



"I realized that everything was over," Thomas says, meaning his military career.

C. STILES

A Seminole Moment

THOMAS FRANCIS | MAY 17, 2007 | 4:00AM

Four months removed from a tour of duty in Iraq, Air Force Airman John Thomas was back in South Florida. Of all people, Thomas thought, *he* had earned the right to enjoy some of those American liberties he and his fellow servicemen and women had fought for in the Middle East.

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On the night of April 22, 2006, a Saturday, the 26-year-old Thomas and two friends went to Murphy's Law, a nightclub located within the entertainment complex of the Seminole Hard Rock Hotel &

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A Seminole Moment

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Casino. A friend of Thomas' had a friend in the house band. That was their hangout.

A fight that erupted at Murphy's Law in the early morning of April 23, 2006, didn't involve Thomas, but he was the guy who found himself on the ground, pinned by a Seminole Police Department officer and handcuffed. In the year since, he's been sinking in the kind of legal quicksand that exists only on the Seminole reservation. Facing a five-year prison sentence, Thomas may be tried in Broward County Circuit Court without the right to see the evidence – or lack thereof – against him.

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▶ Thomas hired **Alexander Penalta**, a Boca Raton-based attorney who is also an adjunct law professor at Embry-Riddle Aeronautical

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University. For all **Penalta's** legal credentials, there is no law-school class for defending clients *not* entitled to basic constitutional rights, like due process of law. And since Thomas was arrested by Seminole law enforcement on Seminole land, that's exactly his predicament.

"This man has gone through bombings in Iraq," **Penalta** says. "He's defended his country, and he comes here and he's not treated like an American."

Thomas has the close-cropped hair, clenched jaw, level gaze, and firm handshake common to military men. On advice of his attorney, Thomas declined to explain in detail the incident that led to his arrest.

The probable-cause affidavit written by Seminole Police Officer Susie Lawson describes how she and her fellow officers responded to a report of a fight at Murphy's Law involving a patron, Rodrigo Babich, presumably a friend of Thomas'. Lawson writes that when Babich did not leave the premises, she arrested him.

Lawson's report claims that, while

leading Babich to her patrol car, Thomas approached her, "grabbed me by my shirt and pushed me, causing me to lose my balance."

According to **Penalta**, during his arrest, Thomas was taunted by another Seminole Police officer, Ulysses Boldin, who was dating Lawson at the time – the two officers are now married. **Penalta** says that Boldin is a reservist in the U.S. Army and that the taunting was related to the ages-old rivalry among different branches of the armed forces.

"They were saying things like, 'You don't know what it's like to fight,' talking about Iraq," **Penalta** says. "I'm sure they were just trying to get [Thomas] angry. That's improper for a police officer to do that."

The Seminole Police Department, which is under no legal obligation to cooperate with the United States' Freedom of Information Act, refused to provide *New Times* with a copy of the police report connected with Babich's arrest. Broward County court records indicate Babich pleaded guilty to trespassing, a misdemeanor. The Seminole Police also denied *New Times* requests to discuss the

incident with Boldin or Lawson.

Five days after the incident, on April 28, 2006, Lawson issued a new case report related to the incident. In it, she intensifies the details that led to Thomas' arrest, adding that, in addition to grabbing her shirt, Thomas took hold of her right shoulder, causing her to lose her grip on Babich, whom she was in the process of arresting. The report also added details about how, after Lawson fell, "Mr. Thomas then charged toward me in an aggressive manner by attempting to push [Lawson] again. I then defended myself by striking Mr. Thomas in his facial area and upper torso area to attempt to stop his aggressive actions."

To **Penalta**, the second report is conspicuous for its hitting upon "buzzwords" that would strengthen the case for battery of a law enforcement officer. "The officer wrote the report that night and then amended the report several days later," **Penalta** says. "Any police officer or prosecutor will tell you that's a huge problem."

In U.S. courts, a criminal defense attorney is provided with all of the relevant evidence in a case,

including exculpatory evidence – that is, anything that could clear his client. Considering that the Seminole entertainment complex is chock-full of surveillance cameras, **Penalta** notes, surveillance video must have captured Thomas' arrest.

Initially, the Seminole Police Department told **Penalta** it would provide a report of the evidence if he mailed them \$1 and a self-addressed stamped envelope. But last July, the department wrote a letter to **Penalta** informing him that it would not provide that information.

"That was the first time I thought, 'Wow, something's not right here,'" **Penalta** says.

The assistant state attorney prosecuting Thomas, David Braun, shared with **Penalta** all the evidence provided to him by the Seminole Police, which included a witness list and police reports. But the material did not include surveillance video, and Braun's office does not allow him to comment to the media on pending cases.

Penalta says that after he took Thomas' case, he walked the grounds outside Murnby's Law

grounds outside Murphy's Law

where the incident occurred and saw video cameras, leading him to believe video footage exists.

Penalta suspects that the Seminole Police are not providing it because it tells a story different from the one in the officer's report. "If they [the Seminole Police] are hiding exculpatory videotapes – and I know in my gut that there's videotape there – and the reason that they're not showing videotape is because of the facts that are going to come out at trial, they're supposed to provide that."

Seminole Police spokesman Capt. Aaron Wright says that in 2006, there were no video cameras overlooking the site of the arrest. Wright bristles at the suggestion that his department would withhold evidence. "How would we get any cases prosecuted if we didn't give [state attorneys] everything they need to prosecute the case?" Wright asks. "That makes no sense."

His department follows the same state laws as any other Florida police department, Wright says.

True, but since the Seminole Police Department is not subject to Florida Government-in-the-Sunshine statutes, as every other

sunshine statutes, as every other Florida police department is, the public has no method for monitoring the agency's inner workings.

To this, Wright points out that all 151 Seminole Police officers are trained, certified, and subject to the investigations of the Florida Department of Law Enforcement, which can penalize Seminole officers found to be violating state law.

"We *have* to turn over the evidence," Wright says. "Our officers – if they do not – they go in front of the Florida Department of Law Enforcement, and if they're in violation, their certification is pulled. And I'm not going to risk my certification for anybody."

When the FDLE receives a complaint about an officer's conduct, FDLE spokeswoman Heather Smith says, the agency's first step is to forward the complaint back to the department that employs the officer. The FDLE considers penalizing the officer only if that department's Internal Affairs investigation finds the officer to be in violation, Smith adds.

Again, the difference is that, while

with other police departments the Internal Affairs process is open to the public, the process with the Seminole Police Department is off-limits to the public.

To **Penalta**, it sounds like the Seminole Police Department is asking U.S. courts simply to trust its law processes while giving none of the same guarantees against internal corruption that exist outside of the Seminole reservation.

"Human nature is to protect one's self," **Penalta** says. "So if it's going to cause a loss to your organization, you'll try to protect it." The Seminoles may be operating under their own honor code, he adds, "but you have to be able to verify it through a system of checks and balances."

In his research, **Penalta** says he's found no precedent for a case like Thomas'. Indeed, it would seem that in most instances, a defense attorney would get full disclosure of the evidence simply because the Seminole Police made a legitimate arrest and would have no reason to hold back information. But in cases where there may be exculpatory evidence, a defense attorney could have no way of

knowing that it exists and might assume that he has received all the relevant information.

Many defendants in Thomas' position, facing the costs and stresses of a criminal prosecution, might be inclined to negotiate a plea deal, admitting guilt in exchange for having the charges reduced. In those cases, the Seminole Police would not be challenged.

Thomas' case is different because of his certitude that there must be video evidence, the exclusion of which suggests to him that it would help his case and hurt the prosecution. Further, Thomas is refusing to negotiate a plea deal, not just because he believes in his case but because even a misdemeanor conviction would likely ruin his military career.

The experience, Thomas says, has been "terrifying." He spent 12 hours in a Broward County jail cell. He had panic attacks. "I realized that everything was over," Thomas says, meaning his military career. "It was something that happened so quickly... It was gone, and I couldn't do a thing about it."

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currently
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motion to
dismiss in
which he will
argue to the
court that he

hasn't received all the evidence related to the case. If he wins that particular point, it would likely lead the judge to dismiss the case.

But even if the case is dismissed, it would be a hollow victory for Thomas. In America, a citizen who is unfairly arrested and prosecuted without full disclosure of the evidence is entitled to sue the police who arrested him and recover the thousands he spent defending himself in court, as well as compensation for his emotional distress.

Except, the Seminole Police Department, like every entity on the reservation, has sovereign immunity from civil suits.

In a way, then, John Thomas has already lost. The only question is: How much will he lose?

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