

Give Hastings his due; put the FBI on trial

It's eerie," Alcee Hastings says, "to be in this position on history's bubble." This time, things should break his way.

Last week, the FBI revealed that an agent lied about evidence that led to Mr. Hastings' 1989 removal from the federal bench.

Mr. Hastings, who now represents the 23rd Congressional District, says he wants his pension restored and his legal bills paid. He should get both.

Here are the basics:

■ Alcee Hastings became Florida's first black federal judge when President Jimmy Carter appointed him in 1979. Then, as now, Mr. Hastings said what he thought. Many were charmed. Many were offended. But no one questioned his judicial fairness or competence until a small-time hood told the FBI that Judge Hastings could be bought.

■ In 1981, the FBI set up a sting — Operation Apple Eye. Mr. Hastings says it was so named because he and friend William Borders Jr., a Washington lawyer, were the apple of the black Establishment's eye.

■ A retired FBI agent posed as Frank Romano, one of two brothers convicted in Judge Hastings' court of looting a pension fund. The agent met with Borders, who said Judge Hastings would return \$845,000 in forfeited money and impose no jail time — if the Romanos paid a \$150,000 bribe.

■ As proof he could control Judge Hastings, Borders correctly predicted the judge would go to a Miami restaurant at a specific time. The agent paid Borders a \$25,000 down payment. An order, written by Judge Hastings' clerk, returned the forfeited cash to the Romanos. The undercover agent then paid Borders \$125,000, and the FBI arrested Borders the same day.

■ In 1982, Borders, who always has refused to testify against Mr. Hastings, was convicted of bribery conspiracy.

■ In 1983, a federal jury acquitted Mr. Hastings of bribery conspiracy.

■ Unhappy with the verdict, a panel of federal judges in 1983 began investigating whether Mr. Hastings should be removed from office.

■ In 1987, a panel of judges recommended that the House impeach Mr. Hastings. The House did so, 413-3, in 1988. The full Senate did not hear the evidence but voted 69-26 to oust Mr. Hastings after a committee of 12 senators voted 7-5 against him.

He was removed from the federal bench based on 'evidence' that was really a lie.

■ In 1992, a federal judge said the panel's vote was short of the three-fourths required to convict. He also said that the full Senate — not just a committee — should have heard the case. But a 1993 Supreme Court ruling upheld the Senate's procedures.

Though Mr. Hastings was acquitted at trial, he didn't always *act* innocent. On the day Borders was arrested, Mr. Hastings fled to Florida without pausing to pay his hotel bill. Mr. Hastings also claimed that during crucial contacts with Borders, the two men were discussing how they could help a mutual friend regain his law license. But that friend testified that Mr. Hastings had never helped him. Judge Hastings also claimed to have written letters and made calls to help the friend, but the letters are dubious and the numbers he claimed to have called were bogus.

Despite those and other inconsistencies, the most important facts are in Mr. Hastings' favor: None of the first \$25,000 in bribe money was traced to Mr. Hastings; the FBI never satisfactorily explained why it ruined its own sting by arresting Borders before he could give any of the remaining \$125,000 to Mr. Hastings; Judge Hastings' order to return the forfeited money to the Romanos was required by a higher court ruling; Judge Hastings told his clerk to prepare the order *before* the alleged bribe scheme was hatched.

And, finally, Judge Hastings was unanimously acquitted at trial.

Most of the senators who voted to remove Judge Hastings never listened to the testimony. And, as was revealed last week, the evidence was tainted by the FBI. Agent Michael P. Malone told the judges who were considering whether to recommend impeachment that Mr. Hastings had lied in giving an alibi for a meeting with Borders the day before Borders was arrested. Mr. Hastings said Borders took him to a luggage shop to repair a broken suitcase strap but was unable to get it repaired. The FBI examined the strap, and Agent Malone said lab tests showed it had been intentionally cut.

But an internal memo shows that the FBI knew as early as 1989 — but never told anyone — that Agent Malone had lied about the lab test.

Last week, U.S. District Judge Gerald B. Tjoflat, who recommended impeachment, said the strap wasn't important. But clearly it was. In a confusing, sketchy case, the damning image of Judge Hastings cutting the strap before giving it to the FBI would affect the perception of his other actions.

The FBI lie about the strap isn't the end of it. The memo, which Rep. Hastings hasn't read, reportedly contains 26 other instances in which Agent Malone misled the judges about Mr. Hastings. The revelations about the Hastings case are part of a larger report, to be released this month, about chronic problems in the FBI lab.

Rep. Hastings doesn't want to be a judge again. "Here (in the House), I can be gregarious." But the pension and legal bills, which haven't been tallied, are important to him. He also thinks John Doar, who presented the case against him to the judges, should be investigated to see whether he knew about the tainted FBI testimony.

"I am definitely owed an apology by the U.S. Senate and the House," Rep. Hastings says. He's right. The case against the FBI is now stronger than the case against Alcee Hastings.