

Case Study: *Martinez vs. District of Columbia*

How to hold a governmental agency liable for the criminal acts of third parties and lessons learned from successfully pursuing such a case

By Ron Simon

Introduction

An FBI agent working on a homicide unit is shot and killed in a gun fight with a person who is under investigation for homicide. Essentially, the murderer was on a suicide mission, as he committed the murder under circumstances in which he knew that he could not escape the building without himself being killed. Under these extreme circumstances, how can civil liability for the deceased law enforcement officer be established?

The Facts

At approximately 3:30 p.m. on November 22, 1994, just two days before Thanksgiving, Bennie Lee Lawson, armed with an automatic weapon, entered Washington, DC police headquarters with the intent to kill members of the homicide division who were investigating him for a multiple homicide in a dispute between rival drug gangs. The only explanation for why the assassin entered the building was his claim that he was trying to demonstrate to his fellow gang members that he was not a snitch.

When the perpetrator went upstairs, he entered an office of homicide investiga-

tors and opened fire. In the gun fight that ensued, two officers were killed. Entering the office, FBI Special Agent Martha Dixon Martinez, aged 35, shot Lawson, who then shot and killed her. Lawson then committed suicide.

The Case

From the standpoint of civil liability, there are reasons that make this case problematic. Special Agent Martinez was killed in the line of duty. Arguably, the assailant was unstoppable because he was willing to give up his life.

With such complicating factors, few lawyers were willing to examine possible theories of liability. The first problem was to get around the workers' compensation bar. Most of the law enforcement officers killed were police department employees. However, Special Agent Martinez was a federal agent who had been detailed to work with the local police department. Therefore, there was no workers' compensation bar because the shooting did not take place on her employer's premises.

Thus, a suit was brought against the local law enforcement agency on the grounds that the police headquarters did

not have adequate security. Throughout the case, the local municipal government was convinced that it had immunity defenses on the grounds that it had made policy decisions about the level of security to maintain. Even if these decisions were incorrect, the city argued, it was protected by the discretionary function immunity that shields governmental decisions from tort immunity. The city's position was defeated by finding specific rules detailing the security required at the building.¹²

The issue of governmental immunity provided another legal challenge. The governmental defendant relied on the "public duty doctrine" to argue that the government is not responsible to members of the general public for crimes committed by third persons. In short, the government is not in the role of an insurer of lives and property against injuries caused by criminal acts. The plaintiff argued that there was a "special relationship" between the plaintiff and the local government upon which she was entitled to rely. The government kept insisting that they were not the guarantors of the safety of everyone in

public buildings, while the plaintiff argued that the law enforcement officer working on homicide cases had a special reason to need and rely on the security provided by the government.

Lessons Learned

While various judges struggled with this issue, the plaintiff's counsel recognized a psychological advantage that I believe was crucial. The judges who heard various aspects of the case all work in buildings where official government business is carried out and in which there is security. Although the issue never directly came up in the legal decisions, I was always able to imply directly or subtly to the judges that they were working in government buildings doing the government's work with people who were known to be dangerous. Even though they had not received written guarantees of safety, they nonetheless were relying on the security in the building in which criminal trials were being conducted. If a judge had been assassinated while in the courthouse, I argued that it would be unimaginable for their surviving family to be told that the government has no responsibility to them because they are in a status no different than a member of the general public who is shot while standing on a street corner during a bank robbery. In short, the judges' concern for their own on-the-job security may have made them sympathetic to the plaintiff.

A second case lesson is that law enforcement officers have numerous avenues to voice concerns about security where they work. Although the lawyers for the government agency refused to produce or identify any information about knowledge of hazards in the buildings, counsel was able to establish contacts and build relationships with members of the police union and retired officers. These contacts led to written security surveys conducted by the law enforcement agency that noted the need for better security. In addition, union officials produced grievances about inadequate security. However, the immunity defenses gave these documents a more ambiguous significance than might oth-

erwise exist when a private entity is the defendant. Typically, against a private defendant, greater knowledge of the hazard leads to more liability and responsibility. However, the reports and grievances were a double-edged sword against the public agency. The reports could be the basis for government claims that it knew of the security hazards and made a policy decision not to provide better security. Such a policy decision would render the government immune from liability. Because of this conundrum, counsel did not disclose the documents or put



FBI Special Agent
Martha Dixon Martinez

them into evidence. Instead, counsel put on witnesses who could refer to the reports without putting them into evidence. Thus, the risk that the reports could be found by the court to implicitly represent a policy decision was lessened.

The final case insight concerns jury selection. Typically, jurors' decisions tend to reflect their economic and social circumstances. Generally, plaintiffs in personal injury cases prefer a jury composed of people with lower incomes, while defendants prefer jurors who are well-off and highly educated. In this case, however, focus groups and discussions with an experienced expert revealed that the plaintiff wanted what would otherwise be a "defendant's jury." For people in high crime communities, violence is a fact of life and they begin to accept it as inevitable, particularly in circumstances where a murderer is willing *ab initio* to give up his own life. By contrast, a juror who does not live in a high crime neighborhood typically does not expect or accept crime as a fact of life that cannot be escaped.

In this case, the first prospective juror was a government lawyer in a highly

specialized job. I recognized that she would probably be outraged that a person who was sitting at her desk could be the victim of violent crime, because crime was not a regular aspect of her life experience. I also knew that she was relying on the security of the courthouse in which criminal trials were taking place. It was easy to see that she would be a likely foreperson on the jury and would be very outraged by the incident and the defense. The government, having the usual stereotypes in mind during jury selection, let me choose what it thought were typical defense jurors, and was shocked at the verdict, which was upheld.¹³ The lesson learned is that in these cases, jury selection may be counter-intuitive and requires some specific thinking about the case itself and people's attitudes toward crime. **VA**

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12. Interestingly, the search for these rules was, in and of itself, quite an adventure because security at the building was maintained by a virtually unknown local government agency. In fact, people who worked in the building did not know who was responsible for security.
13. At trial, the jury awarded Special Agent Martinez's husband, George Martinez, \$1.7 million in damages. The District government appealed, and Mr. Martinez, an FBI supervisor, agreed to settle the case for \$740,000.