



ISSUE PACKET



2006 Florida High School



Moot Court Program

A collaborative project of

The Florida Law Related Education Association, Inc.

funded in part by

The Florida Bar, Young Lawyers Division

The Florida Bar Foundation

Case materials authored by

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Note for Competing Teams: This factual situation is not directly related to the hypothetical situation used in the 2006 Florida High School Mock Trial Competition. Students should not rely on the facts of this packet to prepare for the Mock Trial Competition. Likewise, students should not use the Mock Trial packet to prepare for the 2006 Florida High School Moot Court Program.

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**FLORIDA HIGH SCHOOL
APPELLATE COMPETITION 2006
REGISTRATION FORM**

_____ Yes, we would like to submit a brief for the Appellate Competition. Teams are limited to two students per brief. Briefs must be received in Tallahassee by March 1, 2006.

I. Student's Name: _____
School: _____
Address: _____
City: _____ State: _____ Zip: _____
E-mail: _____ Phone: _____ Fax: _____

II. Student's Name: _____
School: _____
Address: _____
City: _____ State: _____ Zip: _____
E-mail: _____ Phone: _____ Fax: _____

III. Teacher's Name: _____
School: _____
Address: _____
City: _____ State: _____ Zip: _____
E-mail: _____ Phone: _____ Fax: _____

IV. Attorney Coach's Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Firm Name: _____
E-mail: _____ Phone: _____ Fax: _____

Duplicates of this form may be made in the event more than one team competes from the same school.

**Brief submitted on behalf of: (Circle One)
Petitioner or Respondent
Return 3 copies of this form along with 3 copies of the brief to:**

The Florida Law Related Education Association, Inc.
2874 Remington Green Circle, Suite A
Tallahassee, Florida 32308
Phone: (850) 386-8223
Fax: (850) 386-8292

Rules and Guidelines

Introduction

An appeal from a trial court to an appellate court normally involves two components: a written brief and an oral argument. In this exercise, you will prepare a brief as if you would use it as the basis of an oral argument. The top brief writers in each Appellate District will compete in oral arguments at the district level, with the district finalists having the opportunity to argue before appellate court judges in each District Court of Appeal. The winner of each district will proceed in the competition to the state level, with the statewide finalists having the opportunity to argue before the justices of the Supreme Court of Florida in Tallahassee on May 5th, 2006 (expenses to be covered). In determining which side you will choose, you should read and analyze the cases cited in the case materials.

Rule 1: Teams

1. A maximum of two teams from the same school shall be allowed to enter the competition.
 - a. In the event that more than two teams wish to enter the competition, the teacher sponsor will be responsible for determining which of the teams will represent the school in the competition. This determination must be consistent with Rule 3.
2. Teams shall consist of only two students who are enrolled in the same school (public or private) in the district in which they are competing. Both team members must participate in writing the team's brief. The team must participate in the oral argument phase of the competition, if selected.
3. Each team shall submit one brief for either the Petitioner (formerly Appellee below) or the Respondent (formerly Appellant below)¹. Briefs may not be amended or revised once submitted.
 - a. Should more than one team from the same school enter the competition, the teams must submit a brief for separate parties. In other words, no two teams from the same school can submit a brief for the same party. For example, if there are two teams from School "X" choose to enter the competition, one team must write for the Petitioner and the other must write for the Respondent.
4. Teams will need to prepare oral arguments for the same party they wrote a brief supporting. Pairings will be determined randomly.

¹ The party who initiates an appeal at the district court level is known as the Appellant, and the responding party is called the Appellee. The party who seeks review of a district court's decision in the Supreme Court is known as the Petitioner, and the responding party is called the Respondent. Parties can switch roles between the district court level and the Supreme Court level, as has occurred here.

5. Teams may use attorney coaches and teachers as advisors to guide them through the process of preparing the brief and oral arguments; however, the writing of the briefs must be the sole work of the students. Attorneys and teachers are strictly prohibited from writing any portion of the brief.

6. Team Roster

Team rosters must be completed and submitted to the competition coordinator before the date of the competition. At registration, teams must be identified only by code.

7. Roll Call

Before a round of competition begins, the students should submit their roll call sheets, found in the packet, to the judges. No information identifying the team, beyond the students' names and team code, should appear on the form. Team codes will be supplied prior to the first round of competition.

Rule 2: The Packet

1. Students should assume the competition packet is complete and factual. Arguments which challenge the validity of issues beyond the scope of the issues presented in the packet will not be entertained.
2. Students may only utilize the case law referenced in the packet. Any deviation is a rules violation.
3. Students may not construct additional facts not found in the packet. Any information utilized that cannot be fairly inferred from the information packet will be considered beyond the scope and therefore a rules violation.

Rule 3: Competition Format

1. This competition is comprised of two phases: (1) the brief-writing phase; and (2) the oral argument phase.

Rule 4: The Brief

1. Three copies of the students' brief must be submitted to The Florida Law Related Education Association and received by **March 1, 2006**.
2. Each brief should follow the format of the enclosed brief outline. Failure to adhere to the format may lead to disqualification. The brief should be typed on white paper, letter-sized 8 1/2" x 11", with one-inch margins on all sides. Use Times New Roman 12 point font, double-spaced, with the first line of each paragraph indented (footnotes and indented quotations may be single-spaced).

Page numbers should appear centered at the bottom of each page. The cover sheet should identify the brief as either the "Brief for Petitioner" or the "Brief for Respondent," and list the participants' names, school, address, telephone numbers, and email addresses. The brief should be securely bound with a staple in the upper left corner. The entire brief should not exceed 15 pages in length.

3. Pursuant to Rule 2, subsection 2, briefs may not include any case law beyond that which is presented in the packet, and may not include any manufactured or researched facts beyond what is found in the packet.
4. Proper legal citation is not required, but is encouraged. Information on legal citations can be found in the appendices at the FLREA website.
5. Teams will be scored based on the criteria found on the score sheet in this packet. See the appendices available at the FLREA website.

Rule 5: The Oral Argument

1. Each team must present oral arguments if their brief is selected.
2. Each team is given 20 minutes to present its arguments. Speech time is outlined as follows:

Speaker	Time Limit
<i>Petitioner</i>	<i>15 minutes</i>
Attorney – Question/Issue 1	7 minutes 30 seconds
Attorney – Question/Issue 2	7 minutes 30 seconds
<i>Respondent</i>	<i>20 minutes</i>
Attorney – Question/Issue 1	10 minutes
Attorney – Question/Issue 2	10 minutes
<i>Petitioner - Rebuttal</i>	<i>5 minutes</i>

3. Rounds will start on time. If no student from a team appears within that time limit, the team will be judged to have forfeited the round, and bye round scoring will apply to the other team.
4. One or both students on a team shall present oral arguments during any one round of competition. Each team will address both questions present in the appeal. If two students present oral arguments for the team during any one round, each student may address only one question/issue within the guidelines established under Rule 5, subsection 2. If one student presents oral arguments for the team during any one round, that student must address both questions following the guidelines established in Rule 5, subsection 2.
5. No communication should occur between students participating in a round and other team members, coaches, or anyone else in the audience, outside the bar,

who are not competing in the round. Any communication with anyone outside of the partner student during that round will constitute a rules violation.

6. Students should display dignity and respect to the judges, staff, and other competition personnel.
7. Along with respecting the court, teams should respect each other. By the time of competition, everyone will have worked very hard to get into competition. Respect should extend to all competitors.
8. Dress should be professional, courtroom attire.
9. During oral arguments, students will be scored based on the criteria found on the score sheet in the packet. See the appendices available at the FLREA website.
10. Scores and winners will not be disclosed after a round, but verbal critiques will be given.

Rule 6: Videotaping/Photography

1. Cameras and recording devices are permitted in certain courtrooms; however, the use of such equipment may not be disruptive and **must be approved in advance of the competition by The Florida Law Related Education Association, Inc.**
2. When one team requests to videotape during a trial, the opposing team must be consulted and their permission granted prior to taping.

Rule 7: Viewing an Argument

1. Team members, alternates, attorney coaches, teacher coaches, and any other persons directly associated with a team, except those authorized by the State Advisory Committee, are not allowed to view other teams in competition so long as their team remains in the competition.
2. Judges should maintain order in the courtroom. If observers are disorderly, they will be asked to vacate the premises.

Rule 8: Decisions

1. All decisions of the judges are final.

Rule 9: Team Advancement

1. Teams will be scored on their written briefs and their oral argument presentations.

2. During the scoring of the written briefs, the panel of evaluators will give each brief a numerical score consistent with the score sheet located in the case packet. The scores from each of the judges in the panel will be added together to determine the top two to four briefs. The top two to four teams in each district will be given the opportunity to participate in the district competition.
3. During the oral argument competition, judges will score student performances in each round. The team that receives the higher score from that judge will be awarded that judge's ballot.
4. At the end of the competition, all the ballots will be calculated, and the two teams (one Petitioner and one Respondent) with the highest number of ballots will advance to the state competition.
5. In the event of a tie, all teams' point scores will be calculated with the highest cumulative points winning. If that results in a tie, the teams' point averages will be determined.
6. During the state finals, each team will argue once. The team receiving the most ballots in the final round will win the competition.

Rule 10: Eligibility

1. Students must be enrolled in a Florida high school in order to be eligible.
2. Each member of a team must be enrolled in the same public or private school in the district in which they are competing.

Rule 11: Awards

1. Best Brief Awards – given to the two teams – one for Petitioner and one for Respondent – with the highest average brief score at the state level.
2. Best Oral Advocate First Place – given to the team with the highest score at the end of the final round at the state level.
3. Best Oral Advocate Second Place – given to the team with the second highest score at the end of the final round at the state level.

Note:

FLREA reserves the right to amend these rules and to make any decision, which shall be final, regarding any aspect of the competition. All questions should be submitted in writing to ABPflreaED@aol.com, with "Moot Court Competition" as the subject line.

Sources of Legal Research

In writing your brief, you may only use the sources of research and authority that are included in the case materials. However, you may read articles and cases from other jurisdictions to formulate ideas and arguments for your brief or to enhance your understanding of the legal issues. They may not be cited as authority in this competition. While you are encouraged to explore other sources, there is no requirement that you do so. Information on research using primary and secondary sources is in the Appendices available at www.flrea.org for your review.

Additionally, you can utilize on-line research through a variety of sources. You should be able to find most of the cases included in this packet at www.findlaw.com, under "Laws: Cases and Codes." From the "Cases and Codes" page, scroll down and click on the "U.S. Supreme Court" link to locate all cases issued by the Supreme Court (i.e. 123 U.S. 456 or 456 S.Ct. 123). For all federal Circuit Court cases (containing F.2d, F.3d or F.Supp.), click on the applicable Circuit Court link (the actual court will be found in the parenthesis at the end of the citation. For example, *Doe v. v. Dept. of Pub. Safety*, 271 F.3d 38, 60 (2d Cir. 2001) would be found under the **Second Circuit**.

Controlling Authority

1) Case law

Branzburg v. Hayes, 408 U.S. 665, 92 S.Ct. 2646 (1972)

U.S. v. Caldwell, 408 U.S. 665, 92 S.Ct. 2686 (1972)

Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348 (2000)

Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531 (2004)

United States v. Booker, 543 U.S. ____, 125 S.Ct. 738 (2005)

Shepard v. United States, 125 S.Ct. 1254 (2005)

Morgan v. State 337, So. 2d 951 (Fla. 1976)

State v. Davis, 720 So. 2d 220 (Fla. 1998)

Gadsden County Times, Inc. v. Horne, 426 So. 2d 1234 (Fla. 1st DCA 1983)

Behl v. State, 898 So. 2d 217 (Fla. 2d DCA 2005)

2) Constitutional Provisions

United States Constitution – 1st, 4th, 5th, 6th, and 14th Amendments

Florida Constitution Article I, Sections 4 & 9

§ 90.5015, Fla. Stat. (2004)

3) Any other cases or statutes cited in the district court opinion, included in this packet.

Format of the Brief

All briefs shall contain the following, in order (need not be on separate pages):

I. Cover Sheet

State the name of the court (Supreme Court of Florida), the party on whose behalf the brief is written (Petitioner or Respondent), and the team members' names, school, addresses, telephone numbers, and email addresses. See "Sample Cover Page" in the appendices available at the FLREA website .

II. Table of Contents

List the contents of the briefs with references to pages.

III. Table of Authorities

List cases cited in the brief alphabetically, statutes, and other authorities, and the pages of the brief on which each citation appears.

III. Questions Presented

List the two constitutional questions or issues presented on appeal, as found in the case material.

VI. Statement of the Case and of the Facts

Briefly summarize the nature of the case, the course of the proceedings below, and the disposition in the lower tribunal(s). Also briefly summarize the facts of the case, presented in a persuasive manner, favoring the your party.

VII. Summary of the Arguments

In paragraph form, condense succinctly, accurately, and clearly the argument actually made in the body of the brief. It should not be a mere repetition of the headings under which the argument is arranged. It should seldom exceed 2 pages.

VIII. Argument

Thoroughly present your arguments with regard to each issue, including the applicable standard of review, and incorporating relevant case law and other legal sources. Although you are encouraged to highlight the case law that is favorable to your side, you should also skillfully distinguish case law and arguments that do not favor your side. Subheadings may be appropriate here.

- a. Question/Issue I
- b. Question/Issue II

IX. Conclusion

Briefly conclude, in one or two paragraphs, your arguments on appeal, and set forth the precise relief sought by the court (i.e., affirm, reverse, etc.).

Special Note: The jurisdictional statement has been waived for this competition. Please see the sample brief in the appendices available at the FLREA website for an example.

Submitting the Brief

Briefs should be submitted in the required format to The Florida Law Related Education Association, Inc. and **received by March 1, 2006**. The winning brief writers will be notified of dates for the local oral arguments. Submit all briefs to the following address.

The Florida Law Related Education Association, Inc.

2874 Remington Green Circle, Suite A
Tallahassee, Florida 32308

If you have any questions or concerns not already addressed in this packet, you may contact us using the following:

Ph 850-386-8223
Fax 850-386-8292
Toll Free 1-877-826-8167
Email: ABPflreaED@aol.com

Record on Appeal

Special Thanks to:

Ben Kanoski, The Florida Law Related Education Association, Inc.

Janeia Daniels, Esq., First District Court of Appeal

Laurie Chane, Esq., Chane and Eble P.A.

Stetson University College of Law, Moot Court Board

ON APPEAL TO THE SUPREME COURT OF FLORIDA,

**STATE OF FLORIDA,
Petitioner,**

v.

**JAMIE OLSEN,
Respondent.**

Case No. 05-678

The Petition for Writ of Certiorari to the Florida Supreme Court is GRANTED and review is limited to the following two questions:

1. Whether the First Amendment afforded the Respondent a qualified reporter's privilege to refuse to disclose the identity of his confidential source.
2. Whether the imposition of an enhanced sentence under the Criminal Press Act of 2004 based upon additional facts found by the sentencing judge violated the Respondent's Sixth Amendment rights.

DATED: April 1, 2006.
Jennifer G. Williams
Chief Justice
Florida Supreme Court

District Court of Appeal for Florida,
Sixth District

JAMIE OLSEN, Appellant,
v.
STATE of Florida, Appellee.

No. 6D05-105

January 31, 2006

GEHRING, C.J.

Jamie Olsen (“Olsen”) was convicted, as a principle to the murder of an undercover law enforcement officer, after the officer’s identity had been disclosed in a newspaper article contributed to by Olsen was published in the *Deerfield Gazette*. Olsen appeals his conviction, alleging that his rights under Article 1, Sections 4 and 9 of the Florida Constitution, and the First Amendment of the United States Constitution were violated when the circuit court required Olsen to reveal his confidential source, which led to his subsequent conviction. Olsen further claims that the trial court erred in enhancing his prison sentence pursuant to Criminal Press Act 2004 in the absence of a special jury verdict form finding him guilty of the charges with increased penalties. For the following reasons, we affirm in part, and reverse in part, the lower court’s decision.

FACTS

On December 14, 2004, the *Deerfield Gazette*¹ published an article featuring Consada Rodriguez, a newly-elected senator from Deerfield Beach. The article focused on her former work as an assistant state attorney, her efforts over previous years to give back to the Hispanic community where she was raised, and her campaign platform during the heated Senate race against former Senator Luke “Lucky” Swindell. The article also mentioned that Sen. Rodriguez’s husband, Juan Rodriguez, was an undercover agent with the Florida Department of Law Enforcement (“FDLE”), and referenced a picture of the couple that was printed alongside the article. Prior to the article on Sen. Rodriguez, Agent Rodriguez’s true identity was unknown and he had not appeared in any media. He had been assigned to a three-year covert undercover statewide drug sting operation involving a company called “Dogs Without Families, Inc.” In fact, his friends knew of him as Victor Rodriguez, a traveling salesman for a large distributor of pet grooming products.

The day following the publishing of the article, Agent Rodriguez was shot twice in the head, assassination style, by Anton Zebesky. Zebesky was killed by police officers as he attempted to flee the scene of the murder, and Agent Rodriguez subsequently died as a result of his gunshot wounds. A copy of the *Deerfield Gazette* containing Agent Rodriguez’s photograph was recovered from the scene of the crime. A fingerprint analysis revealed Zebesky’s fingerprints on the newspaper. FDLE launched an internal

¹ The *Deerfield Gazette* has a daily circulation of approximately 750,000 subscribers and a Sunday circulation of over 1.2 million subscribers.

investigation into the disclosure of Agent Rodriguez's identity. In abundance of caution, all other undercover agents were removed from the sting operation after the death of Agent Rodriguez, and investigation into Dogs Without Families immediately ceased.

A grand jury was convened to look into the death of Agent Rodriguez in the Twenty-first Circuit. The grand jury issued its first grand jury subpoena to Terry Lane, senior reporter for the *Deerfield Gazette* and co-author of the article on Sen. Rodriguez. Ms. Lane had been a reporter for nearly 25 years, and in fact, worked for the *Deerfield Gazette* for twenty-one years writing a weekly column addressing local and national politics.

On May 13, 2005, Ms. Lane appeared before the grand jury. When asked to reveal the sources for her article on Sen. Rodriguez, she refused to testify and invoked her First Amendment privilege to protect her confidential sources. The court disagreed and held that journalists have no such privilege under the First Amendment. Because Ms. Lane refused to testify and obey the court's order, she was held in contempt and jailed.

In furtherance of its investigation, and in light of Ms. Lane's refusal to reveal her sources, the grand jury subpoenaed Ms. Lane's junior reporter, Jamie Olsen. The subpoena requested Mr. Olsen's testimony as to Ms. Lane's confidential sources and sought the production of Olsen's personal work files, computer drives, and any additional documents relating to the article on Sen. Rodriguez. Olsen's name had appeared in small print at the bottom of the article on Sen. Rodriguez at issue, as having "contributed" to the article. At the time, Olsen had been a junior reporter for the *Gazette* for three years. While in college, Olsen had worked as an intern for a televised news channel in Venezuela that was alleged to have ties to drug smuggling operations. He was recognized in 2002 as the *Deerfield Gazette*'s "up and coming" reporter after his coveted interview with an alleged leader of an illegal drug and parrot smuggling operation in Venezuela, Juan Valdez.

On June 5, 2005, Olsen filed a motion to quash the grand jury subpoena, asserting his First Amendment rights to shield confidential sources. The circuit court denied Olsen's motion to quash, holding that he had no right to protect his confidential sources. Rather than face jail time, Olsen agreed to testify before the grand jury and turned over his work files and additional notes relating to the article, expressly reserving the trial court's ruling for appeal. Olsen revealed that the source for the article and photograph was Kerry Limbaugh, an assistant to former Sen. Lucky Swindell. Olsen also produced a substantial number of documents in response to the subpoena, including memos and reports regarding Sen. Rodriguez, communications between Limbaugh and Olsen, and Olsen's prior drafts of the article. In addition, Olsen produced a copy of the photo of Senator Rodriguez and her now deceased husband that appeared in the newspaper. The photograph had a notation on the back from Limbaugh stating, "Per our discussion: Juan Rodriguez – Agent."

Dogs Without Families is a pet orphanage in Deerfield County. Beginning in 1995, FDLE, through Agent Rodriguez and his team, began investigating the activities of the orphanage and allegations that the orphanage was a front for sending illegal drugs and rare birds around the state under the ruse that the "pets" were being transported to their new adoptive homes. Prior to the production of Olsen's documents, the state was aware

that Olsen was a contributor to Dogs Without Families. The state also learned from its informants that Olsen had visited with the company's president, Raye Valdez, on at least two occasions. Raye Valdez is the brother of Juan Valdez, the Venezuelan drug and parrot smuggler that Olsen interviewed while in college. Anton Zebesky, Agent Rodriguez's killer, was an employee of Dogs Without Families and a known drug smuggler. Per an informant, Mr. Zebesky was present during at least one of the meetings with Olsen and Raye Valdez.

Olsen admitted that on the night of November 30, 2004, he had been involved in a bar brawl with Agent Rodriguez, which Olsen stated ended in a "humiliating manner." Testimony from Kerry Limbaugh indicated that Olsen had recognized Agent Rodriguez in the photo as the man he had fought at the bar.

Immediately after receiving Olsen's document production, the state filed charges against Olsen as a principal to the murder of Juan Rodriguez. No specific charge was made as whether Olsen had used his role as a newspaper reporter to further this crime and the jury was not specifically instructed to make such a determination. However, the prosecution's case focused heavily on the copy of the newspaper, containing Zebesky's fingerprints, found at the crime scene.

The jury found Olsen guilty as charged. During sentencing, the trial court pronounced that Olsen's conduct was also in violation of the Criminal Press Act (2004), which provides that any crime perpetrated through the use of the free press warrants an additional 5 years to be added to the sentence for the underlying crime. See Ch. 2, Art. 4 (stating that "any act of negligence in handling confidential information, whereby through gross carelessness a person commits an act or incites another to commit criminal acts"). As a result, the trial court enhanced Olsen's 25-year sentence by 5 years.

Olsen now appeals to this court, asserting (1) that the denial of his motion to quash the grand jury subpoena violated his First Amendment right to protect his confidential sources, and (2) that the trial court erroneously enhanced his sentence without the requisite findings of fact by the jury, violating his Sixth Amendment rights under the federal Constitution. We disagree on the first issue, and agree as to the second issue.

ANALYSIS

Olsen first argues that he has a First Amendment right to refuse to reveal his confidential sources. For guidance on this issue, we turn to the United States Supreme Court's decision in Branzburg v. Hayes, 408 U.S. 665 (1972).

Branzburg marked the first instance in which the issue of reporter privilege was addressed. There, the reporters argued that if forced to reveal their sources to a grand jury, the sources of all reporters would be deterred from furnishing information, which ultimately stymies the free flow of protected speech. Id. at 680. The majority of the justices, after considering the facts and the policy arguments presented, found that the government properly required the reporter to testify about his confidential sources. Id. at 708. The majority held that a reporter does not have an absolute privilege under the First

Amendment to refuse to disclose confidential sources to a grand jury, despite the potential interference with news gathering. Id.

Yet, the Court recognized that “some” protection must be afforded reporters engaged in newsgathering activities as not to eviscerate the freedom of the press. Id. at 681. In his concurring opinion, Justice Powell stated that a reporter’s “claim to privilege should be judged on its facts by striking the proper balance between freedom of the press and the obligation of all citizens to give relevant testimony with respect to criminal conduct.” Id. at 709.

We find further guidance in the Florida Supreme Court’s ruling in Morgan v. State, 337 So. 2d 951 (Fla. 1976), which is the first time the court reviewed the issue of a reporter’s privilege since Branzburg. There, in a case very similar to the case at bar, the court adopted the balancing test proposed by Justice Powell in Branzburg and stated that, when deciding whether a reporter has a privilege to refuse to disclose his source, a court must first consider the interest sought to be advanced by compelling disclosure of the source’s identity. Id. at 955. Favoring the public interest in unencumbered access to information from anonymous sources, the court found that the reporter had a qualified privilege not to reveal her sources. Id. at 955-56. More recently in State v. Davis, the supreme court reaffirmed that a qualified reporter’s privilege exists in Florida. 720 So. 2d 220, 227 (Fla. 1998).

With this background in mind, we must analyze the instant case. It is clear that the Supreme Court in Branzburg recognized that creating a constitutional right for journalists allows for the publication of unverified information, or, as in this case, abuse by a reporter to further personal motives. Here, the record supports that Olsen intended to reveal Agent Rodriguez’s identity based on the fact that Agent Rodriguez had humiliated him on a previous occasion. It is no small matter that the disclosure of Agent Rodriguez’s identity led to his murder only one day after the article and photograph was published, and also jeopardized an ongoing undercover investigation. Therefore, the State had a legitimate basis to investigate the criminal act that led to the murder. Indeed, to allow Olsen to refuse to testify would hamper the grand jury’s truth-seeking function.

Accordingly, we hold that the trial court properly denied Olsen’s motion to quash the grand jury subpoena.

Olsen also claims that the 5-year enhancement to his sentence violates his Sixth Amendment right to a trial by jury, in reliance on Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531 (2004), and Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348 (2000).

In Blakely, the Supreme Court applied the rule announced in Apprendi: “Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” In Blakely, the offender was sentenced to more than three years above the 53-month statutory maximum of the standard sentencing range, based on the judge’s finding that he acted with “deliberate cruelty.” The Court noted that the facts supporting that finding “were neither admitted by petitioner nor found by a jury.” In

rejecting the State's contention that there was no Apprendi violation, the Court instructed:

Our precedents make clear, . . . that the "statutory maximum" for Apprendi purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant. . . . In other words, the relevant "statutory maximum" is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose without any additional findings. When a judge inflicts punishment that the jury's verdict alone does not allow, the jury has not found all the facts "which the law makes essential to the punishment," (citation omitted) and the judge exceeds his proper authority.

Blakely, 542 U.S. at 302.

Similarly, in United States v. Booker, 543 U.S. ___, 125 S.Ct. 738 (2005), the Court considered the Apprendi rule in the context of the Federal Sentencing Guidelines. The Court held "that the Sixth Amendment as construed in Blakely does apply to the Sentencing Guidelines." The Court found no distinction of constitutional significance between the Federal Sentencing Guidelines and the Washington procedures at issue in Blakely, stating: "This conclusion rests on the premise, common to both systems, that the relevant sentencing rules are mandatory and impose binding requirements on all sentencing judges." Accordingly, the Court reaffirmed the holding in Apprendi. See also Blakely, 542 U.S. at 296. Thus, any fact-finding conducted solely by the sentencing judge is in violation of the Sixth Amendment.

On appeal, Olsen challenges those facts that resulted in a sentence above the statutory maximum: Whether he committed the alleged offense with gross carelessness or incited another to commit the criminal act, via the free press. When applying the aforementioned standard to the present case, a problem emerges because this fact cannot be ascertained from the written conviction. The jury found Olsen guilty of murder as a principle, but did not expressly, and was not asked to, find whether Olsen had made use of the free press in furtherance of the underlying crime. Therefore, this court must determine whether the jury's verdict necessarily equates to a finding that Olsen employed the use of the media, and with gross negligence perpetrated, or incited another to perpetrate, Agent Rodriguez's murder.

Because the jury's verdict convicting Olsen of murder does not indicate that it found Olsen to have acted with gross negligence in committing the underlying crime or by his conduct, incited another, in this case Anton Zebesky, to do so, we cannot reasonably construe any finding of fact with regard to this issue from the verdict. According to Apprendi and its progeny, it is unconstitutional for a trial court to increase the prescribed range of penalties to which a criminal defendant is exposed based on facts not found by a jury beyond a reasonable doubt or admitted by the defendant. Thus, we hold that the trial judge in this case erred in enhancing Olsen's sentence by 5 years.

Accordingly, we AFFIRM the trial court's denial of the motion to quash the grand jury subpoena and REVERSE the appellant's enhanced sentence. The case is remanded for further proceedings not inconsistent with this opinion.

DUNCAN, J., concurs.

YORKSHIRE, J., dissenting.

I disagree with the majority's opinion for two independent reasons.

First, I believe that the majority overlooks the central issue raised by Olsen's assertion of his First Amendment rights, namely whether a reporter has a First Amendment constitutional right to protect his or her sources. Such a constitutional inquiry must be addressed on a case-by-case basis, with a proper balance being struck between the roles of the press and the government. See Branzburg v. Hayes, 408 U.S. 665 (1972) (J. Powell concurring). The majority's opinion summarily concludes that Olsen has no constitutional rights without providing any required constitutional analysis of the competing interests between Olsen and the State.

Second, this court has also erred in finding that the sentence is invalid. The jury's guilty as charged verdict on murder as a principal necessarily embodied the determination that the offense at issue was committed using the free press, where Olsen was charged with contributing to an article that revealed the identity of an undercover agent, leading to his death. See Behl v. State, 898 So. 2d 217 (Fla. 2d DCA 2005). The record supports that Olsen must have used information gathered in his normal activities at the *Deerfield Gazette* to instigate the crime against Agent Rodriguez. The guilty verdict only served as an affirmation of the fact that the Petitioner used the free press to further the commission of this crime. Thus, the trial court did not err in finding the appellant in violation of the Criminal Press Act and sentencing him accordingly.

For all of the above reasons, I dissent.

Criminal Press Act

Chapter 1 General

Article 1

- (1) The freedom of the press means the right of every Florida resident, without prior hindrance by an administrative authority or other public body, to publish any written matter, and not to be prosecuted thereafter on grounds of the content of such matter other than before a court of law, or to be punished therefor in any case other than a case in which the content is in contravention of an express provision of law, enacted to preserve public order without suppressing information to the public.
- (2) In accordance with the principles set forth in Paragraph (1) concerning freedom of the press for all, and in order to ensure the free interchange of opinion and enlightenment of the public, every Floridian shall be entitled, subject to the provisions set forth in the present Act for the protection of individual rights and public security, to publish his thoughts and opinions in print, to publish official documents and to make statements and communicate information on any subject whatsoever.
- (3) All persons shall furthermore be entitled, unless otherwise provided in this Act, to procure information and intelligence on any subject whatsoever for the purpose of its publication in print, or for the purpose of making statements or communicating information.

* * *

Article 3

No person shall be prosecuted, convicted under penal law, or held liable for damages on grounds of abuse of the freedom of the press, or complicity therein, nor shall the publication be seized or confiscated other than in the manner and in the cases specified in this Act.

* * *

Article 5

- (1) The present Act shall apply to all material produced using a printing press.
- (2) The term published matter includes pictures, even where there is no accompanying text.

- (3) Periodical refers to any newspaper, magazine or other such printed material, as well as to the posters and supplements which accompany them, provided that according to the publishing schedule the intention is to issue at least four separate numbers or installments of the publication under a fixed title at different periods throughout the year. Printed matter shall be deemed to be a periodical from the time of issue of a license to publish until such time as the license is withdrawn.

Chapter 2 Offenses Against the Freedom of the Press

Article 1

- (1) If a person makes a statement of the nature referred to in Chapter 1, Article 1, or if he contributes as author or other originator, or as responsible publisher to material intended for publication in printed matter and if he renders himself guilty thereby of preparation for or incitement to commit a crime, the provisions of law regarding liability on account of such a crime shall apply.

* * *

Article 4

- (1) With due regard to the purpose of a universal freedom of the press as set forth in Chapter 1, the following act shall be regarded as offenses against the press if they are committed by way of the free press: any act of negligence in handling confidential information, whereby through gross carelessness a person commits an act or incites another to commit criminal acts.

* * *

Article 6

- (1) If the accused is convicted of an offence specified in Article 4, an additional 5 years shall be added to the convicted person's sentence for an underlying crime.

Special Note: The Criminal Press Act of 2004 is a fictional law that was created for the purposes of this competition. To the knowledge of the author, no authority of a similar nature exists in Florida.