



## 8 years in a Louisiana jail, but he never went to trial

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By Laura Parker, USA TODAY

When he was charged with murder in 1996, James Thomas, an impoverished day laborer in Baton Rouge, became like many other criminal defendants: With no money to hire a lawyer, he had to rely on the government to provide him with one.

He then spent the next 8½ years in jail, waiting for his case to go to trial. It never did.

Last spring, a Louisiana state appeals court ruled that prosecutors had waited too long to try him, and it threw the charge out. By then, Thomas was 34, his alibi witness for the night of the murder had died of kidney disease, and his case had become a symbol of the increasing problems within the nation's public defender system. "I can't think of any reason why he would have so completely fallen off their radar screen except to suggest (public defenders) were so busy and so understaffed and underfunded, they allowed his case to slip," says Chris Alexander, Thomas' new private lawyer. Alexander got the charge dismissed after Thomas' mother scraped together \$500 to hire him.

More than 40 years after the U.S. Supreme Court ruled that every person charged with a crime is entitled to legal representation — provided by the government, if necessary — the promise is an empty one for many low-income defendants.

Tens of thousands of poor people go to jail every year without ever talking to a lawyer, the National Legal Aid & Defender Association in Washington, D.C., found in a nationwide survey this spring of indigent legal services. The survey found that such programs across the nation are short on lawyers, investigators and other staff, and that they frequently fail to investigate the charges against the client, hire necessary experts and make appropriate motions in court.

One of the worst examples the association found was the case of another Louisiana man, Johnny Lee Bell. He was convicted of second-degree murder and sentenced to life in prison without the possibility of parole last year after meeting with a public defender for what Bell says was just 11 minutes before trial. He has appealed his conviction on the basis of ineffective counsel, says his new private lawyer, James Beane.

"There's a real disconnect in this country between what people perceive is the state of indigent defense and what it is," says David Carroll, the group's research director. "I attribute that to shows like *Law & Order*, where the defendant says, 'I want a lawyer,' and all of a sudden Legal Aid appears in the cell. That's what people think."

The American Bar Association examined legal services for the poor in 22 states this year and came to a similar conclusion. Bill Whitehurst, an Austin lawyer who led the effort, says the ABA study reveals a system "mired in crisis," in which inadequacies in funding, excessive caseloads carried by lawyers and a lack of legal experience have become routine.

It's unclear how many people are wrongly behind bars because of problems in public defender programs, Whitehurst says, but it's clear that there are some.

"Not only is it inadequate, it's a tragedy," Whitehurst says of the public defender system. "The worst thing that can happen is for an innocent person to go to jail. What we are finding is that we have been doing this with some regularity. You can't turn on the TV now without Larry King talking about some guy who was convicted and was absolutely innocent."

### Wide discrepancies in funding

Poor people charged with crimes that could result in jail time have been entitled to lawyers since the U.S. Supreme Court's

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decision in *Gideon v. Wainwright* in 1963. A Florida man, Clarence Gideon, could not afford to hire a lawyer and represented himself on charges stemming from a pool hall burglary that netted a few dollars. He served five years. From prison, Gideon hand-wrote a petition asking the Supreme Court to review his case. When the court overturned the conviction, Gideon was provided with a new lawyer. The lawyer found an alibi witness, and Gideon was acquitted.

Today, legal services usually are provided to poor people in one of two ways: by salaried lawyers working in taxpayer-funded public defender's offices or by private attorneys assigned and paid by a court. The justices left it to state and local governments to decide how legal services should be funded. Since the 1963 ruling, governments have wrangled over how to pay for public defenders in the face of budget demands.

For the most part, states that have found ways to cover all or most of counties' expenses in public defender programs — rather than force the counties to foot the bill — have had fewer problems with public defenders, Carroll says. Among the 24 states that fully fund local defender programs, Oregon, Minnesota, Colorado and Massachusetts are widely recognized for their programs' quality. The other states rely on a combination of county and state money, and there are wide discrepancies in funding.

Jeff Lawson, chief public defender in Minnehaha County, S.D. — whose office gets less than 50% of its funds from the state — echoed many of his peers when he told the ABA that tight budgets require choices between "whether roads are going to be graveled or defendants are going to be defended."

Even in the states that win praise for indigent legal services, funding can be a struggle, Carroll says.

Colorado saves money by requiring indigent defendants charged with misdemeanors to first meet with a prosecutor to see whether a plea bargain can be arranged, says David Kaplan, who heads Colorado's public defender agency.

Massachusetts narrowly averted a crisis this summer when the Legislature approved a \$30 million package to raise the pay for court-appointed lawyers. More than 400 lawyers in the Boston area had stopped taking indigent cases to protest hourly pay rates that hadn't been raised in two decades. By the time lawmakers voted to raise the rates — to \$100 an hour for murder cases, \$60 an hour for lesser charges — judges were warning that more than 600 defendants could be released from jail if they did not get lawyers soon.

"The public doesn't like our clients for the most part, and I don't blame them," says Tom Workman, president of the Massachusetts Association of Court Appointed Attorneys. During the debate, he appeared on a radio call-in show where the host blasted the legislative package as too expensive.

"He said poor people eat crummy food, they live in crummy houses and drive crummy cars, so why shouldn't they have crummy lawyers?" Workman says. "The guy is a knucklehead. But at least he was willing to say out loud what many people think."

The Supreme Court has cast the issue of inadequate representation by lawyers — particularly public defenders in death-penalty cases — as an increasing threat to the fairness of the justice system.

Three times since 2000, the justices — all of whom accept the death penalty — have cited inadequate work by defense lawyers and reversed death sentences. The reversals signaled rising concern on the court that the death penalty is not being applied fairly because some defendants have bad lawyers — as well as a fear that someone might wrongly be executed.

### **A national phenomenon**

Across the USA, examples of an overburdened, underfunded public defender system abound:

- In Virginia, caps on fees paid to court-appointed lawyers are the lowest in the nation, Carroll says. Fees on a felony that carries a sentence of 20 years or less are capped at \$428, while defenders whose clients face felonies with a sentence of more than 20 years can be paid no more than \$1,186.
- In Wisconsin, more than 11,000 poor people annually go to court without representation because anyone who makes more than \$3,000 a year is considered able to afford a lawyer, says Ellen Berz, head of the Madison public defender's office.
- Nevada caps defenders' fees in death-penalty cases at \$12,000, and it is the only state that does not allow the payment limits to be waived in such cases, Carroll says.
- In Mississippi, the NAACP Legal Defense Fund and the Southern Center for Human Rights in Atlanta sued the city of Gulfport last month. They accused the city of operating a "modern day debtor's prison" by jailing poor people who are

unable to pay their fines and denying them the right to lawyers.

- In Louisiana, the Lake Charles public defender's office was sued by nine defendants who say they have waited years to go on trial.

"If you've been sitting in jail for two years waiting to go to trial, you've lost your job, your housing, you're horribly in debt," says Melia Brink, a lawyer at the National Association of Criminal Defense Lawyers in Washington.

Litigation has prompted improvements in several states. In Georgia, five lawsuits triggered an overhaul of indigent legal services by state lawmakers last year that led to the opening of 44 new public defender offices across the state.

In Louisiana, the Legislature gave a state indigent defense panel more power to require that counties report caseloads, employees and salaries so the state can calculate the true cost of improvements.

In Virginia, an indigent defense commission was set up to oversee training and other issues. But the caps on legal fees are still in place. Steve Benjamin, a defense lawyer and a commission member, says the caps are so low that they force court-appointed lawyers to choose between mounting a cursory defense or working for free. "Not only will you not be paid for each hour that you work after hitting the cap, you also are using your own money to run your (law) office," he says.

Back in Baton Rouge, James Thomas is now free. But this fall, state prosecutors plan to ask Louisiana's 1st Circuit Court of Appeal to reinstate the charge. The state attorney general's office won't comment because the case is pending.

Thomas was charged with three other men, including his brother, Percy Dyer, in the slaying of Dennis "Doc" Scruggs, 19, of Baton Rouge. None of the men has been tried, and three have been released from jail. Because it started as a death-penalty case, each defendant was entitled under law to two lawyers. It took three years to find eight public defenders qualified to handle the case. The charges were reduced to second-degree murder, which carries a maximum sentence of life in prison without parole.

Jamie Fontenot worked on Thomas' case for several years as a salaried, \$29,000-a-year public defender, and as a court-appointed attorney when she went into private practice. She withdrew from the case when the state didn't pay her \$5,000 fee for her work as a private attorney, as the court had ordered.

While in the public defender's office, she also juggled 70 to 80 other felony cases at the same time, she says. "Part of the trouble was scheduling court dates with eight lawyers' calendars," she says. "Someone would say, 'What about December?' and someone would say, 'I've got a trial.' 'OK, what about January? What about February?'"

"The record shows very long lapses of time when there's no movement on the case at all," Alexander says. "That is inexcusable. Somebody's responsible for that. This is nine years now of a man's life lost by no fault of his own."

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