

# Bribery Case Voided Over Lies by INS Agent

*Courts: Judge dismisses charges against importer after investigator concedes lying during testimony.*

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An INS agent has admitted lying on the witness stand during the bribery trial of a former import executive, leading a federal judge to dismiss the charges this week and scuttling the results of an almost two-year, multi-agency federal investigation of harborside corruption at the Port of Los Angeles.

In a sequence of events that defense and prosecution termed extremely rare, U.S. District Judge Terry J. Hatter in Los Angeles threw the case out Thursday after the government's star witness-- Jessie Avestro, a special agent with the Immigration and Naturalization Service--conceded that he lied while testifying at the suspect's trial.

"He lied repeatedly in this court," a clearly perturbed judge said in explaining his highly unusual decision to grant a defense motion to dismiss the indictment based on "outrageous" government conduct.

The Los Angeles-based agent has been removed from active duty, had his gun taken away and faces a potential perjury prosecution and almost certain dismissal from the INS, federal authorities said in court papers.

"Agent Avestro will be a pariah in the law enforcement community, ostracized by those he used to call his colleagues," the government stated.

Avestro's lies on the witness stand spoiled the prosecutorial fruits of a joint investigation by the INS and FBI that yielded dozens of secret tapes allegedly tying the suspect, Steve Mullen, to bribes offered to Avestro. The agent wore an undercover wire as part of the inquiry.

Mullen, a self-made immigrant entrepreneur who rose from a laboring job to considerable wealth, owned a major warehouse at the Los Angeles Harbor, the nation's second-busiest container shipping port, and operated a freight forwarding company there.

The defense alleged that Avestro doggedly pursued a vendetta against Mullen stemming from a romantic relationship that the agent had with one of Mullen's employees, said Helen Gavaris, who was defense, co-counsel, along with John F. Lang.

Avestro was not available for comment. But his attorney, Alan Rubin, said the agent was not a perjurer.

The dismissal was a major setback for U.S. Atty. Nora M. Manella, whose office is contemplating whether to appeal the judge's ruling and is still prosecuting Mullen on a separate charge of harboring illegal immigrants. Two co-defendants, including Mullen's wife, have entered guilty pleas in the case.

"It's a very disappointing result for us," said Richard Drooyan, chief of the criminal division of the U.S. attorney's office in Los Angeles. "We viewed this as a significant case."

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But Drooyan defended the government's actions against criticism from Mullen's lawyers that authorities did not pay enough attention to previous allegations of wrongdoing against Avestro. The defense depicted the agent as a vindictive, rogue officer and shakedown artist who entrapped Mullen.

In April 1995, Hatter urged federal prosecutors to look into allegations by Mullen's wife that Avestro aggressively solicited her participation in a smuggling scheme and threatened to shut down the warehouse business.

An internal investigation concluded that there was no wrongdoing by Avestro in that instance, said Drooyan of the U.S. attorney's office. But in dismissing the case, Hatter asserted that the government failed to look into the earlier allegations of possible improprieties by Avestro.

Federal authorities depicted the agent's misbehavior as a singular case, but said the matter will prompt a broad review.

The charges against Mullen began to unravel as Avestro took the stand holding an investigative document that had not previously been provided to the defense or prosecution. Its contents proved to be a smoking gun.

On the witness stand, Avestro testified that the allegations against Mullen only came to his attention when the case was assigned to him by a supervisor in November 1992. In fact, the new document revealed that it was Avestro who, five months earlier, had taken the supposedly anonymous complaint that was the genesis of the wide-ranging investigation of Mullen's business.

After the defense brought in a handwriting analyst, Avestro admitted to federal authorities that he had written the initial complaint sparking the investigation.

While U.S. authorities pledged to take legal action against Avestro, lawyers say an unsuccessful government argument that the agent's lies did not undermine the bribery case may provide the officer with insulation against a perjury prosecution. In perjury cases, prosecutors must show that the misstatements were "material" to the case.

Mullen declined to comment directly, but through his attorney, Lang, he described the case as a nightmare that had put his business into bankruptcy and practically destroyed his life, contributing to divorce proceedings.

Earlier in the case, Lang noted, Mullen withdrew a guilty plea that would have sent him to prison for five months and decided to take his chances with a jury trial.

"I could have settled this matter a long time ago, but I feel I was the victim of a miscarriage of justice and I wanted to clear my name and reputation," Mullen said through his attorney. "I just couldn't live with myself because I knew it wasn't right."