

Margie Grover¹ brought her 4-year-old daughter Nicole to a Lorain, Ohio hospital on May 7, 1993. She claimed that her daughter, who attended the Lorain Head Start had come home and said, "We didn't go to school today." Furthermore the anxious mother said that Nicole told her that the bus driver, Nancy Smith, had taken the children to see a man named "Joseph," who tied her up, taped her eyes, and molested her with a stick.

Grover said she found a piece of a branch in the girl's clothing. Officers attending at the hospital noted that most of the information was provided by the mother and the attending nurse, not by the little girl herself. The officers reported that Nicole was physically unharmed.

The case was assigned to Detective Tom Cantu of Lorain's Youth and Gang unit. Cantu, a 20+ year veteran of the Lorain PD and an ex-Marine, was named 1992's Ohio "Policemen of the Year" by the Veterans of Foreign Wars. When Cantu started the investigation, he had an accused person, her unknown accomplice by the name of "Joseph," an unknown crime scene location, and a definite date.

It was clear to Cantu that the incident couldn't have happened as Nicole (or was it her mother?) described. Smith's bus log and the odometer readings confirmed that she had driven her usual route on May 7, and Nicole's teacher had marked Nicole "present." Sherry Hagerman, the aide on Smith's bus that week, confirmed that nothing had happened. At the time of the incident Smith had gone to her second job, driving for the YMCA Meals-on-Wheels program. Her supervisor confirmed that Smith was a reliable driver and she had shown up for work as usual that day.

Cantu spoke to Smith's co-workers, neighbors, and friends. They scoffed at the idea that Smith was a child molester. She was a single mother with four teenage children and she had three part-time jobs that often kept her working for 12 hours a day.

Cantu interviewed Nicole on May 13, but most of the information came from her mother, who insisted that her daughter was telling her a lot of details at home. In front of Cantu, however, Nicole hesitated, saying, "I forgot," "I don't remember that," and "Can we go home now?" After repeated questioning she finally agreed that she had seen "'Joseph's' pee pee."

Cantu went to the Head Start school on May 25 and questioned 11 children, aged 3 to 5 who were on Smith's bus route. His police report for that day notes, "The children

The Shame Of Lorain, Ohio - Nancy Smith And Joseph Allen Convicted Of Non-Existent Crimes

By Lona Manning

were questioned if Nancy had ever touched them in a bad way, or in any way which would hurt, or upset them, and each one stated that she has never touched them. The children were asked if they knew anyone named "Joseph," and they all indicated that they did not. All of the children stated that they liked Nancy and that she was nice."

Nicole's mother had been spreading alarm to other Head Start parents who then questioned their children. Had they heard of "Joseph"? Had they been taken to "Joseph's" house?

Cantu said that from the jumbled descriptions of "Joseph," he couldn't tell "if the guy was white, black, or a white guy with black

After the accusations became public, police investigator Cantu took Smith for a lie detector test, which showed "she didn't do that crime any more than me or the guy that gave the test." Cantu concluded that there was no case against Smith, "There is no proof that a male suspect named "Joseph" exists.... all of the victims in the case have been interviewed with much inconsistency and lack of good evidence."

spots, or a white guy with black spots" One child said "Joseph" was a white man who painted his head and hands black. Several others said "Joseph" had blue eyes. Cantu suspected that parents heavily influenced the children's testimony. "One day they tell you one story, then they go home, and all of a sudden they have the same story."

Cantu recalled, "I took the kids to different houses where they said this thing happened and none of it panned out. The kids gave descriptions of the interior of the house and different pictures that might have been in the house, [but] any house we went into, nothing matched anything the children stated." He canvassed the neighborhood and asked if anyone had seen a bright yellow school bus parked there all afternoon. No one had.

Less than two weeks into the investigation the mayor summoned Cantu to his office and when he arrived Grover was already there complaining that no arrest had been made. Cantu got "into a tiff" with her, but he recommended proper police procedure. "I even told the mayor, 'just because somebody accuses, they say Nancy Smith did it, I have to prove she did it, I can't arrest her on your say-so.'"

Cantu concluded, "There is no proof that a

male suspect named "Joseph" exists at the present."

The Head Start semester ended on May 27 with a picnic in the park. The day afterwards, Grover, who had her identity concealed, appeared on a local newscast with the dramatic claim that a molester was stalking the Head Start kids — and nobody was doing anything about it. She said she wanted, "someone to do something about this case and get the ball rolling." She named a suspect, a white man her daughter had pointed out when he was cutting the grass outside his house. (He was soon cleared.)

After the accusations became public, Cantu took Smith for a lie detector test, which showed "she didn't do that crime any more than me or the guy that gave the test." Cantu concluded that there was no case against Smith, "There is no proof that a male suspect named "Joseph" exists.... all of the victims in the case have been interviewed with much inconsistency and lack of good evidence."

Shortly after Cantu made his recommendation that the investigation against Smith be concluded, he was promoted to sergeant and transferred out of the Youth/Gang unit. The Lorain PD then assigned five officers to a special Head Start task force. The questioning of the children began again.

One of those police reports states, "Amy was asked, did Joseph make you touch him? Amy stated, 'No.'"

When Child Protective Services interviewed Nicole in May, she denied that anyone had touched her. After several months and more interviews, she agreed with detective Eladio Andujar that Nancy and "Joseph" had molested her.

Preschooler Johnny Givens got involved in the case at the end of May. His mother had seen the news reports and she remembered that her son had complained of a sore bottom the previous winter. The police report states, "[Johnny] was questioned if Nancy ever did anything to him, or if she had ever touched him, or ever touched his penis... [Johnny] stated that she had never done anything to him, and had never touched him in any way..."

Two weeks after Grover appeared on the local news, 4-year-old Jason Andrews's mother reported that her son had told her he'd been molested right on the bus by someone named Alan. The police report notes:

"He also stated that Alan looked like

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Al, a neighbor... who is a Hispanic male. This officer attempted to speak with Jason who was very shy and had to be coaxed to reply to questions. Jason related that Alan rides the bus sometimes and helps out the driver.”

Police couldn't find a Head Start employee or volunteer who matched this description. They questioned Elizabeth “Angel” Powell, a 25-year-old bus aide, because another child, Amy Williams, named her, not Nancy, as being the one who took the children to “Joseph’s” house. However, no charges were brought against Powell on the basis of the little girl’s accusation.

Joseph Allen Walks into the Case

In October of 1993, six months after the investigation began, Joseph Allen walked into the Lorain police station to report a stolen vehicle.


Allen had pled guilty in 1985 to sexual battery on a young girl and served a 3-year prison sentence. He claims the girl’s mother falsely accused him because she was angry with him for breaking off their relationship. Lorain County assistant prosecutor Jonathan Rosenbaum handled that case. There was no medical or physical evidence against Allen in the case, since the girl refused to submit to a medical exam. Allen says he is innocent and only pled “guilty” on his lawyer’s advice: “I only know my attorney had me sign some papers because he told me cases like them was hard to win.”

Allen was an unskilled laborer who lived in public housing and spent a lot of his time at

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users. Evidence of another person at the scene is not an automatic exoneration of guilt.

Giving up seems to not be an option for Bruce Lisker. Perhaps he says it best, as he quotes Shakespeare: “Corruption wins not more than honesty. Still in thy right hand carry gentle peace, to silence envious tongues. Be just, and fear not.”

Reprinted with permission. Originally published in *The Long Island Press* as a three-part series in June 2005. Amy Fisher is a columnist for *The Long Island Press*. She was 17 when convicted in 1992 of ‘first degree assault,’ after non-fatally shooting her “boyfriend’s” wife. After seven years imprisonment, she was released on parole in 1999, and her sentence was completed in 2003. Her book, *If I Knew Then...* was published in October 2004. Available from *Justice:Denied’s* Innocents Bookshop, at <http://justicedenied.org/books.htm>. 

the nearby Catholic Charities. He says, “I didn’t have any problem with the law until my car was stolen by these teenage runaways. From that moment on everything started going down hill. The police started following me everywhere I went.”

Detective Joel Miller remembered the little boy who’d said someone named Alan had molested him. What if he was talking about Joseph *Allen*? Miller discarded the other details in the police report — that Alan looked Hispanic and rode on the busses.

Allen was arrested on Nov. 3. “They told me that I was being charged [by] the teenager that had stolen my car.”

Allen agreed to let the police search his home, a small cottage with no second floor and no basement, which didn’t match the children’s descriptions. They described going upstairs in “Joseph’s” house or down to the basement. The police found items that they thought no bachelor should have — sheets decorated with cartoon characters, and toy cars and trucks. (Allen later explained, “I got those things from Catholic Community Services,” for the children of his friends.)

The Lorain task force prepared a photo lineup that included Allen and pictures of five other black men. Their first stop was Grover’s house, where Nicole failed to select Allen as “Joseph.” In fact, of the 10 children shown the photos, nine children either picked no one or picked someone else.

A few days later Grover phoned. Andujar and told him that Nicole really had recognized “Joseph” in the photo lineup. Nicole and her mother had initially described “Joseph” as being white, and previously had even pointed out a white man as a suspect. Joseph Allen could never be mistaken for a white man, but Grover brought Nicole into the station to positively identify Allen as being “Joseph.”

Lineup

Seven children were asked to come to the police station for a lineup including Allen and four other black men, even though some of the children had described “Joseph” as white.

One of those was William Oliphant. He made three separate visits to the lineup room. On William’s first visit, Allen was in the No. 2 spot. William picked No.1 and No. 3. After being asked several times, “Are you sure?”, the session ended. On William’s second trip, Allen was in the No. 4 position, and he picked No. 2. On William’s third visit, Allen was in the No. 3 spot and he picked No. 4. In spite of the bad line-up results, the police decided they

had found “Joseph.” Their notes explained away the mixed identification results by asserting that the children who did not pick Allen exhibited signs of fear or avoidance.

Nancy Smith was arrested on Nov. 5 at her home and taken away in handcuffs in front of her four children and her parents. At her arraignment a few days later, Head Start parents and Smith’s supporters packed the courtroom and watched a weeping Smith enter a plea of “not guilty.” “Child rapist!” came the cry from the parents’ side of the courtroom. “You’ll rot in hell!” one of Smith’s relatives shot back.

Grover was present to tell the journalists some new allegations: Smith had picked her child up early and dropped her off late. Her daughter had come home with needle marks on her leg. “My daughter will have to go to counseling for the rest of her life!” she complained, and accused the school of marking her daughter “present” when she was really absent. At Allen’s arraignment, Grover yelled and cursed at Allen until the judge ordered her out of the courtroom. “Everybody’s going to pay for what they did,” Grover warned. It was suspected — correctly as it turned out — that Grover was paving the way to file a civil suit against the school.

In the months leading up to the trial, two more children were brought to the police station by their mothers to report that Nancy and “Joseph” had victimized them. The children’s stories matched what the other children had been saying, and what the newspapers and television stations had been reporting: They’d been taken to “Joseph’s” house by Nancy. However, the police determined they weren’t telling the truth because one child did not attend Head Start when Nancy worked there, and the other had a different bus driver.

Those children gave the police and prosecutors in Lorain a first-hand demonstration of how children could say and believe things that were not true, and how parents could suggest false scenarios and encourage their children to come forward as “Joseph’s” victims — but apparently that didn’t give them second thoughts about their case against Smith and Allen.

The Trial

Smith’s relatives and friends raised money for her defense and hired Jack W. Bradley — the same lawyer who had counseled Joseph Allen to plead “guilty” to sexual abuse. Allen was assigned a court appointed lawyer, Joseph R. Grunda. Judge Lynett McGough refused Bradley’s motion to try Allen separately from Smith, who had no criminal record, saying that it would be wrong to put the children

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through the ordeal of testifying twice.

Smith and Allen's trial began on July 25, 1994. Bradley was incensed that the prosecution, counter to the law, hadn't turned over its witness lists or other records until the last minute. The *Morning Journal* reported "high emotions" between Bradley and Rosenbaum as they "argued, interrupted each other and raised their voices during testimony."

When interviewed seven years later, the incredulity and anger remained in Bradley's voice as he described the prosecution scenario:

"Nancy supposedly would keep about five kids on the bus, not let them go to the school, and take them to this Joseph Allen's house during the afternoon, she and Joseph Allen would sexually abuse these kids, all afternoon — tie a kid up in the front yard to a tree, poke them with needles, urinate on him, and get them all dressed and cleaned up and take them home — drop them off at their parents."

He knows it was completely impossible.

Four Head Start children testified in court that "Joseph" and Nancy had molested them. A fifth child, Amy, was part of the investigation and participated in the lineup. She didn't testify for the prosecution because she claimed that Angel Powell took her to "Joseph's" house, not Nancy. Inexplicably, Smith's lawyer didn't subpoena Amy or any of the other children who rode the bus, or any of the parents who could have provided testimony supporting Smith's innocence.

Antonio Pena testified that he went to Allen's house three times, with three other children, where he was anally raped. He said that when he refused to drink a cup of urine, Allen tied him to a tree and hit him with a rope. It is significant that the prosecution didn't introduce *any* medical evidence at trial supporting that *any* of the alleged sexual or physical abuse had occurred.

When first questioned by Cantu, Johnny Givens had described Nancy's "boyfriend" as white. He initially denied that anyone had touched him or stuck a stick up his bottom, but at trial he testified had been sexually assaulted. He claimed that when Smith and Allen were finished with the children they were taken back to school, where he told his teacher he'd been playing with toys, and Nancy would then select other children to take to "Joseph."

"When I cross-examined the children," Allen's attorney Grunda later recalled, "I was able to get every child who took the stand to change their stories." Smith's attorney also

found it easy to get the children to agree to whatever he suggested. Nicole testified she was driven to Allen's house in a car, then when cross-examined by Bradley, said she went in a bus. She also shook her head "no" when Bradley asked her if either Smith or Allen had ever touched her. Johnny agreed on cross-examination that it was actually a different Head Start employee, not Smith, who took him to "Joseph's" house.

Under Ohio's rules of evidence, Bradley and Grunda weren't allowed to hear the tapes of the children's interviews until the cross-examination began. Staying up most of the night listening to the tapes, they realized the children had all changed their stories significantly over the course of the investigation. They made a motion to play the tapes in court for the jury. Judge McGough denied the motion. So the jury didn't know what the judge, police, prosecutors, and the defendants and their lawyers knew: The children's courtroom testimony was significantly different than what it was when questioned by Cantu — who was not called as a defense witness by either lawyer.

Several years after the trial, two experts in the field of child suggestibility agreed that the police had manipulated the children into making allegations against Smith and Allen. In the words of Melvin Guyer, a University of Michigan professor and one of the experts, "All of the interviews are outrageous, horrible, terrible.... There is a high incidence of suggestibility and inappropriate questioning. It's outrageous."

Remember that most of the children failed to pick Allen from the men in the live lineup and only one of the ten picked him out of the original photo lineup. At trial, Rosenbaum sabotaged this evidence by using the ridiculous logic that the children's *failure* to identify Allen was in fact proof that Allen was "Joseph." He said that the reason some of the children hadn't picked Allen was because they were afraid of him. He got the jury to believe that Allen had been selected by all of the children, even those who named someone else. When William participated in the lineup, he was still being regarded as being one of "Joseph's" victims. However he didn't testify as a victim because the prosecution couldn't explain how Smith had managed to sneak him away to "Joseph's" when William *did not ride on her bus*.

Linking Smith with Allen

A crucial part of the prosecution's case was to link Smith with Allen, since they had never met prior to being charged as co-defendants, let alone conspired to hurt children.

"Just say yes, this is the guy you saw in the picture, and if I ask you to point him out, can

you do that?" Rosenbaum hissed at the startled witness outside the courtroom. Kathy Cole, a Head Start employee, had just told him that she was not really certain if Allen was the same black man she had seen at the Head Start schoolyard. According to affidavits later filed by Cole and another woman who witnessed Rosenbaum's intimidation tactics, Rosenbaum added: "God damn it, you will answer the way I want you to answer. Is that understood?" Cole told the truth anyway — she couldn't be certain that the strange man she'd seen at the schoolyard was Joseph Allen.

Rosenbaum called Elizabeth "Angel" Powell to the stand. Powell testified that she'd been working on Smith's bus one day when she parked the vehicle to run into a store to get a soda. She testified that Allen muttered "Nancy, Nancy" under his breath as he tried to climb on board. She claimed that after she chased Allen off with a tire iron she saw him go into the store and emerge arm-in-arm with Smith. As Powell delivered this testimony, it was reported that Smith's jaw dropped in horror and disbelief.

The next day, a Head Start parent contacted the defense team and was put on the stand as a rebuttal witness to Powell. He testified that he recognized the incident Powell had described in court and it was he, not Allen, whom Powell had chased off the bus. He had boarded the bus to talk to his son, but apparently had startled Powell, who shooed him away. He had then sought out Smith to explain and apologize for alarming Powell.

To further undermine Powell's testimony, Smith's lawyer got her to admit that she, too, had failed to pick Allen out of a police lineup. However, Powell stuck to her identification of Allen, saying, "Today, when I saw him, I was sure of it. I would stake my life on it."

William's mother also testified that she had seen Allen at the bus stop by the school.

The Defense's Turn

Nancy Smith took the stand in her own defense. Her anguish was apparent as she sobbed, "I have never touched any of those children in a sexual manner at all.... this has ruined my life... and to be accused of this is terrible, because I am a mother."

Her lawyer argued that a molester parking a school bus where it shouldn't be would have been reported: "She's going to take a bunch of kids in a plainly marked bus — and *nobody* ever said, 'Oh yeah, we would see the school bus parked by Joseph Allen's' house. Not one person came in and ever said they'd ever seen any kids getting out of any

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bus, going over to Joseph Allen's house."

The prosecution argued that Smith and Allen's secret molesting hideout must have been somewhere else and not in Allen's home. Children were driven around the neighborhood of the Head Start school and they pointed out various homes during the investigation, but in the end, police were not able to find a home that matched the various conflicting descriptions.

Smith's lawyer also called Head Start officials to testify as to their safety procedures. According to their testimony, Head Start officials ran a safety-conscious school. Bus arrival and departures and odometer readings were logged each day. The bus drivers logged themselves in and out with punch cards. Most of the time there was an aide on the bus. Attendance was taken daily and families were phoned if a child was absent. Furthermore, a would-be molester could never count on being alone with a child — parents were encouraged to ride the bus at any time and to drop in on classes unannounced. The children were always escorted on and off the bus, and to classrooms.

One of Smith's bus aides filed an affidavit confirming that she was with Smith on her bus route every day from January to March and only missed one day of work, that nothing unusual had happened, and that she never saw Allen. However, she wasn't called to testify. Neither did the defense call an expert to testify about how a child's testimony can be contaminated by suggestive questions. Smith and Allen had the impossible task of proving they had never met one another. How could they prove a negative? Excepting May 7, 1993, there were no dates given when the abuse allegedly occurred, so they could not establish alibis. Furthermore, Rosenbaum didn't attempt to prove, though he suggested:

- That the Head Start bus supervisor didn't know where his buses were all the time.
- That it was possible for Nancy Smith to repeatedly sneak multiple children away in a large yellow school bus and park for hours in front of a neighborhood house without anyone in Lorain — including the police patrolling the streets — noticing.
- That Head Start officials tried to cover Smith's crimes by altering attendance and bus mileage records.
- That Head Start officials lied about what they knew and altered records to avoid being sued for millions by angry parents.

Undermining Rosenbaum's insinuations is that no Head Start official was charged for their alleged involvement in an elaborate criminal conspiracy.

Allen didn't take the witness stand because the prosecution could have then used his prior conviction against him. He was in the bizarre situation of having been arrested for reporting his car stolen, while Smith had her presumption of innocence undermined by the prosecution's opportunity to use Allen's record against him if he testified.

Rosenbaum described Allen as a "jackal" who preyed on innocent children. He asked the jury to discount any inconsistencies or contradictions in the children's testimony: "What you saw was humiliated and scarred children, who sometimes told the truth and sometimes lied, but you can tell the difference."

The Verdict

On Aug. 4, 1994, after six-and-a-half hours of deliberation, the jury returned with guilty verdicts. "I have never met this man," Smith wailed as the jury was polled to confirm that their verdict against her was unanimous. "I have never seen this man. I never touched those children. Ever! I didn't touch those children and [Rosenbaum] knows I didn't touch those children.."

Bradley reflected, "I felt that we had shot down every single allegation and the kids did not come off very well on the witness stand and yet, the jury came back guilty." One juror explained later, "I don't think [the children] could have gone into detail like that if they were lying."

Allen was sentenced to five consecutive life sentences. Smith was sentenced to 15 to 90 years in prison and was ordered to pay the costs of her prosecution. Each of her four children swore an affidavit for her appeal. Her oldest daughter wrote, "Like my siblings, I believe the only children abused by the events leading to my mother's conviction were her own four children. We love her, miss her and need her in our lives."

Raymond Kandt's Post-Trial Observations

The trial and the harsh sentences caught the attention of retired Lorain resident Raymond Kandt. After the trial he wrote a number of letters to the local paper that exposed holes in prosecutor Rosenbaum's case. He wrote, e.g., that Rosenbaum used innuendo, not facts, to cast doubt on the reliability of Head Start's records.

"During and after that trial, prosecutor Rosenbaum implied that the personnel of Head Start not only lied in their testimony but that they altered the attendance records of the children involved as well as the records of bus driver Nancy Smith's itinerary...these would be serious

charges, if any charges had been made..."

Kandt pointed out that no Head Start official was charged with falsifying records. Why not? "If Rosenbaum had charged the people at Head Start with these crimes he would have had to prove these charges."

Kandt added that if the attendance records and the bus mileage records were reliable, then the case against Smith evaporated. "The school records showed that the children were not absent from school on the same day, even though they testified to going to 'Joseph's' house together on several occasions."

Kandt was scornful of the idea that a molester would have revealed his identity to the children. "Picture this. Nancy stops her bus in front of the mysterious residence of Joseph and hustles three or four children inside. Joseph greets them — 'Hello, kiddies. My name is Joseph Allen and I will be your abuser for today.' Ridiculous!"

Rosenbaum Sues Reporter

Two years after Smith and Allen went to prison, Paul Facinelli, a columnist for *The Chronicle-Telegram* newspaper, decided to take another look at the case. There was something about the whole thing that bothered him. He recalls, "To believe that this happened, you have to believe that Nancy picked up 25 kids, dropped off 21 of them at the Head Start and somehow got these other four kids in a 30-foot-long yellow school bus to a site undetermined, where she and Joseph Allen did unspeakable things to them without anybody seeing them over a six-month period. Despite all this horrendous abuse that was alleged, no parents, to my knowledge saw anything — there was no bruising, no blood in the panties or anything. The kids told the police about how 'Joseph' peed on them and they had to eat urine laced cookies, but there were no reports of any nausea, no foul odors, nothing."

When Facinelli asked Rosenbaum about Cantu's conclusions that there was no case against Smith and that "Joseph" appeared to be imaginary, Rosenbaum disparaged Cantu's work, saying that he wasn't "the brightest guy around." Facinelli then obtained Cantu's evaluations for 1992 and 1993, and reported that Cantu had received "exceptional" job performance ratings "from three different evaluators."

Facinelli also obtained videotape and the written police reports of the police lineup with Allen and the children. He realized that what was going on in the videotape didn't match the police reports, such as the fact

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that contrary to his mother's trial testimony, William did not appear terrified.

According to the police reports, Nicole was also "frightened" while looking at the lineup, but after reassurance, she identified Allen as "Joseph." What the police report does not say, but the videotape reveals, wrote Facinelli, is that Nicole was "given numerous chances" to choose Allen. "Detectives coaxed and prodded her." Nicole chose Allen in the No. 2 position after the detective asked if there was anyone she wanted to get a closer look at, and her mother, who was holding Nicole in her arms at the time, said "No. 2." Facinelli also found that Grover "herself pointed to Allen, corrected her daughter in order to draw the child's attention toward Allen, and took her daughter's wrist and directed the child's extended index finger."

None of this is mentioned in the police report.

Facinelli also discovered that in the months leading up to the trial, the Lorain Drug Task Force was investigating a dentist for writing illegal prescriptions for painkillers. The woman he was writing them for was one of Rosenbaum's primary witnesses – William's mother Emily. After Smith and Allen's trial was concluded, the dentist was arrested. Oliphant herself was never charged with anything and moved to Idaho with her family. She claimed that she only met with Rosenbaum to discuss the illegal drugs after the Smith trial, not before. But her law breaking made her susceptible to the prosecutor's manipulation as a witness for the state. Her drug use may also have impaired her judgment.

Lorain County Prosecutor Greg White complained that the Facinelli's articles unfairly targeted him and deputy prosecutor Rosenbaum in the middle of his re-election campaign. (In spite of *The Chronicle Telegram's* controversial investigation, White was elected to a fifth term as prosecutor.)

Rosenbaum responded to Facinelli's hard-hitting investigative bombshells by filing a libel suit. The lawsuit was dismissed in 2001. Judge Richard M. Markus ruled that Rosenbaum had not even specified what, if anything, was incorrect about Facinelli's work. Judge Markus wrote, "Despite the court's repeated requests, [Rosenbaum] persistently declined to quote the exact language in each publication that he claimed is defamatory."

The Appeal

Smith and Allen's November 1995 appeal concentrated on the way the children had been repeatedly and suggestively questioned. They cited the Kelly Michaels' case that had recently been decided in New Jersey. Michaels

was a young daycare worker whose child molestation conviction was overturned because of the way the children had been badgered, coaxed, and cajoled to say that she had done bad things to them. (See, <http://crimemagazine.com/daycare.htm>) The Ohio Supreme Court ruled, in effect, that New Jersey could do as it pleased — but New Jersey had nothing to do with the course of justice in the Buckeye State — appeal denied.

The Civil Suit

The parents of Grover, Williams, Givens, and Pena sued the Head Start school for \$20 million in damages after the convictions. It has been reported that the case was settled by the Head Start agency agreeing to pay each child involved \$1.5 million.

A positive result of the lawsuit is lawyers for Head Start discovered exculpatory evidence that undermines the credibility of Angel Powell, the prosecution witness who provided the critical link between Allen and Smith. The attorneys obtained a police tape recording of an interview with Angel Powell, made before the trial, that proves she was aware of the man who boarded the bus was not Allen — but a Head Start parent.

Rosenbaum Resigns

In the years that followed, Rosenbaum was embroiled in further controversy in sex related cases. He was involved in the prosecution of a woman for taking photos of her young daughter in the bathtub. That case dissolved after drawing national notoriety. In another case, a doctor accused of sexual misconduct won a dismissal of the charges when it was discovered the patients who accused him had their memories of the alleged abuse "recovered" in dreams. The doctor's attorney filed a formal complaint against Rosenbaum for withholding that crucial exculpatory evidence from the defense. However Rosenbaum was cleared of wrongdoing.

In February 2000, Rosenbaum resigned from the prosecutor's office, but later returned to work part time. Two years later, prosecutor White suddenly demanded Rosenbaum's resignation. The reason for White's action is unknown.

Legal Limbo

For Smith, the devastating heartache continued when her appeal lawyer missed a crucial filing deadline for appealing her case to federal court. Smith says that she repeatedly called him to confirm he was filing the appeal and that he had assured her everything was taken care of, but she said he never responded to her requests for a copy of the legal papers. At her request, Martin Yant, a

Columbus, Ohio, journalist and private investigator, checked with the court registry and discovered that no appeal had been filed. When Smith confronted her lawyer, he denied that he had ever agreed to represent her and produced a copy of a letter saying as much, which he claimed to have sent to her.

Smith and Allen's case represents one of the most blatant miscarriages of justice that the sexual-abuse hysteria of the 1980s and 1990s produced. Two people who didn't know each other before being prosecuted have been incarcerated for the remainder of their natural lives for crimes that never occurred.

There is some faint hope. Smith and Allen's story was dramatized in an episode of the Discovery Channel's "Guilty or Innocent?" program that was broadcast nationally four times in 2005. Also, the Ohio Innocence Project (at the University of Cincinnati law school) has accepted Smith and Allen's case. Law student Rhett Johnson wrote, "We are rigorously pursuing her case and firmly believe she is innocent." It is also promising that private investigator Martin Yant was notified in August 2005 that The National Center for Reason and Justice will financially support his investigation into Smith and Allen's case. He will be working with the Ohio Innocence Project to uncover new evidence in order to file a petition for a retrial.

After being imprisoned for 12 years, Nancy remains defiant and recently told *The Chronicle-Telegram*, "I will never give up until my last breath — I will fight to clear my name." Joseph Allen recently wrote the author that "I'm 100% innocent, and I'm sure this whole case will be proven some day. God willing, it will be."

Write Nancy Smith and Joseph Allen at:
Nancy Smith W-034304
Ohio Reformatory For Women
1479 Collins Avenue
Marysville, OH 43040

Joseph Allen A 293486
Mansfield Correctional Institution
P. O. Box 788
Mansfield, OH 44901

Anyone with information that may be of assistance to Nancy Smith and Joseph Allen can contact Martin Yant at:

Martin Yant Investigations
1000 Urlin Ave. #1821
Columbus, OH 43212
Email: martinyant@aol.com

JD Note: To protect the privacy of the children referred to in this article, their names and those of their parents have been changed. Condensed, reprinted, and edited with permission from the original article, published on the Internet at, www.crimemagazine.com.

