

¹¹⁰ Ex. 34.

¹¹¹ Babbitt testimony, p. 140.

Secretary Babbitt I did not.

Chairman Thompson What did you tell him?

Secretary Babbitt Well, I've repeated that several times. I said I believe-
-what I believe I've said is that Mr. Ickes expects me
or Mr. Ickes wants me to make a decision.¹¹²

Despite his specific recollection about the Ickes comment, Secretary Babbitt said that he had no memory of making any statement to Eckstein about political contributions from Indians. Babbitt, moreover, did “not recall any reference to or discussion of” the May 8, 1995 O'Connor letter to Ickes.¹¹³ When pressed, Babbitt testified as follows:

Chairman Thompson. Well, is it possible that you could have talked about
contributions in that conversation by the Indians?

Secretary Babbitt. Senator, I simply have no recollection of any conversation
to that effect.

Chairman Thompson. Are you stating under oath, definitely, that you did not
have such a conversation?

Secretary Babbitt. I am stating under oath that I have no recollection of
any conversation of that kind.¹¹⁴

Besides testifying regarding his meeting with Eckstein, Secretary Babbitt tried to explain the rationale for the Interior decision on the Hudson application. In his opening statement, Secretary Babbitt stated that the Department based its decision solely on the “criteria set forth in . . . the Indian Gaming Regulatory Act.”¹¹⁵ He explained that “the Department and this administration has

¹¹² Id., pp. 140-142.

¹¹³ Id., p. 133.

¹¹⁴ Id., pp. 133-134.

¹¹⁵ Id., p. 120.

adhered to a policy that off-reservation gaming will not be imposed on communities that do not want it,” and, therefore, “this virtually unanimous opposition of local governments, including the nearby St. Croix Tribe, required the Department to reject the application.”¹¹⁶

According to Secretary Babbitt, the Interior decision was clear cut and not influenced by any outside factors. Babbitt said it was made in the first instance by George Skibine, a career official, “on a record that virtually compelled that decision and that Mr. Skibine . . . made the correct decision entirely uninfluenced by any external considerations . . . and [the decision] could not have been made in any other way.”¹¹⁷ Later in his testimony, Secretary Babbitt explained that while the political appointees at Interior are the ones vested with final decision-making authority, one of the ways to keep politics out of a decision is to “put a heavy burden on them [the political appointees] to defer to the civil servants, and that is, in fact, what happened here.”¹¹⁸

Secretary Babbitt also testified that he did not personally make the decision to deny the application, nor did he participate in any deliberations about the application.¹¹⁹ He declared that he did not have any contact with anyone at the DNC or the White House about the application.¹²⁰ While conceding that he could not know for sure whether any of his subordinates were in touch with the White House or DNC, Secretary Babbitt maintained that the record spoke for itself and that there was no inappropriate pressure on Interior. Asked by Senator Domenici, “Mr.

¹¹⁶ Id., pp. 120-122.

¹¹⁷ Id., p. 165.

¹¹⁸ Id., p. 198.

¹¹⁹ Id., pp. 120, 143.

¹²⁰ Id., pp. 119-120.

Secretary, is it your position now before the Committee that politics had nothing to do with the denial of the . . . permit to the three poor Indian tribes?” Secretary Babbitt replied, “Senator, that is my position.”¹²¹

Despite Secretary Babbitt’s assurances, and the blanket assertions by other Interior officials that the Hudson application was not influenced by politics, the events leading to the denial of the application raise a number of troubling questions. In tracing the chronology of the application, it is clear that the opposition tribes used the DNC and the White House in an attempt to influence the Department’s decision.

THE DECISION PROCESS AT INTERIOR --WHAT REALLY HAPPENED?

The Career Officials

In his opening statement and hearing testimony, Secretary Babbitt attempted to draw a clear line between the career officials, including Skibine, and the activities of the Interior political appointees. Secretary Babbitt suggested that Skibine’s decision to reject the Hudson application was not only obvious and clear cut, but that Skibine and the career officials made it entirely on their own, unaffected by any other views. The facts do not support Secretary Babbitt’s testimony.

First, it is apparent that from early on, the two career Interior employees most involved -- George Skibine and Tom Hartman -- favored granting the Hudson application. For example, Skibine attended the February 1995 meeting with the Minnesota Congressional delegation, which argued that the Hudson application might harm the existing gambling operations of the wealthy opposition tribes, several of which were located in Minnesota. When Skibine noted the

¹²¹ Id., p. 229.

arguments made by the Minnesota delegation during the February meeting, Hartman refuted each of the arguments point-by-point in a memorandum written to Skibine.¹²²

Later, Hartman's June 8, 1995 memorandum established in detail the predicate for approving the casino. After considering the arguments of the opposition tribes and economic impact study they had commissioned, Hartman concluded that there was no actual detriment to the surrounding community. While not explicitly arguing that the opposition was the product of high-powered lobbyists, Hartman made it clear that Interior needed to ensure that they accounted for naked political pressure. He wrote,

Detriment is determined from a factual analysis of evidence, not from opinion, political pressure, economic interest, or simple disagreement. In a political setting where real, imagined, economic, and moral impacts are focused in letters of opposition and pressure from elected officials, it is important to focus on an accurate analysis of facts. . . . Allowing local opposition, not grounded in factual evidence of detriment, to obstruct Indian economic development sets a precedent for extensive interference, compromised sovereignty, and circumvention of the intent of IGRA.¹²³

Despite Hartman's detailed analysis, it appears that many of the political appointees at Interior never saw it. Duffy said that he did not know who Hartman was and could not recall seeing the memo.¹²⁴ Sibbison testified that she did not remember reading it or even knowing that Hartman wrote a memo.¹²⁵ Michael Anderson also stated that he had never seen the Hartman memo before.¹²⁶

¹²² Notes to files re: February 8, 1995 meeting, undated, p. 3 (Ex. 37).

¹²³ See Ex. 24, p. 15.

¹²⁴ Duffy deposition, pp. 21, 27.

¹²⁵ Sibbison deposition, p. 19.

¹²⁶ Anderson deposition, Sept. 19, 1997, p. 14.

One person who did acknowledge receiving and reviewing Hartman's memo was Hartman's superior, Skibine. In his deposition, Skibine testified about what he did after receiving the memo. He stated, "Well, I took, I read the records, the record initially, and I read the recommendation from the Minneapolis area. I read the Hartman memo. I read essentially all of the record. And I formulated my views and then looked at the supplementary documentation that was provided between February 8th and April 30th, and I essentially made my decision which I put down in writing by June 29th, 1995."¹²⁷ Later in his deposition, Skibine testified that the June 29 draft letter was his recommendation, and that he produced no other written memoranda or analysis of the Hudson application.¹²⁸

Documentary evidence casts doubt on Skibine's assertions. After Skibine was deposed, the Committee located an undated version of the Hartman memorandum that contained a few substantive additions but still favored granting the Hudson application.¹²⁹ The memorandum lists Skibine as the author. The memorandum thus puts Skibine squarely beside Hartman in favor of granting the application. Other documents show that Skibine was leaning towards agreement with Hartman. In a June 30, 1995 E-mail, Skibine wrote about the Hartman draft to other Interior officials. Skibine wrote, "Our tentative conclusion is that the record permits us to make a finding that a gaming establishment at that location will not be detrimental to the surrounding community. We have not finalized the document, and I have not determined whether it should be

¹²⁷ Letter from Ada Deer to Rose Gurnoe, June 29, 1995 (Ex. 38); Skibine deposition, p. 65.

¹²⁸ Skibine deposition, p. 112.

¹²⁹ Ex. 25.

signed or simply stay in draft form.”¹³⁰ Skibine sent this email one day after he purported to reach his final conclusion in the Hudson matter.

Finally, putting aside the inconsistencies between the paper record and Babbitt’s recitation of how the decision occurred, not even Skibine agrees with Secretary Babbitt that the record made the denial decision clear. In his deposition, Skibine acknowledged that the decision on the application was not indisputable. He testified that there were merits on both sides and that it was “a close call” for him.¹³¹

The Role of the Political Appointees

It is clear that the political appointees at Interior were confident that the final decision would be a denial well before June 29, 1995, when Skibine prepared a first draft of the final decision letter for Assistant Secretary Deer’s signature. As demonstrated in the May 18 and June 6, 1995 memoranda, by mid-May the political appointees were telling the White House that the application would be denied. Furthermore, on June 27, two days before Skibine issued his recommendations in the form of a draft letter, Sibbison prepared and sent to the White House two draft letters about the application.¹³² In her cover note to the letters, which were alternative responses to an inquiry from the Minnesota congressional delegation, Sibbison made clear that for all practical purposes the decision to reject had already been reached. She observed, “Please note

¹³⁰ E-mail from George Skibine to Heather Sibbison, June 30, 1995 (Ex. 39).

¹³¹ Skibine deposition, p. 156. In his deposition, Michael Anderson confirmed that Skibine was on the fence. He testified about Skibine, “I don’t really remember Mr. Skibine articulating a final recommendation. Because it was an interactive process, I didn’t detect that he had a strong view either way.” Anderson deposition, Sept. 19, 1997, p. 35.

¹³² Fax from Heather Sibbison to Jennifer O’Connor, June 27, 1995 (Ex. 40).

that I anticipate that the Department's decision to decline . . . may be made public later this week."¹³³

Not only was Sibbison's note written before Skibine prepared the first denial draft on June 29, but Michael Anderson, who actually signed the final decision letter, stated he was unaware that Sibbison had sent such letters to the White House.¹³⁴ Anderson also testified that Sibbison never consulted with him, and that he had no idea that the Interior position had ever been communicated to the White House.¹³⁵

It is also clear that the Secretary's office coordinated and revised Skibine's June 29 draft letter before it was presented to Anderson for final signature. Anderson, for instance, stated that Skibine's draft was "edited by Mr. Duffy and substantially changed." Anderson later clarified that changes were made by someone from Duffy's office, and stated that there were only "two possibilities" -- Duffy or Sibbison.¹³⁶ Sibbison did not talk about her role in editing the letter, but stated that she was sure that Duffy "messed with it because he messes with everything that sat on his desk."¹³⁷ Skibine testified that he was in Denver with Anderson during the week of July 10, and that they received via fax an updated draft of his letter.¹³⁸ In response to questions about who

¹³³ Id.

¹³⁴ Anderson deposition, Sept. 26, 1997, p. 29.

¹³⁵ Id., pp. 29-31.

¹³⁶ Anderson deposition, Sept. 19, 1997, p. 18.

¹³⁷ Sibbison deposition, p. 71.

¹³⁸ Skibine deposition, p. 139.

edited or sent the revised draft, Skibine testified that he did not know if it came from Duffy or from the Secretary's office.¹³⁹

Documents received after the Committee completed its depositions of Interior officials show that Sibbison and Duffy were an integral part of the revision process. It appears that Sibbison made extensive changes to Skibine's draft, and then forwarded it to Duffy with the note "John: Please review asap and call me back. H."¹⁴⁰ On June 30, 1995, Sibbison informed Skibine that she was faxing the letter to Duffy and was waiting for him to respond.¹⁴¹ According to an E-mail describing a meeting on July 5, 1995 between Duffy, Sibbison, and Interior lawyers, Duffy directed that the decision letter be rewritten to include an additional rationale.¹⁴²

Sibbison's June 30, 1995 E-mail is interesting for two additional reasons. First, it mentions the involvement of Tom Collier, Secretary Babbitt's Chief of Staff. Sibbison wrote, "I agree with Collier's uneasiness about some tribes getting all of the goodies at the expense of other tribes -- theoretically they should all have equal opportunities."¹⁴³ Second, it indicates Sibbison's belief that "Ada [Deer] should sign the letter."¹⁴⁴ It is clear that as of June 30, 1995, Sibbison was unaware that Deer had recused herself. Deer's recusal is discussed further below.

¹³⁹ Id., pp. 140-141.

¹⁴⁰ Letter from Michael Anderson to Rose Gurnoe, et al, June 29, 1995, with handwritten revisions (Ex. 41).

¹⁴¹ E-mail from Heather Sibbison to George Skibine et al., June 30, 1995 (Ex. 42).

¹⁴² E-mail from Troy Woodward to George Skibine, et al., July 6, 1995 (Ex. 43).

¹⁴³ Ex. 42.

¹⁴⁴ Id.

Other documents confirm that Skibine coordinated revisions of the letter with Duffy and Sibbison. In an E-mail dated July 8, 1995, Skibine wrote his staff, “I have left on Tona’s desk the redrafted version of the Hudson letter, per Duffy and Heather’s instructions. . . Please make sure it is put in final form and brought up to Heather first thing on Monday.”¹⁴⁵

In light of so much “hands on” involvement by the political appointees in the Secretary’s office, did Skibine in fact feel no pressure from the political appointees, as Babbitt testified? Even in his guarded deposition testimony, Skibine was not so confident that he made his recommendation in a vacuum. He explained, for instance, that he was aware of other views, and that they may have come into consideration. He testified:

Yes. You know, I’ve got to say that in formulating my own views, I look at the record. But I looked also at all the input from others, and I know that in one interview with the press they asked me, well, what percentage of your decision is based on Mr. Duffy’s view, and I can’t really answer that. You know, I’d like to think that this was my own decision in terms of what I would recommend to the Secretary based on the record and on everything that I had heard. But I certainly considered everyone’s views.¹⁴⁶

Later in his deposition, Skibine again talked about the fact that it is difficult to formulate a decision without considering the viewpoints that he heard. He testified:

Yes, sure. This part of the decision making process, I don’t know exactly what influenced me or who influenced me, but any oral communication that is made, it’s in your head. That’s it. I mean, you can’t say one way or the other whether you consider them or not. It is part of--then it really becomes a part of what you know.

As an aside can I -- I sat on the jury last week or two weeks ago. The counsels and witnesses both made statements and there were objections and the judge said disregard the statement. You know, that’s a fallacy. It’s what is

¹⁴⁵ Ex. 44.

¹⁴⁶ Skibine deposition, p. 122.

supposed to be, but how can you disregard something that you hear? When we went back for deliberations, all of the jurors said that. What does he mean disregard? I mean, I heard that.

You know, once something is said, it stays with you, I guess.¹⁴⁷

Although Interior contends that the actual decision maker was Michael Anderson, the deputy assistant secretary who signed the final decision letter, the reality is that he played hardly any role in the Department's deliberations. He testified that he suggested some changes in the denial draft before signing the final version.¹⁴⁸ Beyond that, the evidence shows that he was hardly involved. He conceded that he only spent four to five hours total on the application; he did not even bother to read the November 1994 area office report that recommended granting the application.¹⁴⁹ There are other indications that Anderson was simply a figurehead. He did not attend the meetings where the decision letter was discussed, and the documents do not mention his name. In a handwritten note, dated July 10, 1995, on one of the recently produced Interior documents, Sibbison demonstrated her view of Anderson's importance in the matter. Sibbison wrote to an administrative assistant, "Please let me know as soon as the letters are signed. . . Also, I know Mike Anderson is out, so we'll need to have it signed by whoever is acting for him."¹⁵⁰

Anderson also played no role in deciding when the denial letter should be issued. Anderson testified that on July 14, Michael Chapman, a special assistant at Interior, brought him the letter to

¹⁴⁷ Skibine deposition, pp. 142-143.

¹⁴⁸ Anderson deposition, Sept. 19, 1997, pp. 18-19.

¹⁴⁹ Anderson deposition, Sept. 26, 1997, pp. 66-67.

¹⁵⁰ BIA routing slip [title derived], July 8, 1995 (Ex. 45).

sign. Anderson “assum[ed] it [the letter] came from Mr. Duffy’s office.”¹⁵¹ Chapman also directed Anderson that the decision had to be signed and go out on the 14th.¹⁵² Asked if Chapman indicated why the urgency, Anderson responded, “No, he didn’t. He just said that it needed to be done.”¹⁵³ Anderson testified that he did not ask Chapman why, and that he simply “assumed there was a reason why the Secretary’s office wanted to get it out.”¹⁵⁴ Anderson summarized, “I’m not sure what the rationale was for the urgency.”¹⁵⁵

The Curious Recusal of Ada Deer

Another murky aspect of the Hudson matter is the role of Ada Deer. As the Assistant Secretary of Indian Affairs, Deer was the proper official to sign the final Hudson decision. However, she never signed the denial, delegating the responsibility to Anderson, her deputy. Deer told the Committee that the reason she recused herself was because in December 1994, she had contributed \$250 to the political campaign of Gaiashkibos, one of the leaders of the applicant tribes. Her contention is that she divorced herself from the Hudson application very soon after learning that Gaiashkibos’ tribe (Lac Courte Oreilles) was one of the applicants.¹⁵⁶ She indicated learning of the Hudson matter “through my general knowledge of the issue, which one gets through various sources; Indian Country Today is a newspaper that I read regularly, and, of

¹⁵¹ Anderson deposition, Sept. 19, 1997, p. 59.

¹⁵² Id., p. 58.

¹⁵³ Id.

¹⁵⁴ Id., p. 60.

¹⁵⁵ Id., p. 63.

¹⁵⁶ Deer deposition, pp. 19-23.

course, there are various clips that come from the papers across the country. . . . [and] through the general discussions that go on.”¹⁵⁷

Even without parsing what might have been the true motives behind Deer’s recusal, the timing and mechanics of her decision are troubling. She testified to recusing herself in June 1995, shortly after she became aware of the Hudson application. When pressed for how long it was between the time she heard about the application and her recusal, Deer testified, “It would be -- it would be awhile; no, it wouldn’t be a day. It was probably, you know, several weeks. Again I’m not 100 percent certain of the exact time.”¹⁵⁸

Deer’s testimony about the timing of her recusal is simply not credible. First, it is clear that by February 1995, both political and career appointees at Interior were actively considering the Hudson application. It is difficult to conceive how Deer, who oversaw BIA, would be unaware of its existence until June. Second, it is clear that on April 8, 1995, Deer accompanied Babbitt to a “contentious” meeting in Wisconsin where the Hudson issue was “extensively debated” among Wisconsin tribes.¹⁵⁹

The Committee received a transcript of the April 8, 1995 Wisconsin meeting¹⁶⁰ several weeks after Deer’s deposition. There is no question that Deer attended and participated in the Wisconsin meeting, as the transcript reveals that Deer introduced Secretary Babbitt, made

¹⁵⁷ Id., p. 22.

¹⁵⁸ Id., p. 19.

¹⁵⁹ Anderson deposition, Sept. 19, 1997, pp. 24-25.

¹⁶⁰ Excerpts of Wisconsin Tribal Dialogue with Secretary Babbitt, Apr. 8, 1995 (Ex. 46).

comments throughout the session, and closed the meeting with a final statement. Further, the transcript confirms that the Hudson application was debated by the participants and that everyone present knew the Hudson matter was then pending before the Department. It is evident that the meeting participants knew beforehand the Hudson matter would be a prime topic for discussion. Tribal leaders on both sides of the issue described their positions to Babbitt and Deer, and urged Secretary Babbitt to act in accordance with their wishes.¹⁶¹ Gaiashkibos attended the meeting.

Deer failed to mention the April 8 meeting during her deposition. It strains the Committee's credulity for Deer to say that she was primarily made "aware" of Hudson through newspaper articles and "general discussions" (a term she could not define) and that soon after she discovered Gaisakibos' involvement, she bowed out. At a minimum, Deer must have been aware of the Hudson application, and Gaisakibos's role, by April 8. Inasmuch as Deer is a Menominee Indian from Wisconsin, the Committee finds it hard not to believe she knew precisely what Hudson involved far earlier than April.

Quite apart from the timing of her recusal, there is confusion regarding how Deer reached and communicated the decision. Her testimony on the subject is vague. She testified as follows:

Q: Did you recuse yourself in writing?

A: I don't think so. I think I just told Michael Anderson.

Q: And how come you didn't write anything down?

A: Because I'm not a lawyer. I know that people do this, but no, I just didn't. Generally, I try not to write things.

Q: Did you have discussions with anyone before you decided to recuse yourself?

¹⁶¹ Id.

- A:** Yes, I think I talked with him about it. I'm not sure if I talked with anybody else about it. He's the principal deputy, and it seemed, you know, that was the appropriate thing to do.
- Q:** Did you speak to anyone else in the Department about it?
- A:** I don't think so. You mean about my recusal?
- Q:** About your decision to recuse yourself.
- A:** I might have mentioned it to Mr. Duffy. He was the Counselor to the Secretary at that time.¹⁶²

Anderson, however, disputed Deer's account that she discussed her recusal with him.

Anderson said that he was told about the recusal by a special assistant, Michael Chapman.¹⁶³

Anderson stated that despite the fact that his office was next door to Deer's, he never spoke to her about the recusal or about the Hudson issue.¹⁶⁴

Other important Department of Interior officials were also unaware of Deer's recusal.

During a meeting on June 16, 1995, Duffy told an opposition lobbyist that Deer had "not yet reached a decision on the matter."¹⁶⁵ Duffy testified that he did not learn of Deer's recusal until after the Interior decision was announced on July 14, 1995.¹⁶⁶ Moreover, on June 29, 1995, Skibine prepared a draft letter for Deer's signature. Skibine testified that he is not sure when he

¹⁶² Deer deposition, pp. 24-25.

¹⁶³ Anderson deposition, Sept. 19, 1997, p. 29.

¹⁶⁴ Id., pp. 27-30.

¹⁶⁵ Memorandum from Scott Dacey to Debbie Doxtator, June 16, 1995 (Ex. 47).

¹⁶⁶ Duffy deposition, pp. 22-23.

learned about Deer's recusal, but that it was certainly after June 29, 1995.¹⁶⁷ Because of questions surrounding the timing and mechanics of Deer's recusal, it has been suggested that Deer may not have wanted to sign off on a decision she knew was dictated by political considerations, particularly since it harmed impoverished tribes in her home state. The judge in the federal litigation wrote in a March 1997 opinion:

"I [have] remarked . . . that Deer's late recusal was "odd" but refrained from questioning her motives. I now find it necessary to consider the flip side of the "odd" recusal: that Deer may have wanted to back out once she understood that higher level officials in the department wanted plaintiff's application rejected for political purposes. It is reasonable to infer that Deer backed out because she supported plaintiff's application and did not want to be responsible for denying it. If that were not the case, one might surmise that Deer would have recused herself from the process earlier."¹⁶⁸

When asked whether the judge's comments were accurate, Deer had difficulty providing a direct answer, as the following exchange reveals:

- A:** That's [the judge's] opinion. She's entitled to her opinion.
- Q:** Well, I'm asking you if there is any truth at all to what she wrote.
- A:** Well, I told you my point on this, and that's the basic information.
- Q:** She writes it's reasonable to infer that Deer backed out because she supported plaintiff's application and did not want to be responsible for denying it; is that true in anyway?
- A:** No, my--that's her opinion.
- Q:** I understand it's her opinion.

¹⁶⁷ Skibine deposition, p. 124. The various e-mails referenced above, in which Interior officials discuss the Hudson application, demonstrate that even in early July, Interior officials assumed Deer would be signing the denial letter.

¹⁶⁸ Opinion and Order, U.S. District Court for the Western District of Wisconsin, March 19, 1997, pp. 17-18 (Ex. 48).

- A:** And I stand on the statements that I have given you.
- Q:** I'm asking you for your reaction to that sentence. Is there any kernel of truth at all to that particular sentence?
- A:** That's her opinion, and that's her decision she wants to make on that, you know?
- Q:** Well, let me ask you a direct question, then: did you recuse yourself because you supported the tribes' application and did not want to be responsible for denying it?
- A:** No, that's not the reason I recused myself. I have stated several times now why I recused myself. So, that's my statement.
- Q:** Did you support plaintiff's application--I'm sorry, I keep saying plaintiff.
- A:** Yes.
- Q:** Did you support the tribes' application and not want to be responsible for denying it?
- A:** I have stated why I recused myself. I have given you my philosophical bent of approach, that I like to help, and I want the Department to support, the tribes' economic initiatives, and I can't add anything more than what I've already said about why I recused myself, and people can draw their own conclusions, as the Judge has.¹⁶⁹

CONCLUSION

The December 31, 1997 cut-off date for the Committee's investigation prevented it from fully exploring all of the issues surrounding Interior's decision to deny the Hudson application. Even as this report was being completed, in January 1998, Interior was producing additional relevant documents.

Nevertheless, what emerged from the Committee's investigation is the outline of a story that shows the power of political contributions. Wealthy lobbyists from the opposition tribes activated

¹⁶⁹ Deer deposition, pp. 88-89.

the DNC to work on their behalf. As is clear from the evidence, this was neither unusual nor difficult, as the DNC basically acted as a lobbying arm for tribes with gaming interests. The White House also became involved on behalf of the opposition tribes. Patrick O'Connor, the chief lobbyist for the opposition tribes, spoke directly to President Clinton -- and received an immediate response. Financial support, past, present, and future, was integral to this effort. From all the circumstances, there appears to be a direct relationship between the activities of the Department of the Interior and contributions received by the DNC and DSCC from the opposition tribes.

The Committee's investigation also established that Secretary Babbitt had both Harold Ickes and political contributions on his mind on the day of the decision. Eckstein's sworn testimony, both in his deposition and hearing appearance, was credible and persuasive.

Eckstein's testimony should be compared to the troubling shifts in Secretary Babbitt's own description of the July 14 conversation. Secretary Babbitt first told Senator McCain that he never made the Ickes comment. Then, Secretary Babbitt told Chairman Thompson that Eckstein was right, and that he may have made the comment, but only as a ruse to get his old friend out of his office. Finally, Secretary Babbitt testified under oath that his two statements were consistent, and that he did not mislead Senator McCain. If Secretary Babbitt saw it that way, he may be the only one who did. Also, it is curious that of all the names Secretary Babbitt would have made up to get rid of Eckstein, he selected Ickes, the White House official most heavily connected to the President's fund-raising operation and to the very transaction at issue.¹⁷⁰

¹⁷⁰ Secretary Babbitt's counsel has written the Committee to explain why Babbitt's statements were consistent and are not misleading. Letter from Lloyd N. Cutler to Senators Thompson and Glenn, Jan. 13, 1998 (Ex. 49).

Moreover, at the end of the day, Secretary Babbitt has still never denied telling Eckstein that Indian tribes with gaming interests donated half a million dollars to the DNC.

Because of the evidence uncovered and presented by the Committee, on February 11, 1998 the Attorney General applied for the appointment of an independent counsel to examine Secretary Babbitt's representations to Congress and, more broadly, the events leading up to the Hudson decision. It is the Committee's hope that the court appoints such a counsel so that the matter can be investigated and resolved appropriately.