

Prejudicial Pretrial Publicity in *Florida v. Joseph Peter Smith*

Copyright 2004-2006, 2012 by Ronald B. Standler

No copyright claimed for quotations from any source, except for selection of such quotations.

Keywords

Carlie Brucia, example, examples, fair, Florida, free, freedom, impartial, inflammatory, juror, jurors, newspaper, newspapers, outrage, prejudicial, press, pretrial, publicity, quotations, Sarasota, Joseph Smith, Adam Tebrugge, trial

Table of Contents

Introduction	2
terse facts	2
summary of prejudicial information	3
Prejudicial Florida News Media Articles About Smith	5
Thursday, 5 Feb 2004	5
Friday, 6 Feb 2004	5
Saturday, 7 Feb 2004	7
Gov. Jeb Bush calls for Smith to die ?	8
8 Feb 2004	9
Ms. Melone's Opinion, 11 Feb 2004	9
well-reasoned editorials, 11-13 Feb 2004	12
14-15 Feb 2004	13
19 Feb 2004	15
Indictment, 20 Feb 2004	15
psychologists	18
28-29 Feb 2004	19
March 2004	21
News Media Outside Florida	24
nationwide television	24
New York City	27
Links	29
Conclusion	30

Trial	31
penalty phase	32
Appellate Review	34
Postscript	35

Introduction

About one month after I finished my essay, *Pretrial Publicity Prevents a Fair Trial in the USA*, at <http://www.rbs2.com/pretrial.pdf>, 11 y old Carlie Brucia was kidnapped and murdered in Florida. After a suspect was arrested, publishers and broadcasters made many of the same mistakes that I criticized in my essay. This document quotes and discusses some of the most prejudicial articles that I have collected in this case, so that journalism students and law students can see detailed, contemporary examples of how propaganda by journalists erodes the presumption of innocence of the accused, and how “facts” reported by journalists (but *not* admissible as evidence at trial) can convince potential jurors that a suspect is a bad person who deserves harsh punishment.

This essay focuses on articles in the *Sarasota Herald-Tribune*, partly because that newspaper is the dominant news source in the city where this crime occurred, and partly because – in my opinion – the *Herald-Tribune*’s coverage was more inflammatory and much more prejudicial to the accused than articles in newspapers in nearby cities, such as the *Bradenton Herald* or the *St. Petersburg Times*.¹

terse facts

Note: These facts may not be correct. These preliminary facts are derived from newspapers during February 2004, *not* from evidence presented at trial. A formal statement of facts established at trial was published in *Smith v. Florida*, 28 So.3d 838, 844-852 (Fla. 2009).

On Sunday evening, 1 February 2004, Carlie Brucia, an 11 y old girl, was kidnapped from the parking lot of a car wash in Sarasota, Florida, (south of Tampa/St. Petersburg) when she was walking home from a friend’s house. After seeing on television a surveillance videotape that showed Brucia apparently being kidnapped, one or two people told police that the alleged kidnapper looked like Joseph Peter Smith. On Tuesday, 3 February 2004, police went to question Smith about Brucia’s disappearance, and police then arrested Smith for possession of cocaine and

¹ A column by Ms. Melone in the *St. Petersburg Times* is a conspicuous exception and is discussed in detail below, beginning at page 9.

drug paraphernalia, and also for parole violations. Smith refused to talk to police about Brucia's disappearance, after initially denying his involvement. While in jail on Thursday, 5 February 2004, Smith admitted to someone² that he killed Brucia and Smith told that person where Brucia's body could be found. Using information from that admission by Smith, police found Brucia's body early on Friday morning, 6 February 2004.

Crimes involving children (e.g., kidnapping, murder, sexual abuse, etc.) are amongst the most despised crimes in the USA. Accordingly, it is expected that such crime(s) will produce a flood of highly emotional news reports, some of which will castigate the suspect who is accused of such crime(s).

summary of prejudicial information

On Thursday, 5 Feb 2004, newspapers began a flood of extremely prejudicial information about Smith:

1. Smith had been arrested "at least 13 times" in the past ten years. Most of the arrests were for possession of illicit drugs, which arrests are irrelevant to the alleged kidnapping and murder of Brucia. Smith was arrested three or four times for violence:
 - (A) There was an arrest for battery in April 1993, to which Smith pled guilty. He was sentenced to 60 days in jail.
 - (B) Smith was arrested in Nov 1994 on a domestic violence complaint, but no charges were ever filed in that case.
 - (C) Smith was arrested in July 1997 for carrying a concealed knife and he pled no contest. Smith was sentenced to one year of probation. This incident is arguably not a violent crime.
 - (D) An arrest in Nov 1997 for attempted kidnapping and battery of a 20 y old woman resulted in a jury finding Smith "not guilty".
- Contrary to the impression from reading newspaper articles, Smith did *not* have a significant history of convictions for violent crimes: there were *only one or two* convictions for violent crimes. Only with the advantage of hindsight, Smith's two arrests in 1997 have *some* similarities to the abduction of Carlie Brucia, but — and this is important — no one has come forward to say that they predicted that Smith would kidnap or murder a woman.
2. The sheriff announced on Thursday morning that Smith refused to cooperate in the investigation of Brucia's disappearance. (The journalists did *not* remind readers that Smith has a constitutional right to refuse to talk to police.)
3. On Friday, a captain in the sheriff's department announced that: "We now stand ready to complete our obligation, and assure you that he will pay the ultimate price for what he did to her." (The trial of Smith had not even begun and the sheriff was already not only declaring Smith's guilt, but also declaring the death penalty.)

² The identity of the "someone" was revealed at trial, see below, at page 31.

4. On Saturday, newspapers were reporting that Smith had confessed. By this point, there was no need for a trial – Smith was obviously guilty, convicted by the sheriff’s department and journalists.
5. Newspapers often identified Smith as “tattooed”, as if that somehow made him more likely to be a murderer.
6. Newspapers often mentioned that a reporter had attempted to contact Adam Tebrugge, the public defender who represents Smith in court, but Tebrugge did not return the telephone call. Such statements, while literally true, may give the reader the misleading impression that Tebrugge is *unable* to offer any explanation for Smith’s conduct or that Tebrugge is hiding from reporters. (The reporters did not mention that the rules of professional responsibility for attorneys³ narrowly limit what an attorney can say outside of court, so that Tebrugge is acting in a professional and ethical way, *unlike* the journalists.)

This collection of contemporary examples of prejudicial publicity by journalists may help readers to understand the importance of critical thinking, instead of passively accepting what one reads. Sometimes what is *not* said is more important than what is said explicitly.

About two months after Smith was arrested, it is easy to see a pattern in the newspaper coverage about this case. On Friday, 6 February 2004, the *Sarasota Herald-Tribune* published four stories about Smith. For the next nine days, local newspapers published at least one story about Smith each day. From 16 February 2004 to 21 March 2004, newspaper stories about Smith slowly declined in frequency, with an isolated burst of stories each time there was a court hearing on this case. After 21 March 2004 newspaper stories about Smith were infrequent. However, the infrequent prejudicial articles after 21 March 2004 does *not* mean either that Smith’s reputation has been rehabilitated or that his presumption of innocence has been restored in the minds of potential jurors. The infrequent prejudicial articles after 21 March 2004 does *not* mean that Smith can receive a fair trial in the vicinity of Sarasota. On the contrary, people in the Sarasota, Florida community had learned from the intense coverage in February 2004 that Smith was an evil man, a habitual criminal, a drug addict who could not hold steady employment, a repeated violator of probation conditions who did not deserve his freedom, and — most importantly — the person who had kidnapped and murdered Carlie Brucia. As a result of prejudicial newspaper articles about Smith, an eventual trial in the Sarasota vicinity will be only an empty formality, since the newspaper coverage had poisoned the jury pool there with “facts” that would be *inadmissible* as evidence in trial, either because the “facts” were irrelevant to the issues in the trial, because the “facts” were unfairly prejudicial to Smith, or because the “facts” were *unreliable*. While potential jurors might forget some of the details, they will remember their conclusion that Smith is an evil man who deserves to die for kidnapping and murdering Carlie Brucia.

³ American Bar Association Rule 3.6, quoted in Ronald B. Standler, *Pretrial Publicity Prevents a Fair Trial in the USA*, December 2003, <http://www.rbs2.com/pretrial.pdf> .

I live and work in New Hampshire, approximately 2000 kilometers from Sarasota, and when I talk with people in New Hampshire and mention the name of Smith in connection with the murder of Carlie Brucia, they invariably recall prejudicial “facts” about Smith that were reported by the news media. The situation is clearly much worse in Sarasota, where the local news media had a much more intense coverage, and was much more prejudicial to Smith, than national media.

Prejudicial Florida News Media Articles About Smith

Thursday, 5 Feb 2004

Robert Eckhart and Mike Saewitz, “Suspect Held,” *Sarasota Herald-Tribune*, 5 Feb 2004.

This article begins with the words:

An auto mechanic with a long history of arrests was named Wednesday as a suspect in the disappearance of 11-year-old Carlie Brucia, who was abducted behind a car wash Sunday and has not been seen since.

The fourth and fifth paragraphs say:

"We have strong evidence that he is, in fact, the perpetrator," sheriff's Capt. Jeff Bell said. Smith has not been charged in Carlie's disappearance, and detectives would not elaborate on why they suspect him.

Nevy Kaminski, “Sarasota man has criminal past,” *Bradenton Herald*, 5 Feb 2004. This article begins with the sentence: “Joseph Peter Smith, the suspect in the abduction of Carlie Brucia, has a lengthy history of violence and drug arrests.” and then the article chronicles seven arrests.

Of these seven arrests, three are for either assault, battery, or domestic violence; the other four arrests are for possession of heroin or cocaine. Of the three arrests for violence, one charge was dropped and a jury acquitted Smith of a second charge, leaving *only one* conviction for violence.

Friday, 6 Feb 2004

Robert Patrick and Tom Kim, “Face in the news triggers memories for Manatee woman.” *Sarasota Herald-Tribune*, 6 Feb 2004. This article describes Smith’s alleged attempt to kidnap a woman at knifepoint in November 1997, but Smith was found “not guilty” by a jury in 1998. The clear implication of this article is that the jury made a mistake, and because of that mistake, Smith was not in prison, instead Smith was free to kidnap Carlie Brucia. The prosecutor in that case said the jury’s decision was “the most shocking verdict” in any of her trials.

Jess Andrews, "Court records chronicle a troubled life," *Sarasota Herald-Tribune*, 6 Feb 2004.⁴

This article begins with the words:

Joseph P. Smith was heavily in debt, addicted to drugs and unable to hold a job. A convicted felon with more than a dozen arrests, he was separated from his wife and three children when deputies arrested him Tuesday and accused him of abducting 11-year-old Carlie Brucia.

Mike Saewitz, "System gave suspect many second chances," *Sarasota Herald-Tribune*, 6 Feb 2004.⁵ The theme of this news article is published in more detail in an article in the 15 Feb 2004 issue of the *Sarasota Herald-Tribune*, titled "ONE CHANCE TOO MANY?" and discussed below, beginning on page 14.

Staff and wire reports, "Arrest report says murder suspect told witness he kidnapped, murdered Carlie," *Sarasota Herald-Tribune*, 6 Feb 2004.

"We now stand ready to complete our obligation, and assure you that he will pay the ultimate price for what he did to her," Capt. Jeff Bell said.

This statement by a sheriff was so shocking that it was mentioned by Smith's public defender⁶ in court on 11 Feb 2004 in support of his motion for a gag order "prohibiting all attorneys, parties, witnesses, law enforcement personnel, and court personnel" from releasing information about the case to journalists.

⁴ A similar story by the same author is "Troubled Life Had Divorces, Drug Use," *Tampa Tribune*, 7 Feb 2004.

⁵ A similar story by the same author is "Abduction Suspect Has History Of 2nd Chances," *Tampa Tribune*, 7 Feb 2004.

⁶ Dick Lammers, Associated Press, "Defendant's attorney wants gag order in Carlie Brucia slaying," *Ft. Lauderdale Sun-Sentinel*, 11 Feb 2004; Nevy Kaminski, "No ruling yet on gag order," *Bradenton Herald*, 12 Feb 2004; Mike Saewitz, "Fair trial unlikely, lawyer says," *Sarasota Herald-Tribune*, 12 Feb 2004.

Leanora Minai, "Violence and drugs litter kidnap suspect's history," *St. Petersburg Times*, 6 Feb 2004. Part of this article says:

Court documents of the attack on Stinson in 1997 and the 1993 assault paint a more detailed portrait of Smith, a mechanic with "Mom" tattooed on his arm, a father of three young girls, an addict who was hooked on painkillers and arrested at least 13 times over the past decade in Sarasota and Bradenton.

Smith, 37, remained in police custody Thursday, accused but not charged, still refusing to cooperate with investigators, still believed to be the key in finding Carlie Brucia, said Sarasota County Sheriff Bill Balkwill.

Saturday, 7 Feb 2004

Manatee and Sarasota county court records, "This is Joseph Peter Smith's Florida felony rap sheet before his arrest ...", *Miami Herald*, 7 Feb 2004. A list of fourteen items, some charges have two entries in the list, which makes the list appear longer.

Robert Patrick, "Focus in case turns to trial; death penalty may be sought," *Sarasota Herald-Tribune*, 7 Feb 2004.

Representatives of neither the state attorney's office nor the public defender's office returned phone calls seeking comment. But the State Attorney's Office did issue a statement that "The facts known to us at this time warrant seeking the death penalty."

"This is clearly a death penalty case," said Larry Byrd, a former chief prosecutor and defense attorney. Investigators said they were convinced that Carlie was in Smith's station wagon sometime after her abduction, suggesting to Byrd that investigators found physical evidence such as hair, fiber or blood in the car. With that evidence and the videotape of the abduction, Byrd said it was an "iron-clad case."

The comment by Byrd, an attorney not involved with this case, that the prosecution has an "iron-clad case" against Smith is apparently a guess, and this comment may help the public believe that Smith is guilty before the trial begins. It is certainly premature to be publicly commenting on the significance of the evidence before any evidence is presented in court and before Smith's attorney has an opportunity to object to such evidence or cross-examine the prosecution's witnesses.

On the homepage of the *Sarasota Herald-Tribune* website for the evening of 7 Feb 2004 is the banner headline: “REPORT: SUSPECT ADMITS MURDER” and links to the following two articles:

(1) Robert Eckhart, “Smith charged with murder, kidnapping,” *Sarasota Herald-Tribune*, 7 Feb 2004.

(2) “Police Report: Smith Admits Murder,” *Sarasota Herald-Tribune*, a link to <http://www.heraldtribune.com/assets/pdf/SH133526.PDF> . This PDF file is a photocopy of the four-page probable cause affidavit, which concludes:

On February, 5, 2004, the Defendant told a witness that he abducted and murdered Carlie Brucia. Based upon the specific information provided to this witness by the Defendant, this witness was able to lead investigators to the body of Carlie Brucia. A preliminary Forensic examination of the body indicates Carlie Brucia died as a result of homicidal violence.

Based on the above facts, Affiant has probable cause to believe the Defendant
The Defendant then forcibly abducted Carlie from the parking lot of the car wash and drove her from this location. Through the means of homicidal violence, the Defendant then murdered Carlie Brucia.

There was *no* identification of this “witness” to whom Smith allegedly admitted that he murdered Brucia, so it seems premature for newspapers to have banner headlines about “SUSPECT ADMITS MURDER”.

Gov. Jeb Bush calls for Smith to die ?

Gov. Bush made some remarks in Port St. Lucie, Florida, at a meeting with the Treasure Coast Builders’ Association on 6 Feb 2004:

Bush said that as a father, he would support the death penalty, but as an elected official, he was unsure if that was the best answer in this particular case because of the lengthy amount of time the process can take.

Diana Moskvitz, “Governor offers sympathy for loss,” *WPTV*, 7 Feb 2004, http://www.tcpalm.com/tcp/news/article/0,1651,TCP_997_2636910,00.html .

A television station in Miami reported:

Florida Gov. Jeb Bush said his heart goes out to the Brucia family, and he, too, expressed concern that the man accused of kidnapping and killing Carlie was not jailed a month ago.

But Bush defended the state's actions regarding Smith.

“If someone kills or strangles a 12-year-old child, abducts a child and strangles a child, that's not because of drug addiction, that's because he is sick, and he should be given the maximum penalty if he is convicted,” Bush said.

Associated Press, “Finger-Pointing Begins In Brucia Case,” *WTVJ*, 7 Feb 2004, <http://www.nbc6.net/news/2829049/detail.html> .

My long essay, *Pretrial Publicity Prevents a Fair Trial in the USA*, has a short subsection at the end of the section on professional ethics that explains why it is highly improper for the president, a governor, or other high elected official to make public pronouncements about the guilt or innocence of a suspect. My search of the Google News database on 24-25 Feb 2004 shows only these two news articles that mention this remark by the governor, so it is difficult to know what affect the Governor's remark had on either the grand jurors or the potential jurors in Smith's future trial. Smith's attorney mentioned Gov. Bush's remark in his Motion to Dismiss the Indictment, because of adverse publicity that affected the grand jurors.⁷ In contrast to the concern of Smith's attorney, I am not certain that the Governor's remarks are reprehensible. *If* these two television accounts are both complete and accurate, it seems that the Governor did *not* explicitly say Smith was guilty and that Smith should be executed. Instead, the Governor apparently said that people who kidnap and murder children should be executed after they are convicted in a court.

8 Feb 2004

Brian Haas and Nevy Kaminski, "Carlie's family tries to curtail rumors," *Bradenton Herald*, 8 Feb 2004.

Carlie's family, shying away from publicity, cried out angrily through friends against an increasing number of rumors being circulated. But rumor control has become difficult since the Sarasota County Sheriff's Office halted the flow of information after 3 p.m. Friday. This is the first mention that I saw about attempts to restrict the flow of information. Because Smith was in custody and charged with the murder, there was little need for continued publicity after Friday afternoon.

Ms. Melone's Opinion, 11 Feb 2004

Mary Jo Melone, "In the heat of our rage, incredulous questions," *St. Petersburg Times*, 11 Feb 2004. http://www.sptimes.com/2004/02/11/Columns/In_the_heat_of_our_ra.shtml In my opinion, this column by Ms. Melone is the most inflammatory article amongst the many dozens of articles about this case that I have read. Her column, which is written in the style of a letter to Joseph Smith, begins:

What kind of man are you, Joseph P. Smith? Did you, as charged, do this to Carlie Brucia? If so, how could you? You, with three little girls of your own.

The sixth paragraph of the article says:

Now your lawyer wants a gag order to silence the prosecutors and police, to keep them from talking to the press. Luckily, it can never apply to ordinary people, we who can't fathom the crime, we who cling to the quaint idea that in a civilized world, grown men don't snatch children and slaughter them.

The ninth, tenth, and eleventh paragraphs say:

The person who did this did more than end the life of that blond-haired child. He made parents more worried, more vigilant. He made the world of children more constricted. Don't take shortcuts, we are told to warn our children now. Never walk alone.

⁷ See below, at page 17.

Don't think for a moment this makes us powerless. We'll have the last word on what happens to you, Joseph P. Smith. Prosecutors and a jury will see to that. They'll decide whether you are guilty, and if so, whether you get the death penalty.

I'm usually against it, the killing of killers, but my emotions have taken over. I'm a parent, too.

The final three paragraphs say:

Was it you? How dare you. Could it really be what news reports said, that you flipped out because your wife wanted a divorce? What connection could exist between your rage at life's inevitable hard knocks and this 11-year-old walking home from a sleepover?

They're doing a lot of praying in Sarasota now. They're asking why, if there is a God, he could let a disturbed man be on the loose and at the right place and time to grab Carlie.

We need a lot of faith to come to terms with what happened to this child. My own faith runs short. I ask, and I don't get a single answer. Just the fact of this one senseless act, and the absolute necessity that a killer be made to pay.

While not explicitly saying that Smith is guilty, this opinion column appears to make an emotional appeal that Smith be executed for Brucia's murder. Two days before this opinion piece was published, Smith's public defender filed a motion for a gag order to attempt to stop some of the prejudicial pretrial publicity that would deny his client a fair trial. As Ms. Melone said in her sixth paragraph, a judge's gag order can *not* stop "ordinary people" from expressing their outrage at Smith. And, as I point out in my essay, *Pretrial Publicity Prevents a Fair Trial in the USA*, a judge's gag order can *not* prevent publishers and broadcasters from releasing prejudicial information or opinions. Despite the fact that the motion for a gag order was an appropriate thing for Smith's attorney to do, Ms. Melone criticizes Smith for that allegedly additional indignity perpetrated on the people of Florida. Ms. Melone's article reminds me of the inflammatory article about Sam Sheppard published by the *Cleveland Press* for 23 Oct 1954 that Judge Weinman characterized as "a cheap, sobsister editorial, it literally screamed for petitioner's conviction."⁸

One should ask *why* do journalists like Ms. Melone feel the need to verbally blast Joseph Smith? He is now confined to jail, awaiting trial, and *probably* awaiting an eventual execution by the state of Florida. Smith is now no danger to society. Even if Smith is guilty of killing Carlie Brucia, is the death of *one* 11 y old girl the most important problem facing the USA, or facing Florida, today? A moment's thought reveals several more serious problems facing the USA:

- Public schools in the USA have mediocre academic standards and give high school diplomas to kids who are functionally illiterate and unable to do basic mathematics. Educational standards in American universities have been eroded by pressure to accept anyone who graduates from a high school, and to let students "earn" a bachelor's degree while avoiding classes in calculus, differential equations, statistics, physics, chemistry, and computer science that might prepare them to live intelligently in a society that is increasingly dominated by science and technology. Plagiarism is epidemic in schools and colleges when a term paper is

⁸ *Sheppard v. Maxwell*, 231 F.Supp. 37, 57 (S.D.Ohio 1964). Posted on the Internet at <http://www.rbs2.com/shepp.htm>.

assigned.⁹ Many teachers and professors give everyone an A grade, to avoid hurting the self-esteem of pupils and students, even if the pupils or students failed to learn the basic information or skills in the class syllabus. Fraudulent diplomas from “universities” with no classrooms, no libraries, and no science laboratories are readily available for sale in the USA.

- Approximately 40,000 people are killed each year in automobile accidents on streets and highways in the USA. About half of these fatalities (i.e., approximately 20,000/year) occur in crashes in which at least one driver was intoxicated with alcohol or illicit drugs. Many intoxicated drivers have a series of more than three arrests for driving while intoxicated. Why is recidivism in driving while intoxicated acceptable in the USA?

In the year 1999 approximately 115 children in the USA were kidnapped by nonfamily members.¹⁰ In the year 2001, motor vehicle accidents were the single largest cause of death in the USA for people between 4 to 34 years of age, with a total of 2639 deaths of people age 15 y or less.¹¹ This quick comparison suggests that fatalities to children in motor vehicle accidents are approximately twenty times more prevalent than kidnappings by nonfamily members.

- American businesses are being merged, split, and purchased, as high-level executives play games, accumulating a high level of debt for the corporations and bonuses for the executives. Occasionally a multi-billion dollar fraud is exposed and a corporation (e.g, Enron, WorldCom) is declared bankrupt. People who invested in stock of bankrupt companies lose essentially their entire investment, as the stock price plummets from tens of dollars per share to a few cents per share. Employees of bankrupt companies are not only *unemployed*, but also have lost nearly all of their retirement pension that was invested in stock of the now bankrupt corporation.
- In May 2002, there were more than 61000 known computer viruses and worms for the Microsoft Windows operating system, but the authors of only five malicious computer programs have been arrested and punished.¹² Most of those five malicious programs affected operating systems other than Windows.

⁹ Ronald B. Standler, *Plagiarism in Colleges in the USA*, <http://www.rbs2.com/plag.htm> (2000).

¹⁰ Statistic from the second *National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children* cited at <http://www.missingkids.org/> .

¹¹ Centers for Disease Control, National Center for Health Statistics, *Deaths: Leading Causes for 2001*, National Vital Statistical Reports, Vol. 52, Nr. 9, 86 pp. http://www.cdc.gov/nchs/data/nvsr/nvsr52/nvsr52_09.pdf . Summary posted at <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/RNotes/2003/809-695.pdf>

¹² Ronald B. Standler, *Examples of Malicious Computer Programs*, <http://www.rbs2.com/cvirus.htm> (2002).

Instead of attacking these complex and difficult problems, journalists choose the easy route of attacking *one* habitual drug user who is safely in jail, accused of a heinous crime of murdering *one* child, and further vilifying this already hated suspect.

well-reasoned editorials, 11-13 Feb 2004

Anonymous editorial, "Informed reform: Facts, thought should guide response to Carlie's murder," *Sarasota Herald-Tribune*, 11 Feb 2004.

In contrast to the many inflammatory and prejudicial articles appearing in the *Sarasota Herald-Tribune*, this well-reasoned editorial says:

In Smith's case, his official record prior to Feb. 1 does not match the public's perception of him as a violent, career criminal. Though he is now charged with a heinous deed, his only previous conviction for a violent offense was more than 10 years ago (aggravated battery).

A 1997 false imprisonment charge ended in his acquittal, and thus his rap sheet consists primarily of drug-possession counts.

The *only reason* that the public has this erroneous perception of Smith "as a violent, career criminal" is the content of inflammatory articles in the *Sarasota Herald-Tribune*, and other newspapers in Florida.

Anonymous editorial, "Placing blame," *St. Petersburg Times*, 13 Feb 2004.

The first paragraph says:

The public reaction to the shocking murder of 11-year-old Carlie Brucia has been overwhelming grief and anger, felt not only in her Sarasota community but across the nation. While it is understandable that state leaders and the public are outraged that Carlie's accused killer, Joseph Smith, had a long criminal record and was on the street despite a probation violation, it would be a mistake for lawmakers to hastily alter Florida's probation system. As Gov. Jeb Bush warned lawmakers, "governing based on one incident is the wrong thing to do."

The sixth paragraph honestly reviews the facts of this case:

Examining Smith's record provides little basis for considering him, as the public does, a habitual violent offender. He has been convicted of only one violent crime: when he grabbed a woman and hit her in the face with a motorcycle helmet more than 10 years ago.

His 1997 charge of false imprisonment for grabbing and threatening another woman ended in his acquittal. Smith's other run-ins with the law consist primarily of drug possession charges. Even with 20/20 hindsight, the system was not on clear notice that this was a man who could do what he is accused of doing to Carlie.

Again, the *only reason* that the public considers Smith to be a "habitual violent offender" is the inflammatory and prejudicial reports by journalists.

14-15 Feb 2004

Matthew Doig, "Judges didn't see '97 report on Smith: New details emerge about murder suspect's attempt to lure a woman," *Sarasota Herald-Tribune*, 14 Feb 2004.

This news article reports an alleged attempt by Smith to abduct a 32 y old woman at 1 A.M. on 1 July 1997. Sarasota police arrived and arrested Smith for carrying a concealed knife. Although one policeman wrote a report¹³ on Smith's apparent intention to abduct a woman, Smith was never charged with that crime, apparently because police arrived and arrested Smith before Smith could abduct her. Together, with the November 1997 attempted abduction of a woman by Smith, for which a jury acquitted Smith, these two incidents give the impression that Smith has a history of kidnapping women. Actually, the two attempted abductions in 1997 were interrupted before Smith could successfully kidnap anyone. The leak of the July 1997 police report is a troubling example of pretrial publicity by law enforcement.

Julian Pecquet, "Tabloid says Smith's housemate ran soft-core porn operation," *Sarasota Herald-Tribune*, 14 Feb 2004.

The local newspaper repeats a story first reported by *The National Enquirer* that – after Smith's wife ejected him from their home in December 2003 – Smith was living with Naomi and Jeffrey Pincus, who publish images of "scantily clad" young fighting women at their website. The article also says:

Detectives said Smith borrowed the station wagon used in the abduction from Pincus.

Pincus has not been accused of any wrongdoing.

This article adds to the prejudice against Smith, by tarnishing his image by association with pornographers. Although, given how Smith had already been vilified by the sheriff and journalists, one wonders if the so-called pornographers were unfairly tarnished by their association with Smith. The same facts could be reported with a different tone: compassionate couple offer shelter to Smith, an unemployed homeless man. My search of the Google News database shows that this *Sarasota Herald-Tribune* article is apparently the only mention of this story in reputable newspapers.

¹³ The newspaper article by Matthew Doig says:

The more disturbing summary never got into Smith's criminal history, because he wasn't charged with a crime.

In that incident report, [Sarasota Police] Lt. Bill Spitler wrote that Smith "intended to do great harm," had recently bought pepper spray and a knife and had "initiated a ploy to get a young woman alone in her vehicle."

....

"Even though we knew this guy was up to no good, you can't make up an illegal charge to prosecute him," Spitler said. "He just didn't do enough to be arrested for anything else that night."

Chris Davis and Matthew Doig, "ONE CHANCE TOO MANY?," *Sarasota Herald-Tribune*, 15 Feb 2004. Many earlier articles had reviewed the long string of arrests and lenient punishments for Smith and suggested that criminals should be imprisoned more often and for longer terms. But this article goes farther than discussing public policy about sentences for criminals: this article whips up public hatred against Smith so he will get the death penalty in his trial, instead of another chance to commit crimes. The first four paragraphs of this article say:

Joseph P. Smith squandered every opportunity he got.

He fumbled through life in Sarasota, crossing in and out of a drug-induced haze that cost him job after job and ultimately the trust of those who tried to help him.

He managed to avoid heroin and cocaine for short periods, long enough to start a business and make friends. At these moments, the people around him must have felt vindicated. Maybe this time, their support would pay off.

It never did. Time and again, he went back to the drugs.

The first sentence of the seventh paragraph says:

Nobody wondered if Smith had been given one chance too many until he was charged with abducting and killing 11-year-old Carlie Brucia.

This article mentions that the Florida legislature is "questioning how Florida's legal system" gave such lenient treatment to Smith. The ninth through eleventh paragraphs say:

Smith was charged with 13 crimes and as many probation violations before Carlie's murder.

If he had received the maximum sentence for each arrest, Smith could have been sentenced to a combined 46 years.

Yet he went to prison just once, for 13 months, thanks in part to probation officers who laid blame on others for Smith's transgressions, defense lawyers and prosecutors who negotiated plea deals for him, and judges who accepted his excuses.

Well, there you have it! The responsibility for Carlie Brucia's murder is *not* on the accused, but on those evil criminal defense attorneys who zealously represented Smith, lazy prosecutors who offered plea bargains instead of working to get the longest possible prison sentence, liberal judges who had compassion, and probation officers who blamed other people for Smith's mistakes. The first half-dozen paragraphs of this article make the case that Smith is a worthless loser in life, who no one would miss if he were dead. And if he had been dead (or if he had been in prison), then he would not have murdered Carlie Brucia. To prove that point, the last 75 paragraphs of this article tell the story of Smith's past arrests, and mention the either nonexistent or lenient punishment for each arrest, after Smith moved to Florida in March 1993.¹⁴ Incidentally, this article tersely, but honestly, confronts the possibility that Florida's legal system functioned reasonably in refusing to give Smith long prison sentences for either probation violations or illicit drug use:

State Sen. Rod Smith is not convinced that the judges and probation officers who handled Smith's probation violations did anything wrong.

¹⁴ Journalists tried, but failed, to get information on Smith's life before he arrived in Florida at age 27 years. This article says: "Smith was born in Brooklyn, N.Y., but public records reveal little about his life there. Family members and friends have declined repeated requests for interviews."

The Alachua County Democrat, who has called for Senate hearings to review the state's probation system, said Florida needs to figure out what could have been done to prevent Carlie's murder.

"The answer to that may be nothing," he said.

anonymous, "Smith's lengthy criminal record dates back to 1993," *Sarasota Herald-Tribune*, 15 Feb 2004. List of 19 incidents together with their disposition by the criminal justice system. Of these 19, only 4 involve allegations of violence against a person, which were disposed of by (1) 60 days in jail, (2) no charges filed, (3) one-year of probation, and (4) acquittal by a jury. Reading this newspaper article gives the impression that Smith is a dangerous person and career criminal, when Smith did *not* have a significant history of convictions for violent crimes.

19 Feb 2004

Brian Haas, "Smith 'of interest' in unsolved killings," *Bradenton Herald*, 19 Feb 2004.

This article begins:

Investigators in Manatee and Hernando counties are looking at Joseph P. Smith in connection with unsolved homicides since his arrest Feb. 6 on murder and kidnapping charges in the Carlie Brucia case.

Later, the article says:

Investigators in Hernando County continue to describe Smith as a "person of interest" in an old murder case.

The article quotes "Lt. Joe Paez, spokesman with the Hernando County Sheriff's Office"

"Mr. Smith is not the most cooperative individual," Paez said. "Since he's not yielding information, we're having to do it the hard way."

It is appropriate that the police are re-examining unsolved cases. However, I am troubled that police disclose to journalists that Smith is a "person of interest" (which appears to be bureaucratic jargon for something slightly less than "suspect") in these older crimes. It prejudices the jury pool when people begin to speculate about how many other crimes Smith committed, but was never caught by police.

Indictment, 20 Feb 2004

On Friday, 20 Feb 2004, a grand jury issued an Indictment of Smith for first-degree murder. On the same day, prosecutors filed with the court an Information that alleges Smith committed (1) sexual battery upon a child less than 12 years of age, and (2) kidnapping. This was the first public mention that Carlie Brucia had been raped, the other two counts were expected.

Staff Reports, "Prosecutors contend auto mechanic raped, strangled 11-year-old girl," *Sarasota Herald-Tribune*, 20 Feb 2004. This terse story was posted at the *Sarasota Herald-Tribune's* website on Friday afternoon, until a more detailed story could replace it. This story emphasized the limited amount of facts in the Indictment and Information:

The documents offer few details, though they say that Smith's crimes were premeditated. They said that Carlie died from "ligature strangulation."

The charging documents did not detail a murder weapon.

Both the headline and content appear to be accurate, unlike the story in the following morning's *Sarasota Herald-Tribune*. An editor should have changed "Smith's crimes" to "Smith's alleged crimes".¹⁵

Mike Saewitz, "Details of abduction, slaying emerge: An indictment of Joseph P. Smith confirms that Carlie Brucia was sexually assaulted and strangled," *Sarasota Herald-Tribune*, 21 Feb 2004. In my opinion, this is a rather straight-forward article that is remarkably free from inflammatory content, given the highly emotional impact of the rape allegation. There are two problems with the headline. First, the main headline states that "Details of abduction, slaying emerge" while the text of the article inconsistently says "The document doesn't indicate what evidence the authorities have against Smith, or whether he has given a statement to investigators." Second, the word "confirms" in the subheadline should be "alleges", because an indictment is only an allegation. Smith and his attorney had no opportunity to present evidence to the grand jury that issued the Indictment. The third through seventh paragraphs of this article say:

Carlie's mother, Susan Schorpen, said she retreated to her bedroom when she heard the news.

"I screamed and I screamed," Schorpen said. "It was all I could do."

The indictment is one of the first steps as prosecutors seek the death penalty for Smith, an auto mechanic with a history of drug arrests. A resident of Sarasota since 1993, he had been accused of two attacks on women before Carlie's disappearance.

"I don't think the lethal injection is enough for that man," Schorpen said.

Carlie's father, Joe Brucia, has also called for the death penalty for Smith, as has Carlie's stepfather, Steve Kansler.

The comments by Carlie's mother and father about the desirability of the death penalty for Smith are emotional and inflammatory. Smith has not yet been found guilty by an initially impartial jury, and Smith has not had an opportunity to present any evidence, so it is premature to discuss an appropriate punishment for Smith. The mention that prosecutors will "seek the death penalty for Smith" was probably true on 21 Feb 2004 when this article was published, but appears *not* to be based on any recent public declaration by prosecutors. The only official mention of seeking the death penalty was in a terse statement on 6 Feb 2004, which is mentioned above at page 7.

¹⁵ There are *two* separate issues hidden in the words "Smith's crimes": (1) Was a crime committed? and (2) If yes, is Smith guilty of committing that crime? The first question is answered by the police and coroner and – although details have not been made public – the answer is yes. The second question remains to be answered by a jury when Smith is tried in court. It is *wrong* to presume that Smith is guilty, as the *Sarasota Herald-Tribune* does.

On Tuesday, 24 Feb 2004, newspapers reported that Smith's attorney had, on the previous Friday, filed a Motion to Dismiss the Indictment, because the grand jury was not impartial, as a result of prejudicial and inflammatory coverage of this case in local newspapers. I have not seen the Motion, but newspapers mentioned the following:

Attorney Adam Tebrugge said media coverage of Carlie's abduction and Smith's arrest has created "vindictive and retributive feelings" in the community. Grand jury members have been "subjected to this invidious publicity and therefore cannot perform their duties impartially," Tebrugge argued.

"Almost all of the media coverage has portrayed Joseph Smith as guilty of the murder and kidnapping," Tebrugge wrote. "Very little or none ... has urged the public to wait until all of the facts are discovered or to give Joseph Smith the presumption of innocence to which he is constitutionally entitled."

....
In his challenge, filed Friday, Tebrugge said that Gov. Jeb Bush has already suggested the death penalty for Smith.¹⁶ Newspaper articles detailed Smith's prior record, which includes accusations of attacks on two women before Carlie. Mike Saewitz, "Smith's attorney says publicity biased grand jury," *Sarasota Herald-Tribune*, 24 Feb 2004.

"Almost all of the media coverage has portrayed Joseph Smith as guilty of the murder and kidnapping" of Carlie Brucia, Tebrugge's motion said. It said because of that coverage, the grand jurors "cannot perform their duties impartially."
Brian Haas, "Attorney challenges Carlie indictment," *Bradenton Herald*, 25 Feb 2004.

The Motion to Dismiss the Indictment was actually filed on 1 March 2004. There is no explanation for why the newspapers reported the story approximately one week before the Motion was filed. A later newsarticle also quotes Tebrugge's Motion:

... the indictment was not issued by "an impartial grand jury but instead was issued by a grand jury that was subjected to an invidious pre-indictment publicity that caused vindictive and retributive feelings among the members of the community."
Nevy Kaminski, "Lawyer: Replace grand jurors," *Bradenton Herald*, 3 Mar 2004.

The Motion to Dismiss the Indictment was denied at a hearing on 12 March 2004. I decline to critically analyze the reasons for the Judge's denial of this Motion, because the scope of this essay is only to chronicle the pretrial publicity that is prejudicial to Smith.

¹⁶ Discussed above at page 8.

psychologists

Donna Wright and Brian Haas, "Family tried to have Smith committed," *Bradenton Herald*, 21 Feb 2004. The first three paragraphs of this article say:

Relatives tried to have Joseph P. Smith forcibly committed to Manatee Glens for long-term treatment after he pulled out a knife and threatened to kill himself last August, probation documents show.

Smith's wife managed to have him committed Aug. 22 to Manatee Glens under the so-called Baker Act, probation records from the Department of Corrections reveal.

Within six days, he was back on the streets.

When reporters contacted the staff at Manatee Glens mental health facility in Bradenton, the staff refused to discuss the case, because of patient confidentiality. However, the reporters did get some inflammatory information from Mary Ruiz, the chief executive officer of Manatee Glens:

[Ruiz] is concerned, however, that the public will conclude that if the man in the video who grabbed Carlie and led her to her death had been in drug treatment, the threat of abduction or violence against women would have been reduced.

"This case is not your typical drug abuse and alcohol abuse case," she said. "This is a predator who happened to use drugs and alcohol. This is not a drug abuser who happened to hurt a little girl because he was using drugs."

The man seen abducting Carlie had problems much deeper than drug and depression problems, she speculated.

"Drug addiction was not the main problem of the man in the video," Ruiz said.

"The most chilling thing for me as I watched that video was how extremely assured he was. He looked confident. He knew what he was doing. He was not nervous. When I looked at that video as a professional, I thought this man has done this before.

"He is a sexual predator."

Ruiz pointed out that drug addiction and substance abuse can be successfully treated, but there is no known successful treatment for sexual predators or pedophiles.

I find it astonishing that a psychologist can look at a few seconds of low-resolution images of a videotape made by a security camera and diagnose the man shown in the videotape not only as a "sexual predator" but also as a perpetrator "who has done this before." Note that Ruiz is careful not to say that Smith is the man in the videotape, however readers of this newspaper article will surely make this intuitive leap, because Smith's last name was mentioned in the headline and six times in the article. Ruiz may have been concerned about accusations of malpractice or negligence by staff at her facility.

Elaine Silvestrini, "Experts Paint Portrait Of Carlie's Abductor," *Tampa Tribune*, 15 Feb 2004. About a week before the above-mentioned article in the Bradenton newspaper, the *Tampa Tribune* published the results of interviews with (1) Joe Navarro, a former FBI agent, (2) Deborah Day, a local forensic psychologist, and (3) Al Danna, a special agent with the state of Florida. None of these three people were involved in the investigation of the Carlie Brucia case. Their only knowledge came from watching the low-resolution videotape shown on television, plus what they

had learned from journalists. Of the three interviews, Mr. Navarro was the most damaging to the man shown in the videotape:

It was the man's approach, which Navarro described as "very direct, very forward, very controlling," that gave him away.

"If you notice, he violated her space immediately," said Navarro, who was not involved in the Brucia case. "It was a frontal assault. When he took her hand, he grasped it tightly against his body. All these things were suggestive that this individual, in all likelihood, has experience doing this and was not distressed by what he was doing."

....

Neither Day nor Navarro had any direct knowledge of the suspect in the case, Joseph P. Smith, 37, an auto mechanic who reportedly refused to talk to investigators. He reportedly confessed to a person in jail.

....

Navarro, who said he has avoided reading about Smith, called an abductor "a social predator." Such people are "what we used to call psychopaths," he said. "Basically, they see themselves as being entitled to whatever their desires are, so they act out on society as predators."

The person on the videotape "met that profile," Navarro said. People like that are "known to habitually take advantage of others."

....

The final two paragraphs of this article say:

"They don't seem to be troubled by what they do," Navarro said. "Their conscience doesn't really bother them, which often explains why they don't want to help law enforcement."

Navarro had a particularly chilling assessment of the abductor and what he described as the "the debris field" of human suffering he believes exists. "I can assure you this," he said. "There are other victims out there."

It is amazing that someone can watch a few seconds of low-resolution videotape and make such a diagnosis, including the existence of previous victims. As for the *Tribune's* observation that Smith had "refused to talk to investigators" — or Navarro's explanation that a sexual predator has no conscience, which is "why they don't want to help law enforcement" — Smith has a legal right under the U.S. Constitution to refuse to cooperate with law enforcement and he should not be criticized for using his legal right. The three interviews were careful to avoid identifying Smith as the man in the videotape, but the journalist who wrote the article mentioned Smith's name three times in the middle of the article — and most readers would know that Smith had been accused by the sheriff of the kidnapping shown in the videotape — which leads the reader to the conclusion that Smith is the man shown in the videotape, a conclusion that has *not* been proven in a court of law.

28-29 Feb 2004

Brian Haas and Lisa Marie Lentz, "Smith's friend died of overdose," *Bradenton Herald*, 28 Feb 2004. This article tells the story of Eugene Longobardi, mostly from the reporters' interviews with Longobardi's widow. Longobardi first met Smith at an Alcoholics Anonymous meeting in 1998, then the two of them began using heroin and cocaine together. Longobardi stopped using illicit drugs in the year 2001, but one week before the second-year anniversary of his

being free from illicit drugs, Longobardi met Smith again on 19 June 2003, and one day later Longobardi was dead from a heroin overdose. The article says:

It didn't take long for Smith and Eugene Longobardi's relationship to sour. They had tried to beat addiction together at Alcoholics Anonymous but moved on to harder drugs. After awhile, Kelly Longobardi said, she and Luz Smith [the wives of the two men] agreed that the two men should not get together.

"When they got together, they usually ended up doing drugs," Kelly Longobardi said.

Eugene Longobardi went clean in 2001, Kelly Longobardi said. He stopped doing drugs, she said, and started working with the Calvary Community Church Assembly of God in Sarasota to help others beat their drug addictions. Smith was among those she said he tried to help.

She said her husband was doing well until one week before his two-year anniversary of going clean and his four-year wedding anniversary.

....

The investigation into Eugene Longobardi's death was closed when a toxicology report said he had died of an accidental overdose. The sheriff's office report said, "There were no suspicious findings documented during this investigation."

Smith went to Eugene Longobardi's funeral last year. Kelly Longobardi always wondered how much Smith might have known about her husband's death.

"I think he knows where my husband got the drugs that killed him," she said.

This article has a sinister tone of suspicion that Smith somehow caused Eugene Longobardi's death, without giving any evidence to support that suspicion. Whatever happened between Smith and Longobardi appears to be irrelevant to Smith's alleged kidnapping and alleged murder of Carlie Brucia. Nonetheless, this article is prejudicial to Smith, because it paints Smith as a bad person who somehow contributed to Eugene Longobardi's death.

An anonymous editorial in the Sunday, 29 Feb 2004 *Sarasota Herald-Tribune* summarized some of the problems with Florida's court and parole system, in which no one has a complete history of the suspect's past arrests. The editorial mentions two examples of overlooked information:

The details concern a police officer's strong suspicion that Smith had planned to do "great harm" with the concealed knife he was charged with possessing. They also concern Smith's Manatee County arrest, later in 1997, in an attack on a woman.

The first sentence refers to a police officer's personal opinion in July 1997 that was *not* part of the formal charges against Smith in court.¹⁷ The second sentence refers to a court trial in which Smith was found "not guilty" of the charges. Surely, we don't want to live in a society where the criminal justice system punishes people more severely because of the mere suspicions of a police officer that never became a charge in criminal court, and it would be even more outrageous to punish someone more severely for having been found "not guilty" of some allegation. Yet this editorial seems to urge its readers that it would be better if criminal trials and jury verdicts were ignored:

¹⁷ The original news article in the *Sarasota Herald-Tribune* was mentioned above at page 13.

The courts' options are severely limited when someone isn't charged or convicted. But in our view, probation officers should have been informed of the written details in both these cases. We're not convinced they were.

....

The possibility emerges, then, that for years, the people directly supervising Smith had no inkling of the Manatee attack — or the Sarasota policeman's suspicions. To those of us who believe in the rule of law, “when someone isn't charged or convicted”, they *should not* suffer any punishment, including not suffering increased scrutiny by probation officers. The *only* way to obtain criminal status (including punishment) is to be formally charged in a court, and then either (1) plead guilty or (2) be found guilty by a jury. The *Sarasota Herald-Tribune* is using *impermissible* hindsight to find allegations that *might* have led to a prediction of Smith's alleged kidnapping of Carlie Brucia, then redesign the criminal justice system to put people like Smith in prison *before* they could kidnap Carlie Brucia. Such proposed preventive detention is even more outrageous because the *Sarasota Herald-Tribune* advocates increased scrutiny and punishment of Smith because of the mere suspicions of a police officer in July 1997 and because of an allegation for which a jury acquitted Smith.

Given the immense concern of the *Sarasota Herald-Tribune* about Smith, the reader needs to be reminded that Smith has not been tried and convicted by a jury for the kidnapping and murder of Carlie Brucia, and — technically in law, but apparently *not* in the eyes of the *Sarasota Herald-Tribune* — Smith is still presumed innocent.

March 2004

Joseph P. Smith has agreed to have hair, blood and tissue samples collected from him by law enforcement, according to court documents filed Tuesday [i.e., 2 March 2004] in Sarasota County.

Herald Staff Report, “Suspect agrees to give blood, hair, tissue,” *Bradenton Herald*, 4 Mar 2004. Another Florida newspaper incidentally mentioned in the last paragraph of a long article:

In a separate March 1 court document, Joseph Smith confirmed that he had voluntarily consented to the collection of hair, blood samples and swabs of the inside of his mouth by law enforcement.

Renee LePere, “Smith lawyer asks to dismiss murder indictment,” *Charlotte Sun-Herald*, 4 Mar 2004. (Note the discrepancy in the date of the court document mentioned in these two articles.) Smith's cooperation was also incidentally mentioned about a week later by a Tampa television station:

Since being arrested in February, Smith has allowed sheriff's officials to collect hair and blood samples.

anon., “Accused kidnapper and killer enters not guilty plea,” Bay News 9, 12 Mar 2004. After numerous newspaper articles in early February pilloried Smith for refusing to cooperate with police, it is surprising that apparently only *two* newspapers in Florida promptly reported Smith's cooperation, and each of those reports were a single, terse sentence that is quoted above. It seems *unfair* to prominently criticize Smith for lack of cooperation, while barely mentioning his later cooperation.

On 18 March 2004, prosecutors quietly filed with the Court Clerk a formal notice that they would seek the death penalty. Two days later, newspapers reported the story. While the prosecution apparently issued no press release, Adam Tebrugge, the public defender who represents Smith, made the following terse statement on 19 March :

The decision to seek the death penalty is unfortunate because that will cause substantial expense and delay before the case can be resolved.

Julian Pecquet, "Prosecutors in Carlie case file to seek death penalty," *Sarasota Herald-Tribune*, 20 Mar 2004; Nevy Kaminski, "Prosecutors formally seek death for Smith," *Bradenton Herald*, 20 Mar 2004. In contrast, to the calm, professional manner of the prosecuting and defending attorneys, the *Sarasota Herald-Tribune* reported the following inflammatory reaction by Carlie Brucia's stepfather:

"We knew this was going to happen — it's just another stepping stone — but it is good to know that the state is behind us. I'm going to be sitting in the front row, watching him get injected."

Again, Smith has not yet been tried in court, and not yet found guilty by a jury, and so it is *not* appropriate to be anticipating Smith's death by lethal injection.

As prejudicial pretrial publicity for Smith appeared to be waning, the Sunday edition of the *Sarasota Herald-Tribune* published a long article that explained why Smith was probably guilty. Mike Saewitz, "Experts: Mounting a defense for Smith will be difficult," *Sarasota Herald-Tribune*, 21 Mar 2004. This article contains many prejudicial sentences, such as:

If prosecutors have the evidence they claim, though, few tactics offer strong hope of clearing Smith outright in an abduction and murder case that captured national attention for a week in February, some experts said.

"It appears to be a slam dunk," said Larry Byrd, a former chief prosecutor and defense attorney from Sarasota who's tried about a dozen death penalty cases. "This one is as strong a case as I've ever seen."

Prosecutors with the state attorney's office boast of "overwhelming" evidence that Smith, a father of three with a long history of drug arrests and probation violations, kidnapped and killed Carlie. He has entered a not guilty plea.

Prosecutors say lab tests and admissions from Smith link him to the Feb. 1 abduction of the sixth-grader as she walked home from a friend's house. Family members and friends identified Smith in the video taken by a car wash surveillance camera, prosecutor Debra Johnes Riva said.

....

Byrd, the former prosecutor and defense attorney, said filing similar motions in the future will be essential if defense attorneys hope to slow the case. He said Tebrugge will pick apart the process and the case, looking for any kind of error law enforcement and the courts may have made.

"All you can do is nitpick and attack," Byrd said. "I think this is a nondefensible case that Adam can do nothing but delay."

Tebrugge has declined to discuss details of the case.

Let's examine in detail the prejudicial tone of this article.

1. The headline says: "Experts: Mounting a defense for Smith will be difficult". As the body of this article explains, the real reason that a defense will be "difficult" is that the prosecution's evidence is "overwhelming" — in other words, Smith is really guilty. Such statements are horribly prejudicial to Smith, by robbing him of the presumption of innocence, and by poisoning potential jurors with a conclusion that is based on only a little public information from law enforcement and the prosecution and without any defense. Such "expert" testimony would be *inadmissible* in court, but is admissible in "trial by newspaper".
2. "few tactics offer strong hope of clearing Smith outright". That may be true, but Smith does *not* need to prove his innocence in court — the burden of proof is solely on the prosecution to prove Smith guilty beyond a reasonable doubt.
3. The former prosecutor who proclaims: "It appears to be a slam dunk. This one is as strong a case as I've ever seen." Seventeen paragraphs later in this article, the same former prosecutor is quoted as concluding: "I think this is a nondefensible case that Adam [Tebrugge] can do nothing but delay." Most of the prosecution's evidence has *not* yet been made public, so it is premature to assess the strength of the prosecution's case. It is extraordinarily prejudicial for an experienced attorney to publicly declare that Smith's defense is hopeless, and that the *only* thing the defense attorney can do is "nitpick" and "delay" the allegedly inevitable guilty verdict. (Six weeks earlier, the same former prosecutor declared that this was an "iron-clad case" that was appropriate for the death penalty, see above at page 7.)
4. "Prosecutors with the state attorney's office boast of 'overwhelming' evidence that Smith, a father of three with a long history of drug arrests and probation violations, kidnapped and killed Carlie."
 - A. The allegedly "overwhelming" evidence is *not* a "boast" by the prosecutor, but a response in court on 12 March 2004 to Tebrugge's Motion to Dismiss the grand jury indictment — Tebrugge alleged the grand jurors indicted Smith because of prejudicial publicity and the prosecutor responded by saying the grand jurors indicted Smith because of the "overwhelming" evidence.¹⁸ The *Sarasota Herald-Tribune* reported nine-day-old news as if it were fresh.
 - B. The phrase "with a long history of drug arrests and probation violations" is *irrelevant* to Smith's guilt or innocence in the kidnapping of Carlie Brucia.
5. This article focuses exclusively on whether Smith can be successfully defended (i.e., whether Tebrugge can persuade a jury to acquit Smith or at least avoid the death penalty). That is a superficial view of a trial, to focus only on the guilty/not guilty finding, and to ignore the *reasons* for the result. The court system functions adequately only if the defendant's attorney puts on the best possible defense of his/her client, regardless of whether the client is guilty or innocent. Smith is legally entitled to a fair trial by initially impartial jurors, but it will be

¹⁸ Mike Saewitz, "Prosecutor outlines 'overwhelming' evidence against Smith in Carlie's murder," *Sarasota Herald-Tribune*, 12 March 2004.

difficult to find jurors who have not been prejudiced by news articles like this one and the dozens of earlier articles.

6. The question of whether Smith is guilty should be answered by initially impartial jurors in a trial that is *not* poisoned by emotional calls for Smith's execution, as revenge for the death of Carlie Brucia. It is premature for anyone to speculate on Smith's guilt, because very little of the prosecution's evidence has been made public and Smith's attorney has disclosed neither an attack on the prosecution's evidence nor any defense evidence. The few people who have seen the evidence (e.g., the prosecuting attorney and grand jurors) are — quite properly— *not* talking to journalists. In short, this newspaper article bases its conclusion on a one-sided presentation.

In conclusion, this news article is very prejudicial to Smith, in that it destroys his presumption of innocence, and implies that a guilty verdict is inevitable for Smith, despite his attorney's efforts to "nitpick" and "delay" the legal proceedings. In short, the *Sarasota Herald-Tribune* reports the verdict of "trial by newspaper" months before the real trial has begun in a courtroom.

News Media Outside Florida

nationwide television

The disappearance of Carlie Brucia and the nationwide Amber Alert for her received extensive coverage on nationwide television news channels. This story ended on Friday, 6 Feb 2004 with the discovery of Carlie Brucia's body and charging Smith with her murder. Thereafter, nationwide television channels (e.g., CNN) only provided a terse mention of each significant legal event, such as the Indictment and Smith's "not guilty" plea. The coverage by the nationwide media was generally factual and not prejudicial, hence it is not mentioned in this essay.

Bill O'Reilly, "Talking Points: Carlie Brucia's Brutal Murder," The O'Reilly Factor, Fox News Channel, 9 Feb 2004, <http://www.foxnews.com/story/0,2933,110845,00.html> .

Bill O'Reilly blamed Carlie Brucia's murder on (1) jurors who acquitted Smith in the November 1997 attempted kidnapping and (2) Judge Harry Rapkin, who did not put Smith in jail for probation violations. Mr. O'Reilly said:

Carlie Brucia is dead because the criminal justice system would not protect her.

....

The death of Carlie Brucia is directly on the shoulders of the jurors who acquitted Joseph Smith. You people have a lot to answer for.

And so does Florida Judge Harry Rapkin. Despite the fact that Smith had convictions for aggravated battery and multiple convictions for drug crimes, Rapkin refused to imprison him last year after he violated his probation. The judge issued a statement today blaming the probation department for not giving him more information, but that is bull. Rapkin had to know this guy was a serial offender.

Smith got out of a Florida prison on New Year's day in 2003. Ten days later — 10 days — he was rearrested for possessing cocaine. Since that time, he has two other probation violations. Yet Judge Rapkin would not send him back to jail. So I believe Judge Harry Rapkin is in part responsible for the death of 11-year-old Carlie. If you see Rapkin on the streets of Florida, you tell him for me he should immediately resign his position.

....

I believe this thug, Smith, did the same thing to Carlie that he did six years ago to Teri Stinson. He grabbed her and threatened to cut her. America is now a much different place than it was 40 years ago when I was walking around as a kid. Judges give the benefit of the doubt now to career criminals. Juries are too stupid to convict obvious predators. And drug addicts are seen as victims, rather than people who are operating in a criminal world.

....

There's no way on this earth that Carlie Brucia should be dead. But a jury, a judge and a society would not protect her.

It may be that the jurors in Smith's trial for his alleged attempted kidnapping in November 1997 were "too stupid to convict" Smith. But we, like O'Reilly, did *not* hear all of the evidence in that trial, so we can't make a valid judgment.¹⁹ But Smith is *not* one of the "obvious predators", because Smith's only previous conviction for battery was in 1993, slightly more than ten years before the kidnapping of Carlie Brucia. Calling Smith a "thug" is inflammatory.

O'Reilly also blames Judge Rapkin, who was also the target of criticism in local Florida newspapers. However, additional facts,²⁰ which were not mentioned by O'Reilly, exonerate Judge Rapkin:

1. Smith's probation officer reported to Judge Rapkin that Smith had not paid \$ 170 of court costs from a previous drug conviction and asked that the Judge order Smith be arrested and jailed. Judge Rapkin refused, because there was no evidence that Smith's refusal to pay was "willful" and in the USA we don't put debtors who can not pay in prison. The probation officer never supplied any evidence that Smith's failure to pay the fine was willful. Incidentally, Judge Rapkin received approximately twenty probation violation notifications each weekday, so these reports are routine and frequent.
2. Smith *never* appeared in Judge Rapkin's courtroom. And Judge Rapkin never saw Smith's complete criminal history. In short, Judge Rapkin had no information that showed Smith to be a habitual criminal, and certainly no evidence that Smith was a danger to society.

Despite these facts, Judge Rapkin was receiving death threats, as a result of inflammatory reporting that blamed Rapkin for not preventing the murder of Carlie Brucia. Some people,

¹⁹ Even if those jurors had convicted Smith, it is unlikely that Smith's actual incarceration would have exceeded five years in prison, so Smith would still be free on 1 Feb 2004 to commit a crime.

²⁰ Associated Press, "Judge: 'I did my job' in Smith case," CNN, 7 Feb 2004; Mike Saewitz, "Judge Defends Handling of Suspect," *Lakeland Ledger*, 16 Feb 2004; William W. Merrill III, Gilbert A. Smith, Jr., and Brent A. McPeck (guest column), "Bar Association Presidents Defend Judge's Actions," *Sarasota Herald-Tribune*, 17 Feb 2004.

especially journalists, have an overwhelming desire to immediately find someone to blame for the murder of Carlie Brucia.

Incidentally, the *Sarasota Herald-Tribune* later analyzed the cases of 71000 people who were convicted in Florida of either violent crimes or sex offenses and found that 11000 of them (15%) violated their probation since the year 2001, but were not sent to prison.²¹ That article mentions two criminals by name who have more significant records of violent crime than Joseph Smith, but who were free on probation. A companion article lists the names of eight criminals in Florida who violated the conditions of their probation, but were not sent to prison, and who “were later accused of injuring or killing someone.”²² Two of those eight are currently sitting in a Florida prison waiting execution for murder. The following day, the *Sarasota Herald-Tribune* reported testimony by the head of Florida’s prisons that it would cost a billion dollars a year to put everyone with Smith’s background in prison, and even that draconian policy would not prevent murders.²³ In other words, prior to Brucia’s kidnapping, Joseph Smith was *not* the most dangerous person in Florida who was free on probation. Blaming Judge Rapkin for not putting Joseph Smith in jail because of Smith’s \$170 debt is a cheap shot by Bill O’Reilly and other journalists who are desperate to find someone to blame for Carlie Brucia’s murder.

On 22 April 2004, it was announced that Judge Rapkin would retire from the bench in January 2005, instead of standing for re-election.

Incidentally, the idea of locking bad people in prison to prevent crimes is only superficially appealing. On 27 May 2004, in an article that mentions neither the murder of Brucia nor Smith, the Reuters news agency reported that

The United States incarcerates people at a rate six to 10 times higher than most other democracies. For example, the U.S. incarceration rate of 715 per 100,000 residents compares to rates of 114 for Australia, 116 for Canada, 95 for France and 96 for Germany. Alan Elsner, U.S. Record Prison Population Rises Again, Reuters, 27 May 2004. Despite the high rates of incarceration in the USA, the people who are not in prison commit crimes at rates higher than in most countries in Western Europe and Japan. The U.S. Government needs to find out why Americans are so likely to commit crimes, and why the recidivism rate is so high after American criminals are punished.

²¹ Chris Davis, Matthew Doig, and Robert Eckhart, “State Lax on Violent Criminals,” *Sarasota Herald-Tribune*, 9 Mar 2004.

²² Staff Report, “Criminal Case Histories,” *Sarasota Herald-Tribune*, 9 Mar 2004.

²³ Victor Hull, “Nailing the worst probation violators: The prisons chief says cracking down would be too costly, probably futile,” *Sarasota Herald-Tribune*, 10 Mar 2004.

New York City

Tracy Connor and Corky Siemaszko, "Videotaped kidnap suspect not talking," *New York Daily News*, 4 Feb 2004. The first two sentences of this article says:

The suspect linked to a missing 11-year-old girl whose abduction was captured by a surveillance camera is not cooperating with investigators, authorities said Thursday.

Joseph P. Smith, 37, is not answering any questions about the disappearance of Carlie Brucia, who has been missing since Sunday evening, Sarasota County Sheriff Bill Balkwill said.

This prejudicial article does not mention that Smith has a legal right under the U.S. Constitution to refuse to answer questions posed by the sheriff. The *New York Daily News*, like many other newspapers, appears to condemn Smith for using his legal right.

Adam Miller, "KIDNAP-SLAY SUSPECT'S VILE PAST," *New York Post*, 7 Feb 2004, <http://www.nypost.com/news/nationalnews/15448.htm> .

The first three sentences of this article says:

Long before Joseph Smith was arrested and charged with the kidnapping and killing of 11-year-old Carlie Brucia, the tattooed thug was living a deeply troubled and turbulent life.

Aside from his long rap sheet, Smith was mired in debt, addicted to drugs, unlucky in love, fired from a string of mechanic jobs and at times suicidal, police said.

Since 1993, the 37-year-old punk and Brooklyn native has been arrested at least 13 times in Florida.

This story is particularly inflammatory, because it calls Smith a "tattooed thug" and a "punk". None of the facts mentioned in the *Post's* article would lead to the prediction that Smith was likely to kidnap and kill a young girl. And while Smith certainly had a troubled past, the phrase "vile past" in the headline is hyperbole.

Adam Miller, "KIN AIR GRIEF AS 'SNATCHER' STAYS CAGED," *New York Post*, 8 Feb 2004, <http://www.nypost.com/news/nationalnews/16144.htm> .

This article begins:

The tattooed thug charged with the kidnapping and killing of Florida 11-year-old Carlie Brucia was ordered held without bond yesterday as friends of the victim's mom held a news conference at the family's request.

Ex-con Joseph Smith, 37, a Brooklyn native who's been dodging investigators' questions, waived his first court appearance in the savage slaying of the Sarasota sixth-grader and Long Island native.

This article ends with the irrelevant revelation:

Last night NYPD sources told The Post he also had a 1998 arrest in New York for driving without a license.

Notice the *Post's* headline says neither “suspect” nor “accused”. The *Post* now concludes that Smith is the guilty “snatcher” of a young girl. Calling Smith a “tattooed thug” is inflammatory. And the *New York Post* misleadingly says Smith is “dodging investigator’s questions”, when Smith was actually refusing to talk, which is his constitutional right.

conclusion about New York newspapers

Because Smith was charged with violation of Florida state law, he must be tried by a jury in Florida. Anyone in Florida who looked at these New York City newspaper websites was probably also aware of coverage by journalists at Florida newspapers and television stations. While it is unlikely that these articles in New York City newspapers poisoned potential jurors in Florida, these New York articles *are* examples of inflammatory writing by journalists. These New York newspaper have a more obvious prejudicial tone (e.g., calling Smith a “tattooed thug” and a “punk”) than the subtler prejudicial publicity by Florida newspapers.

Links

The following links are *not* a bibliography for this document.

The *Sarasota Herald-Tribune* homepage at <http://www.heraldtribune.com/>
their webpage about the Smith case:

<http://www.heraldtribune.com/apps/pbcs.dll/section?CATEGORY=CARLIE&template=ovr2>
(alternate) <http://www.heraldtribune.com/apps/pbcs.dll/section?Category=Carlie>

The *Bradenton Herald* homepage at <http://www.bradenton.com/mld/bradenton/>
their webpage about the Smith trial in Nov 2005:
http://www.bradenton.com/mld/bradenton/news/special_packages/joseph_p_smith_murder_trial/

The *Tampa Tribune* webpage about the Smith case: <http://reports.tbo.com/reports/brucia/>

Sarasota County Sheriff webpage about the Smith case: <http://sarasotasheriff.org/CarlieCase.asp>

The State Attorney for Florida's 12th Judicial Circuit (which includes Sarasota County) homepage
at: <http://sao.co.sarasota.fl.us/>

The Public Defender's Office for Florida's 12th Judicial Circuit does *not* have a website.

Sarasota County Criminal Court docket on *Florida v. Smith* at
http://courtweb.co.sarasota.fl.us/crimapp/crimdetail.asp?case_id=80664220

This resource disappeared on 27 Feb 2004, owing to a Florida Supreme Court administrative order that prohibited posting court records on the Internet until issues of confidentiality could be resolved in an orderly way, with the same standards applying uniformly to all counties in Florida.

The Sarasota County Court had been obliterating Social Security numbers, names of children, and other sensitive information, which I believe was adequate protection of confidential information.

CourtTV <http://www.courtTV.com/trials/brucia/>

Conclusion

Personally, I have no objection to executing heinous criminals (e.g., murderers, rapists, kidnappers) for their first offense, provided that they received a fair trial in a calm and rational environment. Personally, I am opposed to the concept of parole or early release from prison.

Whether Smith is guilty of the kidnapping and murder of Carlie Brucia is a matter to be decided solely by an initially impartial jury at a future trial. “Trial by newspaper” should *not* be acceptable in the USA.

My concern is that inflammatory pretrial publicity prejudices potential jurors and poisons the trial, so that the trial is *unfair* because of the initially biased juror(s). Furthermore, when jurors know from news reports “facts” that will *not* be admitted as evidence during trial (e.g., because the “facts” are either unreliable, false, irrelevant to issues for the jury to decide, or *unfairly* prejudicial to the defendant), the trial is corrupted by this extraneous information.

In First Amendment law, the boundaries of freedom of speech are always at the edge of what is disgusting and revolting, if not actually harmful. Similarly, free press/fair trial issues are decided mostly in the context of people who are accused of heinous crimes, since those crimes generate the most publicity by journalists and the most outrage in the community that affects potential jurors. If we can give a person who is accused of heinous crime(s) a fair trial, then one hopes that *everyone* will get a fair trial.

One of the common themes in the newspaper articles²⁴ in the aftermath of the murder of Carlie Brucia is that such crimes could have been prevented. It seems to be a human reaction to horrible events that people angrily proclaim “this must never happen again”, the legislature appoints a committee to study the problem, then everyone forgets about the problem and ignores the recommendations of the committee. Eventually, another tragedy occurs, and the cycle repeats. The purpose of the criminal justice system in the USA is to punish past crimes, *not* to protect society from future crimes (which are speculative), so it is *inappropriate* to blame the criminal justice system for something that it was not designed to do. Finally, Americans seem unwilling to seriously confront the question of *why* the per capita number of homicides is much higher in the USA than in Western Europe or Japan.

²⁴ I cited few of these articles in this document, as most of them were *not* prejudicial to Smith, but simply discussed public policy issues regarding length of prison sentences, parole, allegedly overcrowded prisons, lenient judges, etc. For example, see Mike Saewitz, “Judge Defends Handling of Suspect,” *Lakeland Ledger*, 16 Feb 2004, <http://www.theledger.com/apps/pbcs.dll/article?AID=/20040216/NEWS/402160363/1134> .

All of the tough talk and demagoguery by Florida politicians after Carlie Brucia was murdered in February 2004 did not help Jessica Lunsford, a nine-year old girl who was abducted from her home about 60 miles north of Tampa on 24 Feb 2005, raped, bound, and then buried alive by a convicted sex offender. And those politicians did nothing to prevent Sarah Michelle Lunde, a 13-year old girl from being strangled in her home in Florida on 9 April 2005 by another registered sex offender.

Trial

Incidentally, before the trial, various local news media petitioned an appellate court to grant access to some evidence that had been sealed by the judge of the trial court. The news media won. *Times Publishing Co. v. State*, 903 So.2d 322 (Fla.App. 2005). This opinion briefly mentions pretrial publicity. *Times*, 903 So.2d at 324-325. The news media only challenged access to evidence that was sealed for a different reason than avoiding pretrial publicity.

On Friday, 4 Nov 2005, the defense attorney made a final motion for change of venue, because of extensive pretrial publicity. The motion was denied by the judge.

On Monday, 7 Nov 2005, a jury in Sarasota, Florida began hearing evidence in the trial of Joseph Smith began, on charges of kidnapping, rape, and murder of Carlie Brucia.

On 9 Nov 2005, the third day of trial, John Smith, the brother of Joseph Smith, testified: While Joe was in jail, Joe confessed to John that Joe had “rough sex” with Brucia and then Joe strangled her.

On 14 Nov, the jury heard another major piece of evidence: a semen stain on the back of Carlie Brucia’s shirt matched Joseph Smith’s DNA.

On 15 Nov, the jury heard a recorded telephone call between Joseph Smith in jail and his mother, Patricia Davis, in which Joe confessed to killing Carlie. On 9 Feb 2004, his mother advised him: “Alright Joe, the best thing that, the best thing that you could do is just try to explain it was an accident.”²⁵

Surprisingly, Smith’s defense attorney presented no closing argument to the jury, perhaps because the overwhelming evidence of guilt made a defense summation futile.

The jury began its deliberations on Thursday morning, 17 Nov 2005, and, after five hours of deliberations, found Smith guilty on all three counts.

²⁵ Stephen Majors, “Jury hears Smith confess in taped conversations with mother, brother,” *Bradenton Herald*, 16 Nov 2005.

CourtTV cable television channel covered the trial live, and there were several Associated Press stories distributed nationwide during the eight-day trial. However, the amount of coverage by journalists was much less for the trial than during early February 2004.

The effect of pretrial publicity was probably negligible as the jury considered whether or not Smith was guilty, because I believe there was more than enough evidence to convict Joseph Smith beyond a reasonable doubt.

penalty phase

The trial court reconvened on 28 Nov 2005 to consider the sentence: life in prison or death. The prosecutor argued that there were six aggravating factors that made the death penalty appropriate:

1. Smith killed Brucia to avoid arrest for kidnapping and rape.
2. "The capital felony" (i.e., murder) "was committed by a person previously convicted of a felony" (i.e., possession of cocaine) "and ... on felony probation."
3. Smith committed the murder while engaged in other crimes (kidnapping, sexual battery).
4. "The capital felony was especially heinous, atrocious, or cruel."
5. "The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification."
6. The victim was less than 12 y of age.

These six factors are among a list of possible aggravating factors specified in Florida Statute § 921.141 (5).

Information about Smith's long history of arrests, criminal convictions, and parole violations shows he repeatedly threw away opportunities to be a law-abiding citizen. Information about Smith's inability to hold steady employment, shows he was not a productive member of society. A review of his insignificant accomplishments during his 39 year life show that he had little beneficial influence on society, and that history will remember him only for his crimes against Carlie Brucia.

Carlie's parents were *not* allowed in court to tell the jurors whether Smith should be sentenced to life in prison or death. Outside the courtroom, both during pretrial publicity and during the penalty phase, Carlie's mother was adamant that Smith deserved to die, and that execution by the state would be much more gentle and humane than what Joseph Smith did to Carlie Brucia.

The defense called a parade of 19 witnesses, most of whom had only casual or brief contact with Smith. Some of the defense witnesses were unaware of his criminal past. The defense also called some witnesses who knew Smith during his childhood, but they had minimal contact with him during the past 15 years. These witnesses were *unpersuasive* of the value of Smith's life, but this testimony was apparently the best that the defense attorney could present. *Neither* Smith's

mother, brother, sister, ex-wife, *nor* his three daughters testified during the penalty phase,²⁶ although his mother and his sister sat in the courtroom during the final day of the penalty phase.²⁷

After the end of the defense presentation, the prosecution called a sheriff who supervises the Manatee County jail. The sheriff read a letter from Joseph Smith to an inmate at the Manatee County jail who was awaiting trial on murder charges.²⁸ The letter, which was written by Smith on 9 Nov 2005 (the third day of his trial), contained two surprising items:

1. Joseph Smith criticized his brother, John Smith, for cooperating with law enforcement in the kidnapping of Carlie Brucia and the prosecution of Joseph. Joseph concludes: "If he ever comes to the jail to visit, I'll break his jaw."
2. Joseph Smith gave some encouragement and advice for how to seriously injure another inmate in a fight, by first punching him in the Adam's apple to incapacitate him, "and then you can really go to work on him give him a couple for me OK."

This letter was a glaring contradiction to the parade of defense witnesses who said nice things about Joseph Smith.

During the prosecutor's closing arguments in the penalty phase on 1 Dec 2005, a man in the back row of the courtroom gallery yelled "Let's string him up now!"²⁹ Three sheriff deputies quickly escorted the man from the courtroom and then arrested him. This outburst showed the mood in the courtroom. However, the man was never charged with a crime.³⁰

The judge had planned to sequester the jury during their deliberations during the penalty phase, but the jury reached their decision the same day that they began their deliberations. The jury spent five hours to decide, by a vote of 10 to 2, that Smith deserved to die.

²⁶ Stephen Majors, "Smith's letters convey anger, concern," *Bradenton Herald*, (1 Dec 2005); Todd Ruger, "Brutal letter sets stage for Smith's sentencing," *Sarasota Herald-Tribune*, (1 Dec 2005).

²⁷ Tom Arthur, "Smith's sister and mother arrive," *Sarasota Herald-Tribune*, (1 Dec 2005 10:42 EST).

²⁸ Carl Mario Nudi, "Reading of Joseph Smith's threatening letter ends penalty testimony," *Bradenton Herald*, (30 Nov 2005); Stephen Majors, "Smith's letters convey anger, concern," *Bradenton Herald*, (1 Dec 2005); Todd Ruger, "Brutal letter sets stage for Smith's sentencing," *Sarasota Herald-Tribune*, (1 Dec 2005).

²⁹ Stephen Majors, "Joseph P. Smith shows no emotion," *Bradenton Herald*, (2 Dec 2005).

³⁰ Associated Press, "Spectator who yelled out at child killer's trial won't be tried", (4 Jan 2006); Todd Ruger, "Smith trial spectator won't face charge for courtroom outburst", *Sarasota Herald-Tribune*, (4 Jan 2006).

Smith showed no emotion when the jury's verdict of guilty and the jury's recommendation for his execution were read in the courtroom. Smith never publicly expressed any remorse for kidnapping, raping, and murdering Carlie Brucia, until a one-day hearing in February 2006 on whether the judge should follow the jury's recommendation of the death penalty.

As mentioned above, there was less coverage of the trial than coverage of pretrial news about the crime. Except for the last day of the penalty phase, there was less coverage of the penalty phase than of the trial, which suggests that journalists and newspaper editors were more interested in destroying Smith's reputation with pretrial information than reporting the facts introduced as evidence in court. In the Florida newspapers, there was approximately equal coverage of (1) the first two days of the penalty phase and (2) the efforts of news media³¹ in appellate courts to obtain gruesome photographs of a dead Carlie Brucia at the crime scene and autopsy.

On 15 March 2006, the trial judge formally declared that the aggravating factors outweighed the mitigating factors, and he sentenced Smith to die for the murder of Carlie Brucia. The judge also sentenced Smith to two life sentences for kidnapping and rape.

Appellate Review

Smith appealed his conviction directly to the Florida Supreme Court, which affirmed the guilt of Smith and affirmed his death sentence. The Florida Supreme Court reported the conclusions of the trial court:

On March 15, 2006, the trial judge sentenced Smith to death for the murder. The trial court determined that the State had proven beyond a reasonable doubt the existence of six statutory aggravators:

- (1) Smith committed the felony while he was on probation, see § 921.141(5)(a), Fla. Stat. (2003) (moderate weight);
- (2) the murder was committed while Smith was engaged in the commission of a sexual battery or kidnapping, see § 921.141(5)(d), Fla. Stat. (2003) (significant weight); [footnote omitted]
- (3) the murder was committed for the purpose of avoiding lawful arrest, see § 921.141(5)(e), Fla. Stat. (2003) (great weight);
- (4) the murder was especially heinous, atrocious or cruel (HAC), see § 921.141(5)(h), Fla. Stat. (2003) (great weight);

³¹ The *Sarasota Herald-Tribune*, the *Tampa Tribune*, the *Bradenton Herald* and WFLA-TV in Tampa were plaintiffs. The State of Florida and Smith's attorneys opposed the request. 924 So.2d 8 (Fla.App. 2005).

- (5) the murder was cold, calculated, and premeditated (CCP), see § 921.141(5)(i), Fla. Stat. (2003) (great weight);³² and
- (6) the victim was under twelve years of age, see § 921.141(5)(1), Fla. Stat. (2003) (great weight).

The trial court concluded that Smith had failed to prove the existence of any statutory mitigating circumstances. [footnote omitted] The trial court found a total of thirteen non-statutory mitigating circumstances:

Smith v. Florida, 28 So.3d 838, 852 (Fla. 2009) (per curiam) (affirming conviction and affirming sentence of death).

The Florida Supreme Court agreed with lawyers for defendant Smith that one juror should have been dismissed for cause, because that juror had read news about the case and formed an opinion (“my thought is, okay, well, he's accused, he probably did it.”) before the trial. However, the Florida Supreme Court held that inclusion of this juror was “harmless error”. *Smith* 28 So.3d at 860-861. That is the only mention in the Court’s opinion of any concern about pretrial publicity, or the effect of news reports on members of the jury. Apparently, even Smith’s appellate attorneys were not concerned about the effects of pretrial publicity on the fair trial.

Smith’s lawyers appealed to the U.S. Supreme Court, which declined to hear the case. *Smith v. Florida*, 131 S.Ct. 3087 (U.S. 2011).

As I write this on 28 Jan 2012, Smith is in a Florida prison, awaiting execution.

Postscript

So why the concern with pretrial publicity? When Smith was arrested in February 2004, he was legally presumed innocent until proven guilty by an initially impartial jury. The pretrial publicity made it more difficult to find intelligent jurors who had not been prejudiced by the inflammatory pretrial publicity.

The prosecution’s evidence was not publicly known in February 2004, when I began writing this essay. In hindsight, the Smith case, while a good example of inflammatory pretrial publicity, is *not* a good example of the prejudicial effect of pretrial publicity, because there is overwhelming evidence of Smith’s guilt.

³² The “cold, calculated, and premeditated” (CCP) aggravating factor was rejected by the Florida Supreme Court as not proven, but also held that this was harmless error by the trial court. *Smith v. Florida*, 28 So.3d 838, 867-868 (Fla. 2009). Two judges on the Florida Supreme Court disagreed that CCP was not proven. *Smith v. Florida*, 28 So.3d at 880 (Canady, J., concurring in result, joined by Polston, J.).

I wrote most of this document between 7 Feb 2004 and 10 April 2004, to show journalism students a contemporary example of pretrial publicity by irresponsible journalists and publishers. From 1 May 2004 to 4 Nov 2005 (a total of 79 weeks), my main essay on pretrial publicity had 13,133 hits, but this essay on Smith had only 2272 hits. During this time, this essay on Smith had an average of only 29 hits/week, while many of my essays have more than 200 hits/week, and some of my essays have more than 800 hits/week. I conclude that few Americans care about fair trials for habitual illicit drug users who graduate to violence against children, hence it was probably a waste of my time to write this essay about pretrial publicity in the Smith case. Nonetheless, I am glad that I collected and preserved this example of pretrial publicity.

This document is at **www.rbs2.com/jsmith.pdf**

My most recent search for pretrial newspaper articles about this case was on 10 April 2004.

I searched newspapers during the trial in Nov 2005 and again on 2 Dec 2005.

first posted 19 Feb 2004, revised 28 Jan 2012

go to my main essay *Pretrial Publicity Prevents a Fair Trial in the USA* at

<http://www.rbs2.com/pretrial.pdf>

return to my homepage at <http://www.rbs2.com/>