Cleared but Still Not Clean

After being indicted Lee Martin went from public servant to public enemy. Then charges were dropped. What would be fair now?

By Jacob Bernstein

The week before county Manager Merrett Stierheim left office, he picked up the phone in an effort to right a wrong that has festered for nearly three years. He called Lee Martin, who in April 1998, following a scandalous controversy, was suspended without pay from his post as Miami-Dade County's top building official. Even though Martin eventually was cleared of any wrongdoing, he remained suspended without pay, which impelled him to sue the county. Stierheim had hoped to find a way to settle the lawsuit. "I called Lee voluntarily out of compassion," says the ex-manager. "If a settlement could be worked out, I would be supportive."

While the two sides are scheduled to meet this Monday, March 12, it is unlikely any agreement could repair the damage done to Martin's reputation or return him to the position he once held. Tried and convicted in the court of public opinion by the State Attorney's Office, Martin was denounced as a symbol of government corruption and abuse of power; he even faced jail time for his role in the troubled construction of Dadeland Station, a shopping center on county land leased to a private developer. Simultaneously Martin was forced to do battle with state regulators who wanted to strip him of his professional license in an unrelated matter involving construction at the county seaport. In December 1998 an administrative-law judge exonerated him in the seaport matter, but it would take another year for the SAO to drop the criminal charge stemming from Dadeland Station. When the county didn't promptly lift Martin's suspension, he sued.

Martin's lawyer, Gary Goldman, is a builder himself; and that helped him understand the intricacies of both cases, which involved esoteric details of construction and regulations spelled out in the South Florida Building Code. Goldman, who says prosecutors "hung a Boy Scout" when they went after Martin, dismisses the Dadeland Station charge as "sophomoric."

Lee Martin's troubles began in 1996. He had come to the county three years earlier as permit-control division chief in the former Department of Building and Zoning. (It since has been divided into two departments: the Building Department and the Department of Planning and Zoning.) When Martin took the job, residents still were struggling to obtain permits for home repairs in the aftermath of Hurricane Andrew. "It was quite a shock to get out of the elevators on the tenth floor of county hall and see that it was wall-to-wall people penned in like cattle," he recalls.

An architect by trade, Martin had public-administration experience from previous jobs with Palm Beach County and in his native Ohio. He was hired by Miami-Dade to speed up plan processing and to standardize inspections. The building department had long been criticized by homeowners and the construction industry for being a slow-moving bureaucratic morass. Yet the construction flaws revealed in the hurricane's devastation led to a renewed emphasis on safety and accountability. The tension between these two roles -- policeman and facilitator -- haunts the building department to this day, and Martin's efforts to walk the line between them would contribute to his downfall.
In January 1996 Martin was promoted to the county's chief building official, which made him responsible for overseeing all inspectors and plan reviewers. He also inherited major trouble. His predecessor, Carlos Bonzon, had reached an agreement with seaport director Carmen Lunetta to fast-track construction of two cruise-ship terminals at the port, and so the work proceeded without proper permits, a violation of the South Florida Building Code.

Martin says he assumed all appropriate permits were in order because Bonzon had authorized construction. When he discovered that wasn't true, he could have shut down the job. Instead he expedited inspections so the permits could be issued, a move that later was criticized. State regulators investigated and charged him with eleven counts of misconduct and negligence. Bonzon, also charged, forfeited his professional license to settle his case, but Martin, certain he had done nothing wrong, decided to fight. His case finally was resolved in December 1998, when administrative-law Judge Linda Rigot emphatically declared Martin's innocence. She found that most of the alleged wrongdoing had occurred when Martin had neither authority nor responsibility for the project. Furthermore, she noted, the terminals presented no threat to the public. By that time, however, Martin had bigger worries than the seaport: He already had lost his job and was facing the prospect of jail after being charged in the Dadeland Station case.

This was another project Martin had inherited when he became the county's top building official. Developer Jeffrey Berkowitz had won county approval to build a multilevel shopping center on public land adjacent to the South Dadeland Metrorail station at Kendall Drive and South Dixie Highway. By the time Martin took over, structural plans had been approved, and the complex was under construction.

In the fall of 1996, a county plan reviewer named Mohammed Partovi, while examining Dadeland Station's technical drawings, spotted serious problems with the joists, which already had been installed. Based on his inspection, additional supports were added to the building. Three structural engineers approved the repairs. Pending Partovi's final review, Martin issued a temporary certificate of occupancy for the first floor of Dadeland Station. This would be his alleged crime. By December, with Partovi's blessing, the rest of the retail complex opened to the public.

Shortly thereafter, at Partovi's suggestion, Berkowitz hired an outside engineer to review plans for the entire project. The engineer, Lawrence Brill, discovered what he believed were serious deficiencies. On July 17 Brill sent a letter to Martin explaining his findings. The building chief immediately assigned a county structural engineer to work exclusively on Dadeland Station. In a later affidavit the engineer stated that 80 hours of review had led him to conclude there was no likelihood that death or great personal injury would result from the county's temporary certificate of occupancy. Still, Berkowitz agreed to shore up the building even more. Because county experts deemed the structure safe, Martin saw no reason to shut it down, especially after Berkowitz undertook repairs. "Nobody was going to be in there during a hurricane anyway," Martin says.

During this time police investigators and the State Attorney's Office also had been busy. In late June and early July 1997, county employee Larry Gay met with police several times to discuss problems at the building department. In his statements, which Gay gave under immunity, he portrayed Martin as a building official who ignored warnings in his haste to open Dadeland Station.

Attorney Goldman believes the SAO -- armed with Partovi's joist review, the Brill letter, and Gay's testimony -- thought there was sufficient evidence to charge Martin with culpable negligence. "It was a tapestry of unrelated facts they wove together," Goldman asserts.

Throughout the fall and into the spring, two grand juries looked into the county building department. On
April 1, 1998, State Attorney Katherine Fernandez Rundle held a press conference to announce indictments in the Dadeland Station case: Lee Martin, structural engineer Richard Klein, and the county's assistant director for permitting and zoning. Martin's charge, a second-degree misdemeanor, was punishable by up to 60 days in jail. "The use and abuse of power and influence in government fosters a deep cynicism in the mind of the citizenry," Rundle declared at her press conference. "The actions of the people indicted have fed that cynicism."

Martin was dumbstruck. "It was not lost on me this was April Fool's Day," he says. "All I could think about was that I was going to jail, and my family was going to live under a bridge." The next day Merrett Stierheim suspended him without pay. A week later the manager sent a letter to commissioners stating that the indictments were "an embarrassment to all of us." He also announced he would reorganize the department and seek to replace Martin permanently.

Martin struggled to find work. He says he lost one lucrative job in the Bahamas because of his indictment. (He currently is employed as a contract consultant by a prominent local firm whose identity he asked not be revealed.) The strain of the ordeal also took a toll on his family. "It was much harder on my wife than it was on me," he admits.

Martin's torment did not end with his suspension and replacement. In April 1999, a year after his suspension began, he received a memo from Charlie Danger, the veteran county administrator who had been hired to fill his position. The memo stated that all building department employees who took outside work needed Danger's approval. Goldman responded that the rule didn't apply to Martin. Danger countered that Martin still was considered a full-time employee, though an unpaid one. "Failure to comply with this directive will jeopardize his continued employment with Miami-Dade County," Danger wrote. Goldman returned fire, insisting that Danger had misread the rule, and the matter died. "He had to ask permission to support himself?" marvels Goldman. "That's pretty nasty."

On November 5, 1999, the SAO dropped the charge against Martin, saying only that conflicting evidence had arisen, creating a reasonable doubt that Martin was guilty. (The original prosecuting attorney had left for a new job, but his successor commissioned another study to determine if Dadeland Station had ever presented a danger to construction workers or the public. When the consultants returned with a negative verdict, the SAO dropped the case.)

Developer Berkowitz never blamed Martin for the problems at Dadeland Station. "What did he do wrong?" he asks. "A reasonable man would have done the same thing." He faults the original engineer, who lost his license because of the fiasco. Berkowitz also blames the county's initial reviews of the plans, which did not catch the problems.

When the county did not quickly reinstate him, Martin filed suit. He did so on November 30, 1999, his wedding anniversary, as a tribute to his wife. The suit asked for damages based on the county having made false and stigmatizing statements against him, and never allowing him an opportunity to clear his name. A judge dismissed the suit in April 2000, ruling that the stigmatizing statements were made by the State Attorney's Office, not the county government. Attorney Goldman argues that the State Attorney and the county were one and the same. An appeal hearing has been scheduled for this May.

The county's initial settlement offer consisted of back pay (minus the amount Martin earned in outside work) up to the date Martin filed his lawsuit. Goldman and Martin rejected it. "What's reasonable?" asks Goldman. "Some kind of acknowledgment in writing from the county that the combination of his indictment, the dropping of charges, and his suspension and replacement were not the fairest of events, [an admission] that he was a true public servant, and a settlement in the six figures somewhere."
Broward schools hire once-indicted Miami-Dade official

*He was cleared of any wrongdoing*

BY STEVE HARRISON
sharrison@miamiherald.com

A former Miami-Dade County building official who was indicted, then cleared of any wrongdoing by prosecutors, is the new chief building official for the Broward County School District.

School Board members ratified Lee Martin's selection Tuesday. He had five votes, but three members voted against the appointment, in part protesting the district's selection process.

Board chairman Paul Eichner said he wanted more information about other candidates and Martin's past.

"I have an obligation to make sure that we do what is prudent," said Eichner, who voted against Martin with Judie Budnick and Stephanie Kraft. "Given the high profile nature of the job, and the scrutiny our building department is under, I just want to make sure this is a perfect fit."

Superintendent Frank Till stressed Martin was researched thoroughly, and added former Miami-Dade County Manager Merrett Stierheim gave Martin a good reference.

"We checked, and saw documents that there was no probable cause," Till said. "People can accuse you of anything. But at the end of the day, if you are exonerated, you are exonerated."

Board member Lois Wexler agreed.

"I am a hard-ass, and I scrutinize everything," she said. "But we saw in writing the charges were totally dismissed."

Martin, 52, will supervise 20 to 25 inspectors and planners who oversee school construction. He is filling a new position, created as part of a reorganization of the district's building department. Martin will make $79,500 a year.

The district's construction program was criticized by a grand jury in 1997 for lax oversight of projects. A new deputy superintendent, Tom Calhoun, now runs the construction department, and Till and School Board members have tried to reform it.

"I inherited a building department with a bad rap," Till said. "I won't throw two years of work I've done away."

Martin was ensnared in a Miami-Dade State Attorney's Office investigation into the county building department that started in 1998. He was indicted for allowing the Dadeland Station shopping center on South Dixie Highway to open with construction flaws, but the charges were dropped in November 1999. Martin's former boss, Reinaldo Villar, was also cleared.

Martin, who has been working as a private consultant, settled a lawsuit against the county two months ago. He collected $100,000.

He said he was happy about his new job, but added: "I don't think this will ever go away."

One of Eichner's complaints is that district staff didn't forward a complete report on Martin until asked. Board members originally tabled Martin's appointment, then brought it back after being given more documentation.
"I believe in full disclosure, and all of that came up during an intensive interview process," Martin said about being cleared. "There was an injustice done, and I gave them an extensive amount of information. I don't know what human resources gave to the board."

Till said staff did additional checks on Martin, calling people who weren't listed as references.

"People said it was fallacious," Till said.

Eichner, Kraft and Budnick might not have been able to scuttle Martin's appointment with an additional vote, School Board attorney Ed Marko said. By state law, the School Board can only vote down an appointee with good cause.

"I put in a good word for him," Stierheim said. "I said he was an excellent professional and that I would hire him. I felt bad for him. He got a bad rap."

© 2001 The Miami Herald and wire service sources. All Rights Reserved.
http://www.miami.com/herald
Muffingate and the Media's Big Fat Mistake

Washington has learned to be frightened by gotcha news—even stories as false as the $16 muffin—and it responded by adopting gotcha idiocy.

By JAMES Q. WILSON

You probably believe, as I do, that the task of the deputy U.S. attorney general is to help the attorney general oversee the civil, criminal and investigative responsibilities of the Department of Justice. Maybe at one time it was, but no more. Now his job is to decide who can hold a major conference for which his department pays the bill.

In September, the department’s Office of the Inspector General (OIG) issued a report critical of how much money Justice spent on food between 2007 and 2009. Conferences are a way of life in Washington. The federal government must work with state, local and international agencies to get its work done, and the OIG looked hard at 10 conferences—with U.S. attorneys, foreign drug investigative agencies, Indian tribes and other groups. For these 10, it found that Justice had spent $490,000 on food. Maybe this was too much, maybe it was just right.

We may never know, because all else was forgotten when the press reported that at one meeting Justice paid $16 for each muffin served at breakfast. The Washington Post denounced this extravagance, and politicians and journalists immediately piled on. Sen. Charles Grassley (R., Iowa) said $16 muffins made Americans “cynical about government” and Sen. Patrick Leahy (D., Vt.) denounced this “wasteful spending.” Bill O’Reilly on Fox News said that the “$16 muffin now becomes a symbol of how wasteful the feds are with our tax dollars.”

But there never were $16 muffins. Two days after the Washington Post story about the OIG report, Hilton Hotels, which had supplied the food, said the $16 fee was for the entire breakfast, not just for muffins. After a few days, the OIG admitted that it initially misstated the price of muffins, saying that it regretted the error in its original report. Of course it could have asked Hilton when it was doing its first report whether the claim was correct, but it didn’t. Neither did most of the newspapers that reported the claim.

Failing to fact check is one thing, failing to correct is another. A Huffington Post blogger later calculated that only 37 of the 223 articles that pushed the $16 muffin story were retracted. ABC, CBS and NBC reported the myth; not one followed up with a correction. The New York Times and USA Today reported the myth; neither set the record straight. The Washington Post, after running several Muffingate stories, did run a correction—on page 16.

Sen. Grassley never backed off. After he learned that the $16 muffin didn’t exist, he issued a statement saying that while the $16 muffin “includes a tip” (still dead wrong), meal expenses are still too high. Maybe, but how do you know?

The problem was not with the OIG report (hardly anyone reads them) but with the press accounts. Washington has learned to be frightened by gotcha news and it responds by adopting gotcha idiocy. And so the director of the Office of Management and Budget announced that Vice President Biden would convene a meeting of department heads to implement the Campaign to Cut Waste. Meanwhile these departments must report to the Office of
Management and Budget about what they have done to better monitor expenditures so far. Press reports quoted Mr. Biden as saying that the "deputy secretaries" of all cabinet departments will have to approve conference-related activities while this review is under way.

In the Justice Department, Assistant Attorney General Laurie Robinson said on Oct. 21 said that no funding from the Office of Justice Programs can be used to purchase food or beverages at any meeting or conference. I have spoken to some senior executives there who are now spending their nights telling groups that have already agreed to attend a conference that they won't be fed and in some cases telling organizers they must renegotiate their contracts.

Perhaps the Justice Department should set clearer rules for food costs at its meetings. But that should not be retroactive and should not require the deputy attorney general or other high-ranking officials to spend much of their time on these matters.

To make that possible, though, journalists have to stop practicing gotcha news. In the current news climate, that may be impossible. The highly competitive world of newspapers losing circulation, television programs locked in bitter conflict with their rivals, and bloggers searching eagerly for some way to call attention to themselves does not lend itself to careful reporting and thoughtful analyses. By the way, The Wall Street Journal never was part of mugglingate.

Mr. Wilson teaches at Pepperdine University and has taught previously at Harvard and UCLA.