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ABSTRACT

These materials are part of the Project Benchmark series, designed to teach secondary students about our legal concepts and systems. This unit focuses on the structure and procedures of the California Supreme Court and the Courts of Appeal. The materials outline the historical development of the appellate courts, jurisdiction, and the appeal process. Such concepts as certiorari, mandamus, habeas corpus, and restraint are explained. The appellate process section defines who and what may be appealed and the basis by which a decision is made. A glossary provides brief definitions of many legal terms and concepts. Suggestions for a sample lesson using these materials are also included. This lesson requires students to hold a moot court or mock appellate hearing in the classroom. Instructions for playing roles of attorneys and justices are provided. (DE)

APPELLATE COURTS

By

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and

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for

PROJECT BENCHMARK

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PREFACE

This booklet focuses on the work of the California Supreme Court and the Courts of Appeal. These courts help to insure that ours is a government of laws and not of men. Specifically, appellate courts make sure that trial court decisions are the result of the application of laws to facts; rather than the result of a trial court judge's personal ideas of right and wrong.

Our judicial process is imperfect because judges are human and hence fallible. But the system does represent the use of the "common law" method developed and tested over hundreds of years in the Anglo-American tradition of justice. The common law grew out of the local customs and rules of early England. For example, if a man rented his neighbor a plow, the neighbor was bound to return it in good condition. Common law in the United States has been formalized by a long series of court decisions, recognizing and enforcing these early customs and rules.

The Supreme Court and the Courts of Appeal apply the laws passed by our Legislature to the facts that the judge or jury decided were true after they weighed the conflicting evidence presented during the trial. When there is no written-down statute or law that covers the facts of a particular case, the appellate courts will apply the common law to the case. That is, the court will look back over all of its earlier decisions to see how it decided similar cases in the past. The justices will also look at the common law principle used to decide these earlier cases to see if it is still valid. If the principle is still a good one, the justices will decide this case the same way they decided earlier, similar cases. If the changing conditions of society have destroyed the reason for the principle, the court will reject it and establish a new principle on which to base this and future decisions. The new principle will be based on the conditions of today's society.

In rare instances, the Supreme Court and Courts of Appeal must decide whether a law passed by the Legislature is consistent with the principles stated in the United States and California Constitutions. When an appellate court finds that a law is contradictory to a constitutional provision, the court must declare the law unconstitutional and, thus, void. Such decisions test both the scholarship and courage of the reviewing judges. To declare a law unconstitutional is usually an unpopular act, whether it declares the right of members of a minority race to schooling, housing and employment, the right of a person charged with a brutal murder to a fair trial, or the inability of the majority to impose its standards on the minority in areas where the Consitution says it cannot do so. The rule of law requires that judges make unpopular decisions when they are necessary to uphold the Constitution.

It is the purpose of this booklet to explain the manner in which the reviewing courts of California perform their vital functions. Only if these courts are staffed by judges of integrity, independence, ability, and courage can the legal system of California operate effectively. If this booklet teaches nothing else, it will have achieved its purpose if it illustrates the need for the citizens of California to insist upon a high caliber judiciary that can and will do its job.

Robert S. Thompson
Justice, Court of Appeal

Site of San Francisco, in 1848

SAN FRANCISCO WAS A BUSY, EXCITING PLACE IN MARCH 1850. Gamblers, sailors, merchants, and farmers jostled each other on the city's streets. And everywhere bearded miners, their pouches filled with gold from northern claims, talked confidently about the wealth in California's hills and streams.

Businessmen sat together in newly-built offices and planned the shipment of goods. Some wanted to bring lumber, nails, brick, and glass to the area. Others wanted cabbages, artichokes, and potatoes from the south--venison, bear, and salmon from the north. A few men even talked about the time when a railroad--running all the way from the East Coast--would carry goods to San Francisco.

Many kinds of people came to the city in those days. Some were even reckless adventurers, eager to make their fortunes quickly and move on. There was lawlessness--but there was also a sense of order and justice.

Three men contributed to this sense of justice. They were Serramus Clinton Hastings, Henry Lyons, and Nathaniel Bennett--the first justices of the California Supreme Court. They met together one cold day that March and heard the first cases ever brought before the state Supreme Court.

The three justices knew they had a lot of hard work ahead of them. California was soon to be admitted to the Union, and the state's formal system of courts had just been set up. But the men had help in setting up the courts and applying the law. They knew the basics of English COMMON LAW.* They were

Definitions for capitalized words appear in Glossary beginning on page 33.

familiar with the United States Constitution. They could refer to the rich traditions of the Spanish and Mexican legal systems. And, of course, they had the informal rules of the miners themselves.

Where did Californians get the right to set up their new judicial system? The United States Constitution gave the model for three branches of government. It outlined the organization and duties of each branch. Californians followed this model when they adopted their first Constitution in 1849. The Constitution set up the original California court system and gave the courts their power. In addition, the structure of the early courts was influenced by the Spanish-Mexican court system, which had existed in California for many years.

HISTORICAL BACKGROUND

SPAIN STAKED A CLAIM TO CALIFORNIA THROUGH COLONIZATION. The Spanish set up a series of forts, missions, and farming villages throughout the entire West. For a long time, the commandantes of the forts and the padres of the missions decided questions of law. But gradually the Spanish introduced the alcalde system into California. The alcalde was a combination mayor, sheriff, and justice of the peace. His chief duty, however, was to settle disputes in his village. People generally liked the alcaldes; they decided conflicts quickly, often according to common sense.

In 1822 Mexico underwent a violent revolution. The Mexicans won independence from Spain, and they, too, claimed California. Mexico kept the alcalde system of justice for some time because it seemed to work well. But later, in its constitution of 1837, Mexico set up a more complicated system. There were several kinds of judicial officers with different duties. The judges with the highest authority were called Judges of Second Instance. When a Judge of Second Instance decided cases in his own district, he had power to rule on appeals. That is, he could decide whether or not a lower court decision was fair. In this way Judges of Second Instance foreshadowed the Courts of Appeal justices we have today.

When the Judges of Second Instance met as a body, however, they were known as the Superior Tribunal. The Tribunal's job was to rule on appeals, too. Tribunal judges had the *final* word on any case that came to them. So they were much like our present Supreme Court justices.

Americans knew about the Mexican court structure when they took control of California in the mid-nineteenth century and set up their own judicial system. They kept some of the same Mexican courts. They even kept the same names. But they changed the Mexican system in two important ways. They modified the Mexican Superior Tribunal and called it the Supreme Court. And they did away with the Courts of Second Instance--the intermediate appellate courts--at least for a time.

SUPREME COURT

STRUCTURE

THE HIGHEST COURT THAT THE CALIFORNIA CONSTITUTION OF 1849 established was the Supreme Court. At that time the Supreme Court consisted of a Chief Justice and two Associate Justices. The Legislature elected the justices, who served six year terms.

How did the first Supreme Court spend most of its time? Justice Hastings and his friends had much to do because "an unparalleled immigration had brought with it an unparalleled amount of litigation . . . ." The first reported Supreme Court case was *People v. Smith*. Several men were accused of murdering some Napa Valley Indians, burning their lodges, and destroying their crops. The men asked to be released from custody because, they said, the warrant for their arrest wasn't valid. Justice Bennett decided it was. However, he let them out on bail. In those early days in California, there were no secure jails in which the men could be held until their trial.

The case of *People v. Smith* was unusual because the Supreme Court didn't hear many CRIMINAL appeals. Most matters then were CIVIL--disputes over wages, shipping contracts, damaged goods, and farm land. Because the court system was new, the justices also had to decide questions about their authority and the power of the lower courts. The California Constitution wasn't always clear on which court should handle which cases.

SUPREME COURT CHANGES

THE SUPREME COURT HAS CHANGED SINCE THE DAYS of Justice Hastings. For example, the California Constitution of 1879 increased the number of justices on the Court from three to seven. And it changed their terms from six to twelve years.

The Supreme Court hears cases for about one week every month, except during the summer. It meets to hear these cases in Sacramento, San Francisco, and Los Angeles. It can hold special sessions in other locations if necessary. The Supreme Court's main office is in San Francisco.

No matter where the Court sits, however, all seven justices listen to arguments on all cases. What happens if one justice is sick or disqualified from hearing a certain case? Then another judge--usually a Court of Appeal justice or a retired Supreme Court justice--takes his place temporarily.

QUALIFICATIONS AND SELECTION

BEFORE A PERSON CAN BECOME A SUPREME COURT JUSTICE, he must have been a California attorney for at least ten years. Or he must have been a judge of a municipal or superior court or a justice of an appellate court for ten years. Or a combination of the two--for example, an attorney for five years and a judge for five years.

How is a new justice chosen? The Governor appoints him, but he must be approved by a special group, called the Commission on Judicial Appointments. This Commission is made up of the Chief Justice of the Supreme Court, the State Attorney General, and the senior Presiding Justice of the Courts of Appeal.

Once appointed, a new justice serves until the next time an election is held for Governor of California. In that election the voters are asked if the justice should remain in office. If they decide he should, the justice stays on the Court. Otherwise the Governor must appoint a new justice.

COURTS OF APPEAL

HISTORICAL BACKGROUND

UNLIKE THE EARLIER MEXICAN SYSTEM, the first California judicial system didn't include intermediate Courts of Appeal. But the Supreme Court found itself with more cases than it could handle. So the people of the state passed a constitutional amendment in 1904 that created the District Courts of Appeal. The amendment divided California into three districts. Each had its own appellate court. The First Appellate District Court met in San Francisco, the Second in Los Angeles, and the Third in Sacramento. Each court had three justices.

The cases the appellate court justices decided in 1905 were similar to those they hear today. There were appeals from cases involving wills, contracts, personal injuries, libel, burglary, and murder. These appeals brought up questions of lower court error. Perhaps the lawyer appealing the decision thought certain evidence shouldn't have been admitted during the trial. Or perhaps he questioned something the judge said to the jury about the case.

APPELLATE COURT CHANGES

LIKE THE SUPREME COURT, California's intermediate appellate courts have changed since the time they were created. One constitutional amendment changed their official name to the Courts of Appeal--dropping the word "District." Other amendments increased the size and number of the courts. For example, two additional appellate districts were created in 1929 and 1961. And several new divisions of justices were added to the appellate districts to help with the growing workload.

Today the Courts of Appeal are divided into five districts with thirteen divisions and fifty-one justices:

First -- San Francisco, 4 divisions with 3 justices in each division;

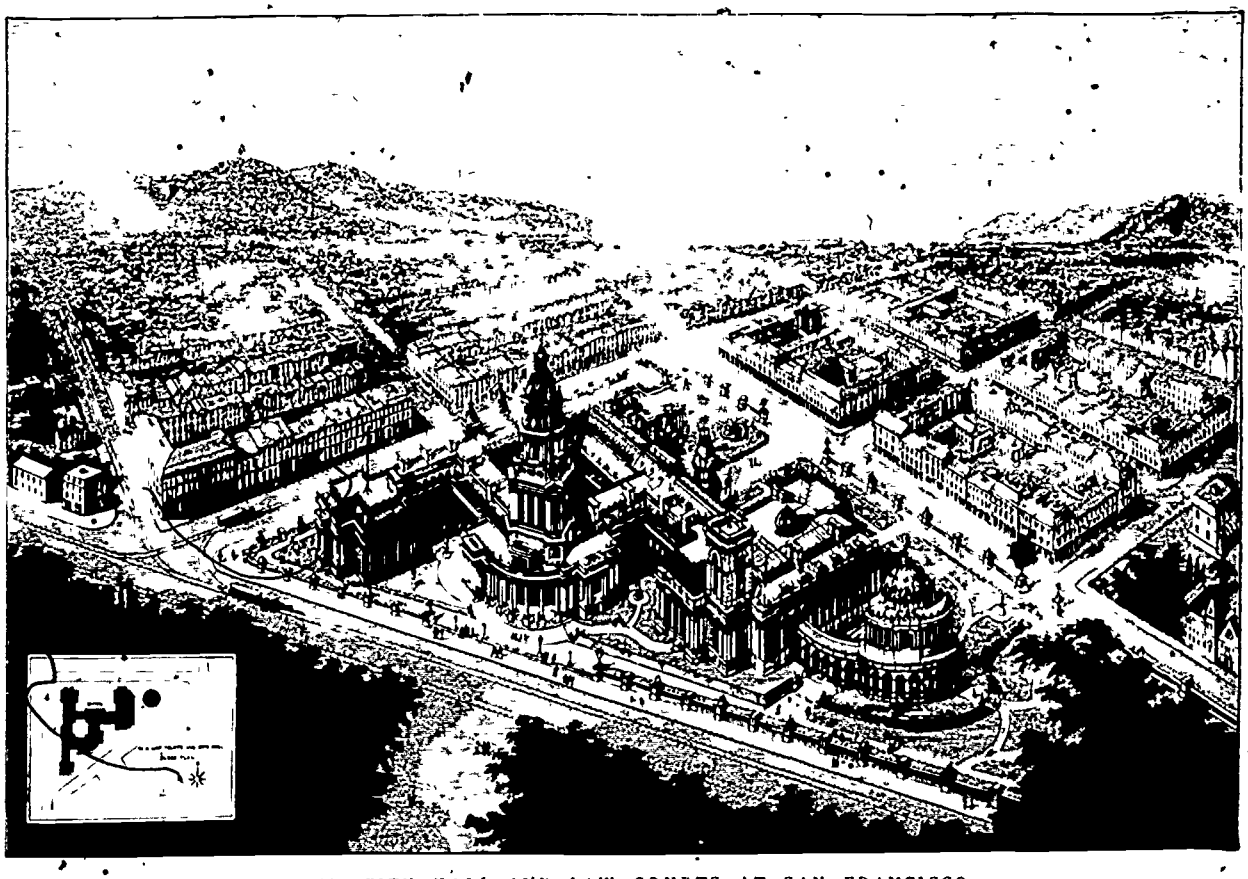
Second -- Los Angeles, 5 divisions with 4 justices in each division;

Third -- Sacramento, 1 division with 7 justices;

Fourth -- San Diego, 2 divisions with 4 justices in San Diego and 5 in San Bernardino; and

Fifth -- Fresno, 1 division with 3 justices.

The justices in each division hear arguments for a few days every month. The rest of the time the justices study the cases before them, do research, discuss issues with the other members of their court, and write explanations of their decisions--called opinions. Normally three justices hear and decide each appeal. Two justices have to be present in order to hear the appeal, and two must agree on a decision. If one justice is sick or unable to hear a case, a justice from another division in his district may take his place. Or a justice from another district. And at certain times, a retired appellate court justice or a superior court judge may serve temporarily.



NEW CITY HALL AND LAW COURTS AT SAN FRANCISCO

QUALIFICATIONS AND SELECTION

LIKE A SUPREME COURT JUSTICE, a justice of a Court of Appeal has to meet certain requirements. He, too, must have been a California attorney for ten years. Or a judge of a municipal or superior court. Or a combination of the two.

The Governor appoints Courts of Appeal justices. They must then be approved by the Commission on Judicial Appointments. When the Commission approves a Court of Appeal justice, its membership includes the Chief Justice of the Supreme Court, the Attorney General, and the Presiding Justice of the Court of Appeal in the affected district.

A new appellate justice serves until the next time an election is held for Governor of California. Then the justice runs in an election in his district, and the voters decide if he should remain in office. If the voters approve him, a justice remains on the bench for a twelve year term. If they don't, the Governor will appoint a new justice.

JURISDICTION

NOW THAT WE'VE LOOKED AT THE STRUCTURE of the Courts of Appeal and the Supreme Court, let's see what the justices actually do. What power do the appellate courts have? What kinds of cases do they handle?

The appellate courts can act only when they have JURISDICTION. Jurisdiction means a court's power to hear and rule on a case. The court must have authority over the subject matter and people involved. If it doesn't, it can't go ahead with the case.

How does jurisdiction apply to the appellate courts? Suppose you lose a lawsuit in the Alameda County Superior Court and you want to appeal. You'd like to file in the Court of Appeal in Los Angeles. The justices in that court just heard a case much like yours. They said the lower court's decision was wrong and ordered a new trial. Can you file your appeal in Los Angeles? No. You have to file in San Francisco in the Court of Appeal for the First Appellate District. Only the First Appellate District has power to hear appeals from cases in Alameda County.

Both the Courts of Appeal and the Supreme Court have two kinds of jurisdiction--original and appellate. Basically original jurisdiction means a court has power to consider certain kinds of cases for the first time. Appellate jurisdiction means a court has power to review lower court decisions and decide whether or not they're correct.

The main business of both the Courts of Appeal and the Supreme Court is to review lower court decisions and see if they're correct. This is their appellate jurisdiction.

But sometimes the appellate courts have to make sure a lower court--or board or person--is acting legally. Perhaps the law won't allow a normal appeal to review this action. Or a normal appeal would take too long, because the problem is urgent. In this case, it's sometimes possible to file a new lawsuit directly in an appellate court. Such a lawsuit is within the court's original jurisdiction. The appellate court can make sure a lower court or an official is abiding by the law.

ORIGINAL JURISDICTION

WRITS

THE APPELLATE COURTS HAVE ORIGINAL JURISDICTION to issue writs. A writ is a court order. It commands a person to do, or stop doing, something.

There are several kinds of writs, including certiorari, prohibition, and mandamus. In the past, courts followed certain rules in deciding whether or not to issue a particular writ. A court looked at the facts of the case before it. But it also made sure that definite conditions were met before it granted a particular writ.

Today courts apply these rules loosely. An appellate court may decide to issue a writ if the matter before it is important and urgent. And if there is no other way to correct the problem--for example, if you don't have the right to appeal.

However, it's up to the court's discretion to decide whether or not to grant a writ. The court looks carefully at the facts of your case. It decides, first, if any kind of writ at all is warranted. If so, it then decides what kind.

A writ is a safety valve. Perhaps you think an error has been made during the middle of your trial. You can't stop the proceedings and appeal right away. You have to wait until the trial is over. But you can ask for a writ. The court receiving your petition may agree that your situation is serious. It may also agree that you don't have any other means of solving your problem quickly and effectively. In that case, the court would issue a writ.

In short, an appellate court once used definite rules in deciding whether or not to grant a writ. These rules are now less important than the facts of your case and the court's judgment on how serious your problem is and how effective other remedies are.

CERTIORARI

LET'S LOOK BRIEFLY AT THREE WRITS the appellate courts can issue. Remember, writs are part of the appellate court's *original* jurisdiction. One of these is the writ of certiorari. It is also called with writ of review. Its purpose is to affirm, annul, or modify a lower court order that can't be appealed. Certiorari can also review orders other than those issued by a court. These include orders of certain departments and boards--for example, the Department of Motor Vehicles or a local city council. The writ can even be directed against individuals, such as state government officials.

PROHIBITION

PROHIBITION IS A SECOND WRIT appellate courts have the power to grant. This writ is used to prevent, or stop, something. It is directed against a lower court, corporation, board, or person. It forbids the body to keep on doing what it's doing. For example, the writ might be used against a board of supervisors that is making plans to turn a city park into a parking lot without proper authority.

MANDAMUS

THE APPELLATE COURTS CAN ALSO ISSUE a third kind of writ--mandamus, or the writ of mandate. This writ orders a lower court, corporation, board, or person to do something. It might tell the court or body to perform an act required by law. Or it might order that someone be given a certain right or job to which he's entitled.

Sometimes an appellate court may issue a writ that involves both prohibition and mandamus. That is, the court tells a person or company that it must stop doing something and start doing something else.

CASE EXAMPLE

LET'S LOOK AT AN ACTUAL CASE in which a person applied for a writ. The person involved thought his case was serious. He also thought that a writ was the only effective means of solving his problem.

Gregor Myers, a student at a California high school, was suspended because of his hair length. The school had a dress code that didn't allow "extremes of hair styles." School officials thought Gregor's hair length was extreme. They said it was distracting and disrupted the educational process. Gregor argued that his suspension was "arbitrary and capricious" and asked for a writ of mandamus. He wanted to force school authorities to let him return to school.

The court granted the writ. It said the school's rules were too vague and thus unconstitutional. School officials were wrong to suspend Gregor.

HABEAS CORPUS

THE APPELLATE COURTS HAVE POWER TO ISSUE still another writ. Habeas corpus is one of the most important writs the courts can grant. Traditionally, habeas corpus hasn't had as many rules governing its use as the other writs we've seen. It can be used in many situations--more than we usually imagine.

The term habeas corpus comes from Latin and means "You will have the body." Penal Code Section 1473 tells when this writ can be used: "Every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint."

Suppose you think you're being held unfairly. You can ask an appellate court justice or an appellate court to order your release. The court will send the agency that is holding you an "order to show cause." That is, an order to come before the court and show the justices that you're being held correctly.

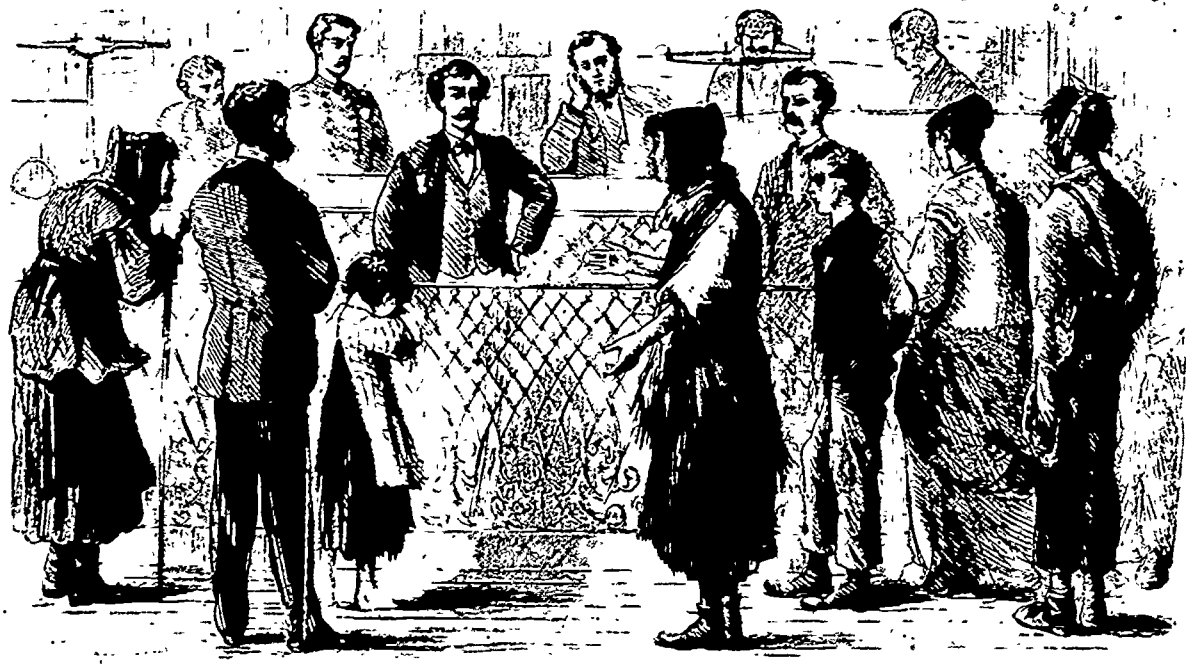
A habeas corpus hearing normally looks to see if the court or body holding you has the power to do so. The writ also examines cases in which you claim you were imprisoned under an unconstitutional statute. And cases involving very important questions of law that can't be dealt with by ordinary means. The writ's purpose in all these examples, however, is to test the legality of your confinement and to bring about your immediate release if you've been held illegally.

HISTORICAL BACKGROUND

THE WRIT OF HABEAS CORPUS HAS EXISTED since the thirteenth century. To the English it was a guarantee of certain rights under the Magna Carta--their charter of political and civil liberties. Through the writ of habeas corpus, the English people could make sure that prisoners were tried or discharged, at least on bail, once each year. The prisoners couldn't be locked up and forgotten forever.

We've had habeas corpus in the United States since the country's independence. It was part of English common law that the colonists borrowed from Britain and included in their own legal system. Today both the United States

and California Constitutions recognize the writ of habeas corpus. Both say our right to this writ can't be denied, except in cases of rebellion or invasion when public safety requires.



RESTRAINT

AS WE'VE SEEN, THE QUESTION in habeas corpus proceedings is whether there's been unlawful restraint. The restraint can be imposed by legal process--that is, through the courts. Or by the decisions of administrative bodies, military authorities, or others. The restraint must be real and involuntary, as well as illegal. But the person doesn't necessarily have to be locked up. For example, the California Supreme Court ruled that a convict on parole is essentially a prisoner of the Corrections Department. The convict can test the legality of his restraint through a writ of habeas corpus.

JUDICIAL PROCESS

THE MOST COMMON FORM OF RESTRAINT IS THROUGH THE COURTS. Mickey Knowles is arrested and put in jail, but no charges are brought against him. Jack Silbert is convicted and sent to state prison. He claims he was only sentenced to the county jail. Rita Thomas is required to pay $50,000 bail for release on a petty theft charge.

In all these examples, the people involved are confined by the judicial process--the court system. If they think they're being held illegally, they can ask to be released on a writ of habeas corpus. Penal Code Section 1487 spells out the times when a person confined by the courts can be released on habeas corpus. These include:

**when a court acts without authority--or goes beyond its authority--and restrains you;*

**when your imprisonment is legal at first, but becomes illegal through something that happens later;*

**when the person who has you in custody isn't the one legally allowed to hold you;*

**when the judicial process involved in your confinement is defective in some very important way;*

**when the proper judicial process has been applied to a case not allowed by law;*

**when the judicial process is not authorized by any court order or judgment or by any law;*

**when you have been arrested without reasonable or probable cause.*

CASE EXAMPLE

A COURT CAN ISSUE A WRIT OF HABEAS CORPUS in both civil and criminal cases. Let's look at one example. Jane Rider was in custody legally--through correct judicial procedures. The question was whether or not she had been denied certain constitutional rights and was because of that, illegally held.

Jane was in the county juvenile hall. She was waiting for a court hearing on a criminal charge. The superintendent of the juvenile home wouldn't let Jane speak privately with her lawyer so she could prepare her defense. The superintendent wanted to be present during all discussions.

Jane filed a writ of habeas corpus. She admitted she was held in juvenile hall legally. But she argued that her lawful restraint became unlawful when the superintendent wouldn't let her speak privately with her lawyer.

The appellate court agreed. It said a person could be unlawfully restrained of liberty--and entitled to a writ of habeas corpus--even though his custody was legal. In other words, someone could be "deprived of some right to which, even in his confinement, he is lawfully entitled under the constitution or laws of this state or the United States. . . ." Through a writ of habeas corpus, Jane Rider was allowed private consultations with her lawyer.

OTHER FORMS OF DETENTION

WE'VE SAID THE MOST COMMON FORM OF RESTRAINT tested by the writ of habeas corpus is judicial restraint--imposed by the courts. But there are other forms, too. You could use a habeas corpus writ:

**To decide whether someone is being properly held in a hospital for the insane;*

**To get someone out of custody, when that person has recovered from alcoholic or drug addiction;*

**To test the confinement of aliens not allowed to enter the United States;*

**To see if all legal requirements have been met in* EXTRADITION *cases;*

**To test illegal induction into the military, or jurisdiction in a court-martial;*

**To determine a child's custody, particularly in divorce, guardianship, or adoption proceedings.*

Let's look at an example of habeas corpus in a child custody case. Albert and Pauline Bauman were divorced in Oklahoma. Each got custody of their daughter Arletta for several months each year. Albert Bauman later asked the court to give him total custody of the child. "My former wife isn't taking care of Arletta properly," he said.

Pauline Bauman moved to California. She took her daughter with her. Meanwhile the Oklahoma court granted Mr. Bauman's request and gave him full custody of the child. He filed a writ of habeas corpus to force Mrs. Bauman to give Arletta up.

A California Court of Appeal ruled in Albert Bauman's favor and granted the writ. The court said the Oklahoma custody order was proper. Mrs. Bauman had to return Arletta to her former husband's care.

PROCEDURE

WHO CAN ISSUE A WRIT OF HABEAS CORPUS? The Supreme Court or any of its justices, the Courts of Appeal or any of their justices, or a superior court judge. Generally a court won't grant a writ of habeas corpus if there is something else the person could do--such as appeal.

You apply for the writ by a written petition to the court. The petition says you're being held and tells who is holding you and where. It also tells why you think your restraint is illegal. After studying your petition,

the judge may decide to issue a writ. The writ tells whoever is holding you to come before the judge at a certain time and place. The person receiving the writ "makes a return" or answer. That is, he states in writing whether or not he's holding you and what his authority is. After the judge receives the return, he holds a hearing. He decides whether or not you're being wrongfully held. The judge can hear evidence and subpoena witnesses--that is, force people to testify.

The judge will release you if he thinks there's something illegal about your confinement. He may not free you from *all* restraint--only the illegal parts. But what happens if the judge thinks your confinement is legal? Then he would refuse to grant your writ of habeas corpus.

Does this end your fight for freedom? Not necessarily. If a lower court won't grant you a writ of habeas corpus, you can file a new petition for another writ in a higher court. You can sometimes go right to the California Supreme Court, if your case is urgent.

The State can always appeal the judge's ruling. This means that if the judge orders your release, the State can ask an appellate court to review the situation. The higher court might agree with the State. The court might reverse the judge's decision.

JUDGE DISCIPLINE

THE SUPREME COURT HAS ORIGINAL JURISDICTION in another area. If necessary, the Court can discipline a judge. The California Constitution gives this power only to the Supreme Court. The Court uses its authority carefully. [*California Constitution, Article VI, Section 18.*]

When might a judge need discipline? When he is guilty of a FELONY, under federal or state law. The Supreme Court can remove a judge under these conditions on its own motion. Or on the recommendation of the Commission on Judicial Qualifications. This Commission was established by a constitutional provision. It is made up of several judges, lawyers, and public members. It investigates charges of judicial misconduct or disability and makes recommendations for discipline--if necessary--to the Supreme Court.

Seal of California.

In addition, the Court can retire a judge if he has a permanent disability that seriously interferes with his work. Perhaps the judge is very old or ill and no longer has the energy and clear-headedness needed to handle his cases.

On the Commission's recommendation, the Court can also CENSURE or remove a judge for one of the following reasons: a) wilful misconduct in office; b) wilful and persistent failure to perform his duties; c) a serious drinking problem; or d) conduct that affects the administration of justice adversely and brings the judicial office into disrepute. In addition to censuring, removing, or retiring a judge, the Supreme Court can sometimes even refuse to let a judge practice law in California for a certain amount of time.

PROCEDURE

BEFORE THE COURT CAN START TO DISCIPLINE A JUDGE, it must follow definite procedures. First the Commission on Judicial Qualifications has to investigate charges against the judge on its own motion or because of a complaint. These proceedings are confidential.

Suppose the Commission's investigation doesn't show any reason for discipline. Then the matter is dropped. But sometimes the Commission feels it should look into the charges further. It arranges for a hearing and notifies the judge of the charges against him.

At the hearing the judge can have a lawyer represent him and confront and cross-examine witnesses. The judge can introduce evidence in his own behalf. He can also have the court subpoena witnesses to testify.

After the formal hearing, the Commission may decide there are grounds for the charges against the judge. Then the Commission will recommend that the Supreme Court censure, remove, or retire the judge. Five of the Commission's nine members must agree on this recommendation. The judge, however, can ask the Supreme Court to modify or reject the Commission's recommendations. The Court will consider the judge's arguments before making its final decision. [*California Constitution, Article VI, Section 18; Rules of Court 901-921.*]

ATTORNEY DISCIPLINE

THE SUPREME COURT CAN DISCIPLINE ATTORNEYS, TOO, when it has good reason. For example, when a lawyer has been convicted of a crime involving MORAL TURPITUDE--that is, an offense showing a serious lapse of judgment and ethics. Such as stealing money that rightfully belongs to a client. Or bribing a witness not to testify against the lawyer's client.

The attorney's wrongdoing doesn't have to be a *crime*, however. Any offense involving moral turpitude may be grounds for the Supreme Court to discipline an attorney. Perhaps the attorney contacts the judge in a case without advising opposing counsel. Or perhaps he promises to represent a client and then does nothing at all about his case.

Before the Supreme Court can discipline the attorney, though, it must follow certain procedures. First The State Bar of California--the agency which licenses all attorneys who practice law in this state--investigates the charges against the attorney. As with judges, the initial proceedings are confidential.

If the State Bar finds that the charges against the attorney aren't true, it drops the matter. However, if the State Bar believes there is some truth to the charges, it arranges for a hearing and notifies the attorney of the specific charges against him. At his hearing, the attorney can have another lawyer represent him. He will have the chance to introduce evidence on his own behalf. And he'll be able to confront and cross-examine witnesses against him.

After the hearing the State Bar may decide there are grounds for discipline of the attorney. The State Bar may then itself privately reprove the attorney--that is, warn him to improve his conduct. Or the State Bar may publicly censure the attorney. If the charges against the attorney are quite serious, the State Bar will ask the Supreme Court to suspend or disbar the attorney. Suspension means the attorney can't practice law for a certain period of time. Disbarment means the attorney can't practice law for at least five years.

If the attorney disagrees with the State Bar's recommendations to the Supreme Court, he will have the opportunity to tell the Court why he doesn't feel he should be suspended or disbarred. He also has the right to request Supreme Court review if the State Bar decides to publicly or privately reprove him. The Court will consider the attorney's arguments and the State Bar's findings and recommendations before it makes a final decision.

APPELLATE JURISDICTION

COURTS OF APPEAL

SUPERIOR COURT CASES

WE'VE SEEN THAT THE SUPREME COURT AND THE COURTS OF APPEAL have original jurisdiction to issue writs. And that the Supreme Court has original jurisdiction in judge and attorney discipline cases. Now let's take a look at the areas in which these courts have appellate jurisdiction--where they review cases from lower courts.

The California Constitution allows the Courts of Appeal to review many lower court decisions. These include all cases where the superior court has original jurisdiction. This means civil cases where the amount of money involved is over $5,000. And more serious criminal cases, punishable by death or imprisonment in the state prison.

Suppose you're tried in superior court on a charge of second degree burglary and found guilty. You want this verdict reviewed. The Court of Appeal in your district can hear your appeal. Is there any time when the Court of Appeal can't review your case? Yes. If you're convicted of a crime punishable by death, only the Supreme Court can handle your appeal.

JUSTICE, MUNICIPAL COURT CASES

THE COURTS OF APPEAL REVIEW OTHER KINDS OF CASES, TOO. They may review a case tried originally in a municipal or justice court, then appealed to the appellate department of the superior court. For example, suppose the Ridgeway Furniture Company sues Richard O'Reilly for $1,500 in municipal court. O'Reilly loses the suit. He appeals the decision to the superior court. It may be that a Court of Appeal can review his case instead, either before or after the superior court rules on it. This might happen under one of the following conditions:

1) CERTIFICATION by superior court on its own motion -- The superior court can ask that a case be transferred to a Court of Appeal, either before or after the superior court appellate department makes a decision on it. We say the superior court "certifies" the transfer. The superior court can ask for a transfer "to secure uniformity of decision or to settle important questions of law."

When might the superior court ask a Court of Appeal to review Richard O'Reilly's case? When it wants the Court of Appeal to clear up two or more conflicting rulings on the same point of law made by two superior courts. To certify, the superior court writes a brief statement. The statement explains the problem--the reason the superior court wants a transfer. The statement also gives the superior court's decision in the case, if it made one.

A Court of Appeal must order Ridgeway Furniture Company v. O'Reilly transferred to it within a certain time period. If it doesn't, the transfer is denied.

2) Certification by superior court on application of one of parties -- There's a second way in which a Court of Appeal can hear a case reviewed by the superior court. One party in a case may ask for the transfer. The reason, again, must be to ensure uniformity of decision or to settle an important question of law.

Suppose Richard O'Reilly wants to transfer his case. He can apply for certification only after the superior court reviews his appeal and reaches a judgment. If the superior court certifies O'Reilly's case, the Court of Appeal may refuse to hear it. Then that's the end. The superior court's decision stands.

3) Transfer to Court of Appeal on own motion -- There's a third way in which a Court of Appeal can review a superior court case. That's when the Court of Appeal itself orders the case transferred. When might it do this? The justices on the Court of Appeal might read a superior court appellate department decision. They then might decide to transfer the case involved for a new hearing. Again, their purpose would be to settle an important question of law or resolve conflicting decisions.

A Court of Appeal has to transfer the case within a certain amount of time after the superior court appellate department makes its decision. Otherwise the lower court's decision stands.

We must repeat one point. The Court of Appeal alone decides if it will hear a case first appealed to the superior court from a municipal or justice court. The Court of Appeal will review a case further only if it's important enough to warrant higher court examination.

DO THE COURTS OF APPEAL HAVE APPELLATE JURISDICTION in any other cases? Yes. The Supreme Court has power to transfer cases. It can send any matter on appeal before it--except a death penalty case--to the Courts of Appeal for consideration.

However, appeals from all cases originating in superior court go directly to a Court of Appeal. So the Supreme Court generally uses its transfer power only to send a case from one Court of Appeal to another. Or to send a case back to a Court of Appeal after transferring the case to itself.

SUPREME COURT

DEATH PENALTY CASES

WE'VE ALREADY MENTIONED ONE AREA in which the Supreme Court has appellate jurisdiction. The California Constitution states that the Supreme Court alone has power to review death sentence appeals.

TRANSFERRED APPEALS

WE'VE SAID THAT THE SUPREME COURT CAN TRANSFER A CASE from itself to a Court of Appeal. Or vice versa--it can transfer a case from a Court of Appeal to itself.

The Supreme Court can decide to transfer a case *before* a Court of Appeal hears and rules on it. When might the Court do this? Usually when it wants to bring together related cases for consideration. Suppose several Courts of Appeal are reviewing similar cases, involving a police officer's authority to search a car stopped for speeding. The Supreme Court might decide to bring these cases together. It could make one ruling on all of them that would be binding on the state's lower courts. Otherwise there could be two--or more--interpretations in different parts of the state.

Another reason the Supreme Court might transfer a case to itself is this. The Court might want to review an appeal and make a prompt decision if the case is one of public importance. For example, the Supreme Court might hear a case on school integration. It could reach a decision quickly that would be binding on the state's schools.

Can the Supreme Court transfer a case to itself *after* a Court of Appeal has ruled on it? Yes. But the Supreme Court must act within a certain legally established time period.

Usually the Supreme Court hears a case already considered by a Court of Appeal through a "petition for hearing." This is a formal request filed by one of the parties in a case. He asks the Supreme Court to review the lower court's decision.

Suppose Terence Little is convicted in superior court for possessing cocaine. Terence appeals to the Court of Appeal in his district. He says police officers entered his home without a proper warrant and illegally seized the cocaine.

The Court of Appeal upholds Terence's conviction. So he asks for a further review of his case in the state Supreme Court. He must file a petition for hearing within a certain amount of time after the Court of Appeal reaches a decision. If at least four justices on the Supreme Court agree to the petition, the Court will review the ruling.

When will the Court agree to review a case? In three instances. The first and most common is when the Court wants to resolve conflicting decisions or to settle an important question of law. For example, the Court might think the search and seizure question in Terence Little's case important enough for another look. Or perhaps several Courts of Appeal have ruled differently on the same question. The Courts of Appeal act independently of each other. They can and do make conflicting decisions--and no one of them is bound by another's rulings. The Supreme Court may want to hear a case to set a uniform rule of law for the state.

The second instance in which the Supreme Court can review a Court of Appeal decision on petition is when the Court of Appeal acted without jurisdiction. Perhaps the Court of Appeal heard a case on appeal from the municipal court--and there was a mistake in the transfer procedure.

Finally, the Supreme Court can review a Court of Appeal decision on petition when a party thinks a particular justice should have been disqualified. If that were so, the court's decision might be invalid--since two qualified justices have to agree on a judgment. The Supreme Court can, on petition, review a case like this.

One final point: After a transfer to the Supreme Court, a Court of Appeal's decision no longer has any effect. The Supreme Court's judgment alone will stand.

APPELLATE PROCESS

The DEFENDANT rises unsteadily to his feet as the jurors file silently into the jury box.

"They've got to find me not guilty," he whispers. "They've just got to."

His attorney nudges him to be quiet.

The judge asks, "Ladies and gentlemen of the jury, have you agreed upon a verdict?"

The jury foreperson replies, "Yes, your honor, we the jury find the defendant guilty as charged."

The defendant sinks slowly into his chair.

His attorney claps him on the shoulder. "We haven't lost yet," he says. "We'll appeal."

We've talked about the appellate courts and the kinds of cases they hear. But what exactly is an "appeal?" And how does a convicted defendant go about getting an appeal?

Suppose a party thinks the trial court made a mistake in applying or interpreting a law in his case. Or his attorney says the court allowed an improper procedure during the trial. In such cases the party can appeal. That is, he can have an appellate court review his case and perhaps change the decision. The higher court decides if the trial court actually made an error. But a minor error isn't enough. It must be an important error that caused the appealing party to receive an unfair trial.

RIGHT TO APPEAL

WHAT GIVES YOU THE RIGHT TO APPEAL an unjust decision to a higher court?

Under English common law there was no right to appeal. Neither the United States Constitution nor the Bill of Rights mentions this right, either. But these documents do guarantee DUE PROCESS rights, such as your right to know what you're accused of, your right to bail while awaiting trial, your right to counsel, your right to a public trial, your right to a jury trial, and your right not to be tried twice for the same crime. Your right to appeal isn't included in this list, but it is implied. Without the ability to appeal to a higher court, there would be no way to decide if the trial court had unjustly denied any of your other rights.

Individual states can and do grant their citizens the right to appeal. In California, this right is provided by:

1. California Constitution -- The state Constitution, first adopted in 1849, revised and readopted in 1879, and amended many times since, sets up the appellate courts and explains their powers. [*California Constitution, Article VI, Sections 1-3, 10-13.*]

2. California Statutes -- The California Legislature passes statutes or laws that list the steps to follow in making an appeal. For example, these laws spell out who can appeal and what kinds of decisions can be reviewed by higher courts. [*Penal Code, Sections 1235-1265; Code of Civil Procedure, Sections 901-923.*]

3. California Rules of Court -- The Judicial Council of California, the primary administrative agency of the state courts, adopts detailed rules outlining appellate procedures. These rules cover everything from time limits for filing appeals to the correct paper size for legal briefs. [*California Rules of Court, Numbers 1-69, 101-191.*]

WHO MAY APPEAL

IN A CIVIL CASE, EITHER THE PLAINTIFF OR DEFENDANT CAN APPEAL to a higher court. Sometimes they *both* appeal. For example, plaintiff Smith, who sued for $200,000, doesn't think his award of $40,000 is enough. Defendant Jones thinks it's too much. So both Smith and Jones appeal.

THE PLAINTIFF.

In a criminal case, it's usually the defendant who appeals. Sometimes, however, the prosecutor--who represents the *People of the State of California*--asks that certain orders be reviewed. But the prosecutor can't appeal a verdict of *not guilty*, no matter how guilty he thinks the party is.

The party who appeals must have an *immediate* and *substantial* interest in the case. Suppose you're convicted of a crime. Or you lose a lawsuit filed against you for money damages. You or your attorney must file the appeal. Your sister or your business partner can't appeal for you.

WHEN TO APPEAL

MOST APPEALS ARE *AFTER* THE TRIAL COURT makes a final "judgment" or decision in a civil or criminal case. The final judgment ends the trial and decides the rights of all the parties involved in the case--unless there's an appeal.

WHAT TO APPEAL

NOT ALL TRIAL COURT DECISIONS CAN BE REVIEWED by an appellate court. It depends on:

1. whether the case in question is civil or criminal; and
2. if criminal, whether the party who appeals is the defendant or prosecutor.

CIVIL APPEALS -- Either side in a civil case--plaintiff or defendant--may appeal the trial court's final judgment. Examples of final judgments include an order to dissolve a marriage, an award of money, or a court order requiring a party to do or not to do something. However, you generally can't appeal intermediate rulings made by the judge *before* or *during* the trial until everything is over. Then the appellate court will review the final decision, including any earlier rulings which may have affected it.

For example, suppose your trial hasn't begun. Your attorney asks the judge to "continue" or delay the trial because an important witness is out of town. If the judge insists the trial begin on time, your attorney can't file an immediate appeal. He may think the judge made a mistake in refusing to delay the proceeding. But both you and your lawyer have to wait until the trial ends. Then, if you lose, you can appeal.

In a civil case you can usually appeal an ORDER made *after* judgment, too. Suppose you lose your case. You ask the court to give you a new trial before a different jury. If the judge agrees, the other side can appeal the judge's order granting you a new trial.

THE DEFENDANT

CRIMINAL APPEALS (DEFENDANT) -- A criminal defendant pleads *not guilty*. The court finds him *guilty*. He may then appeal from:

1. A final "judgment of conviction." This is the pronouncement of guilt the judge makes at the time of sentencing. Such a judgment might read, *"Clark D. Richards . . . was convicted by a jury of a felony, to wit, Burglary, a violation of Section 459 of the Penal Code of the State of California, as charged in the Information."*

2. An order made *after* judgment affecting the substantial rights of the party. For example, Clark is convicted of stealing a set of mag wheels, and the judge places him on probation for a year. Later the judge extends his probation from one year to three. Clark can appeal the order extending his probation.

As in civil proceedings, the defendant usually can't appeal a ruling or order made *before* or *during* his trial until the trial is over.

CRIMINAL APPEALS (PROSECUTOR) -- You might think the prosecutor in a criminal case has no right to appeal. It's true that if the jury finds the defendant *not guilty* the prosecutor can't appeal. But there are several times *before* and *after* the trial that the state can appeal.

Generally, the prosecutor can appeal any order made *before* the trial that would dismiss the case and release the defendant. For example, Paul Jones is accused of purse-snatching. Paul's attorney thinks the law under which Paul is charged is unconstitutional. So he asks the judge to dismiss the complaint against his client. If the judge dismisses the complaint, then the prosecutor can appeal the judge's order.

NO ABSOLUTE RIGHT

WE'VE SEEN THAT YOU CAN'T APPEAL EVERY COURT ORDER or decision. But even when the law says you may appeal, there are still certain rules you must follow. Let's look at some examples.

First, your right to appeal expires if you don't file a notice of appeal within the legal time limits. This rule applies to both civil and criminal cases. The court can't give you more time than the rules allow. This is true even if both parties agree in advance to extend the time for appeal.

Second, there is no right to appeal in a civil case if you voluntarily accept a judgment in your favor. For example, the jury awards Hal Webster $6,500 for personal injuries and damages to his car, sideswiped by James McGregor's van. If Mr. Webster thinks $6,500 isn't enough for his injuries and damages, he must refuse the money. If he accepts any part of it, he'll lose his right to appeal.

NOTICE OF APPEAL

AS WE SAID EARLIER, YOU CAN'T WAIT TOO LONG to tell the trial court you're appealing its decision. How much time do you have?

In a civil case, you must file a written notice of appeal with the superior court clerk within sixty days after the court notifies you of the final decision in the case. However if you aren't notified, you must still file your notice of appeal within 180 days after judgment. The deadline for appeal can be extended beyond sixty days if one side asks for a new trial. But the appeal can never be filed later than 180 days after judgment.

In a criminal case, you must file a written notice of appeal with the superior court clerk within sixty days after sentencing. Again, the time can't be extended for any reason.

A "notice of appeal" need only say in writing that you want to appeal from the decision. You or your attorney must sign the notice. When the *People* appeal an order in a criminal case, the prosecutor must sign the notice. You don't even have to say to which court you're appealing. Your appeal will automatically go to the Court of Appeal in your district, unless it involves the death penalty. Then it will go directly to the Supreme Court.

If you file an appeal, you are called the "appellant."

If you're the party an appeal is filed against, you're the "respondent."

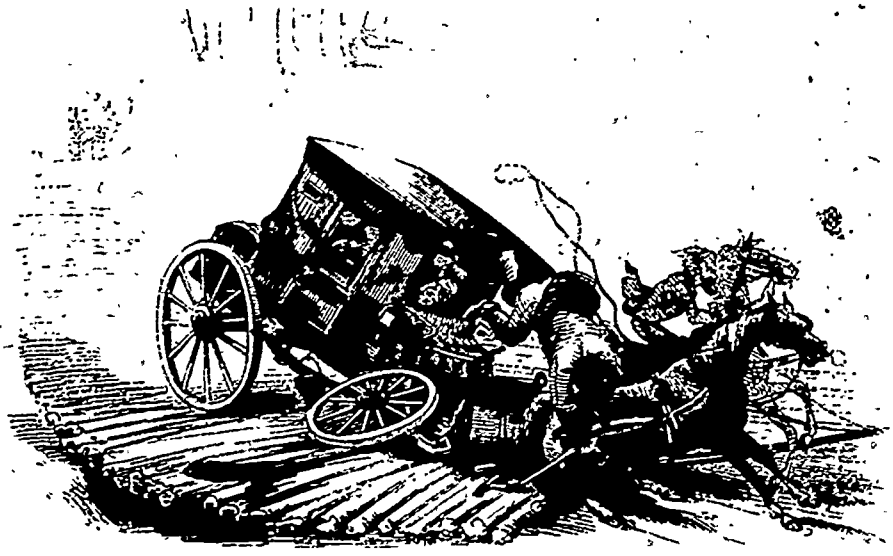
IN THE INTERIM

ONCE YOU'VE APPEALED, THE TRIAL COURT no longer has jurisdiction over your case or the people involved. For example, it can't look at newly-discovered evidence. Nor can it change the amount of money awarded. The appellate court alone has authority over you.

What happens to the judgment against you while your case is on appeal? Sometimes the judgment is delayed by a STAY OF EXECUTION or a WRIT OF SUPERSEDEAS. If a stay or writ is granted in a civil case, for example, the court may not immediately make you pay the money it says you owe for backing your car into Violet Murphy's car. At least not until your appeal is decided. And then only if you lose, of course.

In a criminal case, the judge may or may not order you to serve your prison sentence until the higher court reviews your case. But if you appeal a criminal conviction, you may still have to wait in jail until your appeal is decided. People convicted of dangerous felonies usually have to stay in jail pending their appeals. Those convicted of MISDEMEANORS or less serious crimes, however, have the right to go free on bail.

How do you get a stay of execution to hold off action while your case is on appeal? This will depend on the facts of your case. Sometimes a stay takes effect immediately when you file your appeal. Or it may begin as soon as



RAILROAD ACCIDENT.

you post an UNDERTAKING or BOND with the trial court. These are guarantees that you'll follow the trial court's order if it's upheld on appeal. For example, instead of paying Violet Murphy the judgment she won right away, you file an undertaking. That is, you guarantee you'll pay her later if you lose your appeal. The amount of the undertaking or bond may be fixed by law. Or the judge may decide how much it will be.

Sometimes you'll have to ask the trial court judge for a stay. When this happens, the judge can either allow or refuse the stay--depending on the facts of your case.

Suppose the trial court won't give you a stay? You can apply to the appellate court for a writ of supersedeas. If the appellate court grants the writ, the trial court must suspend its judgment--at least until your case is reviewed. A writ of supersedeas isn't usually necessary. The trial court almost always grants a stay if it will protect the interests of all the parties involved.

RECORD ON APPEAL

YOU'VE FILED YOUR NOTICE OF APPEAL. And the judge has given you a stay of execution. What next? You arrange for preparation of a "record on appeal." This is the written history of your case from beginning to end. The record on appeal usually includes all the important documents about your case that were filed with the trial court. It almost always includes a transcript of part or all of what the witnesses said at your trial. Trial court personnel

prepare the record on appeal and send it to the appellate court. The appellate court reviews your case using only these papers. It doesn't see witnesses or hear testimony, except in very rare instances.

In a civil case, the appellant has to ask the trial court to prepare the record on appeal. He has to pay the court reporter for preparing it. In a criminal case, the record is prepared automatically when the notice of appeal is filed.

ERRORS

WHAT DOES AN APPELLATE COURT JUSTICE LOOK FOR in all these papers and TRANSCRIPTS? He looks for errors that your attorney says came up during the trial. For example, your lawyer might say the judge made a mistake in not allowing certain testimony or exhibits that would have proved your innocence. He might also say the judge gave the jury an incorrect INSTRUCTION when he told the jury members how to consider the evidence. Or perhaps your lawyer might think the attorney for the other side was guilty of misconduct during the trial.

If an attorney wants the appellate court to review any of these errors, he must follow certain procedures:

1. *During the trial, the attorney must "object" or bring the supposed error to the trial court judge's attention. That is, the lawyer must complain at the time he thinks an error was made. For example, suppose the prosecutor starts to question the defendant about other crimes he committed. Suddenly the defense attorney exclaims, "I object!" This lets the trial court judge know that the attorney thinks an error was made. The lawyer has to tell the judge why he objected. If no reason is given, the appellate court may ignore the objection.*

2. *The trial court judge must rule unfavorably on the attorney's objection. If the judge allows the question the lawyer objects to, he says "Objection overruled." This means the question is proper. But if the judge doesn't think the question is proper, he says "Objection sustained." He tells the jury to disregard it.*

3. *The attorney must make sure that the record to the appellate court contains the error he wants reviewed. Suppose the trial judge allowed a question or answer that the defense attorney thinks is prejudicial or unfair to his client. If the attorney wants the appellate court to look at the error, he must be sure the record on appeal includes the prosecutor's question, the defendant's answer, the attorney's objection, and the judge's ruling on the objection. The appellate court won't review an error that isn't in the record.*

Clerk's Transcript

IN A CIVIL CASE, THE RECORD ON APPEAL USUALLY INCLUDES the "clerk's transcript." This is a copy of all the important documents about your case filed with the trial court. As the appellant, you have ten days after filing your notice of appeal to ask for the clerk's transcript. You must tell the superior court clerk exactly what papers you want included. Within ten days the respondent--the other side--must ask for any other papers he wants included, too. Then the clerk lets you know how much the transcript will cost. You have ten days to make arrangements to pay for the transcript. Once you do, the clerk has thirty days to prepare the papers.

In a criminal case, the clerk's transcript usually includes certain basic documents. The criminal defendant is entitled to one free copy of the transcript if he can't afford to pay for it.

Reporter's Transcript

IN A CIVIL CASE, THE "REPORTER'S TRANSCRIPT" is sometimes part of the record on appeal, too. If you appeal, you have ten days after filing to ask for a complete reporter's transcript--a copy of everything that was said at your trial. Occasionally you may want just part of the transcript; a shortened version will save you money and will save the court time. The respondent, too, can ask that parts of the testimony he feels are important be included.

THE ATTORNEYS

After you ask for the transcript, the reporter has ten days to estimate how much it will cost. Then you have ten days to make a deposit. The reporter usually has thirty days to prepare the transcript. But he can apply for an extension if he can't finish within the time limit.

In a criminal case, the reporter's transcript usually includes all the proceedings of the trial. It is provided free by the state.

AGREED STATEMENT

INSTEAD OF THE CLERK'S AND REPORTER'S TRANSCRIPTS, the parties in either a civil or criminal case can file an "agreed statement." This takes the place of the record on appeal. The appellant and respondent together prepare the statement. It says what court order or judgment they are appealing and what errors they want the appellate court to examine. The attorneys make sure the statement is accurate and complete enough to allow the appellate court to make a decision.

SETTLED STATEMENT

THE PARTIES IN A CIVIL CASE MAY ALSO APPEAL on a "settled statement," rather than transcripts or an agreed statement. A settled statement is a narrative of part or all of the proceedings. It can include written documents, too. This short form of the record on appeal saves time and money.

Usually the appellant makes up the statement and gives it to the trial court judge who heard the case. The judge holds a hearing to "settle" the statement. At that time the respondent can ask for corrections of or additions to the statement. When the trial judge is sure the statement is correct, he "settles" it. That is, he says the information in the statement is accurate and complete.

Parties in a criminal case can't use a settled statement--except when there is no reporter's transcript. Perhaps the transcript is lost, or the reporter is no longer around to transcribe it.

FILING THE RECORD

WHAT HAPPENS WHEN THE RECORD ON APPEAL IS COMPLETED? The trial court clerk sends it to the appellate court clerk. In a civil case, the appellate court clerk tells the appellant he must pay a filing fee within twenty days. After the fee is paid in a civil case--or after the record in a criminal case is received--the record on appeal is officially filed with the reviewing court. Then the attorneys write their briefs.

BRIEFS

WHAT IS A BRIEF? It's a legal document that lists and explains the legal questions in the case. Every appellant *must* file an "opening brief," or the court will dismiss the case. Every respondent *must* file a "respondent's brief," or the court may base its decision on the record on appeal and the appealing side's opening brief. Any appellant *may* file a "reply brief."

Briefs tell the appellate court what the case is about. They point out specific errors in the trial court proceedings. Each brief lists and explains the laws and case decisions the attorney wants the court to consider. The brief must be very definite. It must "cite" or refer to exact laws and earlier decisions the attorney thinks are important. It's up to the appellant's lawyer to show the reviewing court that the trial court was wrong. The appellant's attorney can't bring up new errors when he files his reply brief. He can only refer to errors he mentioned in his opening brief.

The appellant usually has thirty days to file his opening brief. The respondent has another thirty days to file his brief. Finally, the appellant has twenty days to reply to the respondent's brief. These time periods can be increased by up to sixty days each, if the attorneys agree. But beyond that, only the Chief Justice of the Supreme Court or the Presiding Justice of the Courts of Appeal can give extra time. The case can be dismissed if the attorneys don't file their briefs when they should. But this is rarely done.

Since a brief is a legal argument, it is usually prepared by an attorney. In a civil case--if enough money is involved to make an appeal worthwhile--each party can generally afford to hire a lawyer. But many criminal defendants can't afford attorneys to prepare their appeals. In such cases, the appellate court will appoint a lawyer to help the criminal defendant with his appeal. The state will pay for the attorney.

ORAL ARGUMENT

ONCE THE BRIEFS ARE FILED, the appeal is set for "oral argument." The attorney can waive or skip the oral argument if he wants to. He then asks the appellate court to examine the case by looking at the record and briefs alone.

However, lawyers generally argue their cases before the Supreme Court unless the Court specifically asks them not to. This happens when the Court is anxious to decide the case and doesn't want to hold up its decision until oral arguments can be heard.

An attorney makes an oral argument if he has new laws or case decisions to tell the Court about. For example, he may want to mention an important case decision made after he filed his brief. He can tell the justices how he believes the new decision affects his case. Or in a complicated case, the attorney may think it will help his client if he explains the most important questions involved in a face-to-face presentation to the justices. During the oral argument the justices are free to stop the lawyer to ask a question. This gives the attorney a chance to make sure the Court really understands the arguments he presented in his brief.

ARGUING THE CASE OF A LOST NOTE.

Court rules give each party a maximum of thirty minutes to present his oral argument. But most arguments are shorter, even in complicated cases. The appellant's attorney has the right to speak both at the beginning and end of the proceedings. This way he can present his case and then answer the respondent's arguments, which support the trial court's decision. It isn't necessary for either of the parties to be present for the oral arguments.

MAKING THE DECISION

AFTER THE LAWYERS ARGUE THEIR CASES, the court begins to work out its decision. The justices will already have looked at the record on appeal. They will have read the briefs. Now they will think about the oral arguments, too. They may do further research on their own. They may talk about the case with other members of the court. But finally each justice will make up his own mind about how the case should be decided.

In the Supreme Court, at least four of the seven justices present at the oral argument must agree on a decision. In the Courts of Appeal, two of three justices present must agree. Suppose there haven't been any oral arguments? Then all the justices are counted as "present" when they make a decision.

BASIS OF DECISION

HOW DOES AN APPELLATE COURT REACH A DECISION? The facts of each case appealed are different. But the justices have guidelines for reviewing cases.

First, the justices deal with questions of law, *not* fact. The trial court decides the facts. It hears witnesses and looks at exhibits. The appellate court justices are different from trial court judges. A justice doesn't decide if an alibi is true. He doesn't decide which of two drivers involved in an accident ran the red light. The trial court and jury decided these questions of fact. And except in very rare circumstances, the appellate court won't review the facts. The court will accept them as true.

Instead, the appellate court reviews the entire record of the case. Did the trial court make any errors? Did these errors lead to the verdict? Were you found guilty or negligent because of the trial court error? Did the trial court make a mistake of law? If so, did the mistake hurt you or affect your rights? Would a different decision probably have been reached if the court hadn't erred?

Even though the trial court makes a mistake, the error doesn't always mean there was a miscarriage of justice. If the court's decision would have been the same with or without the error, then the error is not prejudicial. For example, technical errors aren't prejudicial. Perhaps your name was misspelled on the complaint against you. Or maybe the prosecutor didn't sign the complaint. Many minor procedural errors aren't considered prejudicial, either. For example, an appellate court usually won't reverse a case simply because the trial

court judge forgot to caution the jurors before each recess not to talk to each other about the case. In addition, an error generally can't be called prejudicial if your attorney didn't object at the time the mistake happened during the trial.

Sometimes a prejudicial error is "cured" or corrected later in the proceedings. Suppose the trial court improperly let in evidence that you were convicted of a crime many years ago. If you later took the stand and freely said the same thing, the error is considered corrected.

THE JUDGE.

Some errors are always prejudicial. For example, suppose you don't speak much English and the trial court doesn't provide an interpreter. If you're convicted and appeal, a reviewing court will always call this error prejudicial. Or suppose the prosecuting attorney tells the jury he knows you're guilty because you told him so. This error is certain to be held prejudicial, too.

Of course, many errors are prejudicial in some cases and not in others--depending on the facts of the case. Several justices can read the same record and briefs, hear the same oral arguments, and study the same laws and cases. And yet they can reach different conclusions about how a law should be applied in your case.

THE DECISION

AFTER ITS REVIEW, THE APPELLATE COURT can do one of three things. It can "affirm," "modify," or "reverse" the trial court's decision.

Suppose the appellate court agrees with the trial court's ruling? Then it affirms. This means the trial court's decision has to be followed. The prison term starts. Or the fine must be paid. Or the partnership is dissolved.

Sometimes the appellate court decides instead to modify--or change--the lower court's decision. Suppose you're ordered to pay $200,000 to a driver you injured. Your insurance company appeals because it thinks the amount of money is too high. The appellate court reviews the record of the case. The justices decide that of the $200,000 judgment, $150,000 was "punitive" damages--not allowed in an ordinary accident case such as this. Therefore, the appellate court modifies the judgment by reducing it to $50,000. Of course, the appellate court will only modify a judgment if this will help the appellant.

Finally, the appellate court can reverse, or set aside, the original decision. When a decision is reversed, it no longer exists. Perhaps the appellate court reverses Bill Daly's conviction for murder. This does *not* mean that Bill will necessarily go free. It means he's entitled to another trial before a new jury.

A new jury will look at the facts of Bill's case and make a decision. However, the error that caused the original decision to be reversed won't be made again. Suppose the judge in Bill's first trial let the jury hear testimony about crimes he committed earlier. If the appellate court decides the judge made a mistake in allowing this testimony, it will say that the testimony can't be given in the new trial. And this might result in a *not guilty* verdict for Bill. Or it might not.

The appellate court decision is not final right away, as we said earlier. If the Court of Appeal reviews a case, the losing party can ask the court for a rehearing. If the court refuses, the losing side can then ask the Supreme Court to hear the case. The Supreme Court may agree, or it may refuse. If it does hear the case, the Supreme Court's decision isn't final right away, either. The losing party has thirty days to ask for a rehearing.

What happens after the appellate court finally decides? The court's decision is written down as part of its "opinion." The opinion gives the reasons for the decision. It shows how many justices agreed with the decision. It includes, too, any dissenting opinion filed by a justice who disagrees with the majority view.

All Supreme Court decisions are published in books called "California Reports." They can be found in your county law library. A Court of Appeal decision is published only if it establishes a new rule of law, modifies an existing rule of law, involves a legal issue of continuing public interest, or criticizes an existing law. Court of Appeal decisions are published in books called "California Appellate Reports," also found in your local law library.

GLOSSARY

BOND -- A certificate or written evidence of a debt. An agreement to pay a certain amount of money at a certain time in the future. (p. 25)

CENSURE -- To blame, condemn as wrong, express disapproval of, or criticize adversely. Used in the legal sense when the Supreme Court censures an attorney or judge for misconduct. (p. 14)

CERTIFICATION -- A written assurance that some act has or has not been done. Specifically, a written assurance made by one court to another court, judge, or court officer that certain things have been done. Term used in the transfer of an appeal from one court to another. (p. 16)

CIVIL ACTION -- Civil actions are brought against individuals or organizations by other individuals or organizations, i.e., a partnership, corporation or government agency. The party who files a civil action seeks recovery or redress for some wrong. For example, in many civil actions the plaintiff wants money from the defendant. Civil actions include the claims of accident victims, disputes over business transactions, and questions of personal or property rights. In fact, a civil action is any action other than a criminal action. (p. 3)

COMMON LAW -- A body of law which grew out of the local customs and rules of early England. For example, if a man rented his neighbor a plow, the neighbor was bound to return it in good condition. Common law in the United States has been formalized by a long series of court decisions, recognizing and enforcing these early customs and rules. The body of common law is separate from the statutes or laws enacted by our legislatures. (p. 1)

CRIMINAL ACTION -- Criminal actions alleging violation of the California Penal Code are brought against individuals or organizations by the "People," acting through a county district attorney or city prosecutor on the trial level. The state Attorney General handles these matters on appeal. In a criminal case the prosecutor asks that the defendant be fined or imprisoned, or both. The defendant in a criminal action is accused of the violation of a penal law--an offense against the state. Criminal offenses include, for example, murder, robbery, rape, arson and bribery of a public official. (p. 3)

DEFENDANT -- The person who defends against or denies a criminal or civil charge. Or the person of whom something is being asked. For example, the accused in a criminal case, or the person who is asked to pay damages in a civil case. (p. 20)

DUE PROCESS -- Justice, fair play, the ordered concept of liberty. The term due process is usually thought of in two parts--substantive and procedural. Substantive due process refers to the fairness of a law itself. Neither Congress nor the Executive branch may make "arbitrary, unreasonable or capricious" laws. Suppose, for example, Congress passes a law saying that men must pay twice as much tax on their incomes as women. Plainly such a law would be unfair and a denial of substantive due process. The courts would declare the law unconstitutional. The second part of due process--procedural--refers to the way in which a just law is enforced. It prohibits unfair methods of applying

the law. Let's imagine that our double tax law is revised--taxes are made equal for everyone. But suppose that any person who is late in paying his tax is immediately arrested and thrown into jail for a year, with no trial. Such an action would violate many of the person's basic due process rights. Even a delinquent taxpayer has a right to be notified of the charges against him, a right to a hearing, a right to counsel, and so forth. Our courts would not permit such an unjust way of enforcing a law, even though the law itself is legal. (p. 20)

EXTRADITION -- The turning over of an alleged criminal, fugitive, or prisoner by one state or country to another. The return of a criminal to the state where his crime was committed from the state to which he has fled to escape prosecution. Also, the return of a convicted criminal who should still be in the custody of another state. (p. 12)

FELONY -- A serious crime for which punishment is death or imprisonment for more than six months, usually in a state prison. Murder, robbery, arson, and the sale of dangerous drugs are examples of crimes designated as felonies in California. (p. 13)

JURISDICTION -- The authority or right of a court to carry out its judicial duties. For example, the court's power to hear a case, to decide issues of fact and law, and to enforce its decision. A court's jurisdiction or authority can be limited in several ways: (1) By the subject matter of the case. For example, only a superior court can conduct a juvenile hearing. It can't be held in a justice court or municipal court. (2) By the parties involved in the case. For example, a court has no power over a person who has not been properly served with a summons and complaint, telling him of the specific charges against him. (3) By the particular judgment to be made. For example, the municipal court can only give a judgment in a civil case of up to $5,000. If the plaintiff is suing for a larger sum of money, he must file his case in superior court. (p. 6)

INSTRUCTION -- A direction given by the judge to the jury concerning the law of the case. A statement made by the judge to the jury informing them of the law to be applied to the case. The jury must accept and apply the judge's instructions concerning the law to the facts of the case they are considering. For example, one instruction a judge might give the jury in a murder trial would be. . ."Homicide is justifiable and not unlawful when committed by any person when resisting an attempt to commit a forcible and atrocious crime." (p. 26)

MISDEMEANOR -- Offenses and less serious crimes which are punishable by a fine or time in the county jail, or both. Misdemeanor fines are usually not more than $500; time in county jail is limited to six months. Petty theft, disturbing the peace, trespassing, littering and many traffic offenses are considered to be misdemeanors under California law. (p. 24)

MORAL TURPITUDE -- Conduct contrary to justice, honesty, modesty, or good morals. Conduct contrary to the accepted and customary rule of right and duty between man and man. An act thought of as immoral in itself, regardless of whether or not it is punishable as a crime.

ORDER -- Generally, a command or direction authoritatively given; a rule or regulation. In the legal sense, every direction of a court or judge made or entered in writing, and not included in the final judgment, is an order. (p. 22)

PLAINTIFF -- The party--it may be a person, business, corporation or other organization--who brings an action against the defendant. The party who complains to the court or sues in a civil case. (p. 21)

STAY OF EXECUTION -- A court order stopping the execution or completion of a judgment or decision for a specific period of time. For example, the trial court may give you a stay of execution so that you don't have to pay a fine while your case is on appeal. (p. 24)

TRANSCRIPT -- The official record of the proceedings in a trial or hearing. The transcript may include all the important documents filed with the court about a particular case. It may also include the word-by-word record of everything that was said during the trial or hearing. (p. 26)

UNDERTAKING -- A promise by two people--called sureties--that if the defendant loses his appeal and still doesn't pay the plaintiff, they will pay for him. In some cases it is necessary to file an undertaking with the court before the judge will grant a stay of execution. (p. 25)

WRIT OF SUPERSEDEAS -- A writ issued by an appellate court against a trial court, suspending the trial court's power to enforce its judgment or decision while it is on appeal. (p. 24)

SAMPLE LESSON

INTRODUCTION

Each teacher who reads this education unit on the APPELLATE COURTS will probably consider the following questions:

--How useful is this material to me and my students?

--How can I incorporate part or all of this material into a current or future study unit?

--How can I present this material to my students in an informative and interesting way?

Individual answers will vary according to the age, grade, and ability level of your students, and according to the courses you teach and the curriculum with which you must work.

The Sample Lesson included with this education unit is just one example of how you might choose to present this material on the APPELLATE COURTS to your class. It's only a suggestion; feel free to modify this lesson or to substitute one of your own design.

LESSON

A. CONCEPT: Appellate Courts

B. GRADE LEVEL: Secondary (8-12)

C. TIME NEEDED: 5-6 Class Periods + 4-5 Hours Student Preparation Time

D. OBJECTIVES: To hold a MOOT COURT or mock appellate hearing in your classroom with students roleplaying the attorneys and justices. Students will discuss the facts and analyze the issues in the "Sample Case." All students will prepare legal briefs, writing on behalf of either the Appellant or Respondent. Four student attorneys will make oral arguments to the appellate court. The remaining student justices will read and analyze the written briefs, listen to and analyze the oral arguments, and decide the case on its merits.

After the moot court the students will be able to:

--define the roles played by the participants in the appellate court;

--list the procedures used by the appellate court in hearing a case;

--explain how appellate court decisions are made.

E. PROCEDURES:

1. Before Court Begins

a. The teacher should read both the descriptive and lesson sections of the APPELLATE COURTS education unit.

b. The students should read the descriptive part of the booklet, paying particular attention to the section on "Appellate Process," which begins on page 20.

c. If possible, the teacher and students might want to attend a session of the California Supreme Court or one of the Courts of Appeal. The Supreme Court meets periodically in Sacramento, San Francisco and Los Angeles. The various Courts of Appeal hear cases in Sacramento, San Francisco, Fresno, Los Angeles, San Bernardino and San Diego. The schedule of days on which the courts meet is available from the Court Clerk. Advance arrangements should always be made before visiting the court because seating is limited.

2. To Hold Court

a. Day One

1) The teacher distributes "Case Fact Sheet" to the entire class.

2) The students read the "Case Fact Sheet."

3) The teacher and students discuss the "Case Fact Sheet," listing the facts involved in the case, the parties who have an interest in the outcome of the case, and the issues it involves. The teacher will have already studied the "Case Background Sheet," which will help him/her direct the discussion.

4) The teacher assigns the students to read the "Case Background Sheet" that night.

b. Day Two

1) The students discuss the legal principles involved in the case, based on their reading of the "Case Background Sheet." If possible, the teacher might want to have a law student or attorney present to assist with the discussion.

2) The teacher divides the class into two groups. One group will represent the Appellant in the brief writing exercise; the other will represent the Respondent.

3) The teacher assigns each student to write a brief, either for the Appellant or Respondent. The briefs should be 3-5 pages long in essay form. The briefs should contain:

a) Cause of Action--a statement of how the case reached the appellate court.

b) Statement of Facts--a brief listing of the main facts of the case.

c) Statement of Issues--a statement and analysis of the main social and legal issues involved in the case, supporting the position of either the Appellant or Respondent.

d) Statement of Decision--a statement of what the court's decision should be in the case.

c. Day Three (several days later)

1) The teacher has reviewed the briefs and assigned four students to roleplay the attorneys for the oral arguments. Two students will represent the Appellant and two the Respondent. Each student will give a separate argument based on what he/she feels to be the important issues in the case.

2) The teacher has assigned the rest of the students to sit as three-member panels of the Court of Appeal. Each panel will elect a Presiding Justice; the other two members will be Associate Justices. These panels of justices will hear the attorneys' oral arguments and make a decision in the case.

3) Each of the attorneys for the Appellant has twenty minutes to present his/her opening argument to the justices.

d. Day Four

1) Each of the attorneys for the Respondent has twenty minutes to present his/her oral argument to the justices.

2) Each of the Appellant's attorneys has five minutes to make a closing argument, rebutting the Respondent's position.

e. Day Five

1) The various panels of justices, who have previously had the opportunity to look over the written briefs on file in the classroom, meet separately to formulate their decisions.

2) The Presiding Justice of each Court of Appeal panel announces its decision and the reasons for the decision to the other panels and the attorneys.

3. After Court Ends

The teacher should review the APPELLATE COURTS with the class, summarizing with them the roles played by the various participants, the procedures followed by the court, and the decision-making process used by the justices.

SAMPLE CASE

FACT SHEET

The city of Santa Ramona has for many years operated a water treatment plant in a residential neighborhood. The homes in the area--valued at $40,000 to $50,000--were built after the treatment plant. The plant has two functions--to treat overflow waters from storms and to treat sewage. Over the years the second function has grown in importance; today the plant is the main sewage treatment facility for the entire city. Treated water and sewage from the plant are discharged directly into the Salmon River.

The Regional Water Quality Control Board--an agency of the state of California--sets standards of cleanliness for the rivers and streams in the area. The Board considers all types of pollutants and then decides the maximum allowable amount of each type of pollutant that the water can contain. Santa Ramona is required by law not to allow more pollutants into the water than the Board's standards permit. The city receives money from both the state and federal governments to assist it in meeting the Board's standards.

About a year ago the city of Santa Ramona hired a professional engineering firm to design a large addition to its main sewage treatment facility so that it could meet the stricter clean water requirements adopted by the Regional Water Quality Control Board. The city told the engineers to design a sewage treatment facility which would just barely meet the requirements.

The city and the engineers together decided to try a new method of biological sewage treatment, using a new chemical which had recently been developed by Dow Chemical Company.

When the expanded facility was finished, however, it failed to meet the Board's clean water standards.

Residents in the neighborhood complained about the terrible odor coming from the plant.

The Public Health Department found that the new facility was not able to treat sewage well enough to control the growth of bacteria. As a result, bacteria were being discharged with the water into the Salmon River.

Santa Ramona began to use large amounts of chlorine to kill the bacteria in the discharged sewage. Too much chlorine was used, however, and most of the small fry salmon traveling to the ocean from the upstream spawning grounds were killed in the river. The city then switched to other chemicals to de-chlorinate the river.

It was brought to the attention of the Attorney General that the city had failed to follow the Board's requirements and had created a nuisance by over-chlorination. The city of Santa Ramona responded that it had attempted in good faith to comply with the requirements but had been prevented from full compliance due to circumstances beyond its control. The city's attorneys pointed to the fact that the new biological treatment chemical did not work as well as expected. They pointed out that the city was not responsible for the poor technical design of the facility. They also stated that although the amounts of bacteria in the treated sewage exceeded the new stricter standards of the Regional

Water Quality Control Board, the bacteria were not present in sufficient amounts to create an immediate danger to public health.

In the meantime, however, the tomato canning season is fast approaching. The tomato canning industry is one of the largest in Santa Ramona, and the canning season is short since the tomatoes must be canned while ripe, but before they spoil.

The waste discharge from the tomato canning plants always overloads the city's sewage treatment facilities. In the past the city has prepared contingency plans to shut down the canning plants to reduce the load on the sewage treatment facility, should this become necessary to preserve the quality of the city's water. However, the city has been reluctant to shut down the canning industry because of the tremendous economic impact which would result.

The State Attorney General, therefore, has filed a lawsuit in the superior court against the city of Santa Ramona for failing to meet the requirements set up by the Regional Water Quality Control Board. The suit alleges:

--that foul odors were coming from the sewage discharge;

--that the city had failed to successfully disinfect the river;

--that the river had become toxic to fish; and

--that a high bio-oxygen demand had been created by the plant's discharge.

In the lawsuit, the Attorney General asked the court to issue a permanent injunction against the city, ordering it to actually meet the pollution control requirements. In addition, he asked the court to award damages of $6,000 for each day that violations of the requirements continued.

As a temporary solution of the situation, the Attorney General also requested that the court immediately take the following actions: (1) issue a temporary "cease and desist" order against the city to prevent further pollution while the case was awaiting trial; and (2) issue a writ of prohibition to prevent the city from dumping the waste from the tomato canning plants into the river.

Because of the limited time remaining before tomato canning season begins, these last two matters were certified by the superior court to the Court of Appeal in that district for immediate consideration and action. Both sides are quickly preparing their arguments for presentation to the appellate court.

CASE BACKGROUND SHEET

The fact situation presented in the "Santa Ramona Tomato Case" is based on the "Sacramento Tomato Case," an actual lawsuit filed by the Attorney General against the city of Sacramento several years ago. The case was settled out of court before ever going to trial. So, of course, there was no decision to appeal. Nor did the Attorney General ask an appellate court for a writ to prohibit the discharge of the tomato canning waste into the Sacramento River. However, as you read in the "Case Fact Situation," the "Santa Ramona Tomato Case" *is* now pending before the Court of Appeal, and an immediate decision must be made.

The decision in the "Santa Ramona Tomato Case"--and in any similar cases that come up in the future--must be based on the applicable laws and on earlier case decisions, interpreting these laws:

1. The Dickey Water Pollution Act, found in the California Water Code, sections 13000 and following. The Dickey Act sets up the water quality control boards, gives them the power to set standards for water pollution, and sets up the procedures by which these standards are to be enforced.

2. *People v. City of Los Angeles*, (16 Cal.App.2d 494) 1958, and *People v. New Penn Mines, Inc.*, (212 Cal.App.2d 667) 1963. These are cases in which the Attorney General tried to enforce provisions of the Dickey Act. Both cases involve a California Court of Appeal's application of the water pollution laws to the facts of the particular case.

These provisions of the Dickey Act and of the two appellate decisions, interpreting the act, which are important in your decision in the "Santa Ramona Tomato Case," are summarized below. If you like, you can refer to the actual statutes and cases, but it is not necessary to do so to reach a decision in the case.

1. The law distinguishes between "contamination" of water--which means an actual health hazard--and "pollution"--which refers to the economic and esthetic spoiling of water.

2. The State Water Quality Control Board and its regional boards have the power to set up minimum requirements for any party discharging wastes into a body of water. Cities and counties also have the right to establish even more stringent requirements if they wish.

3. Anyone who is going to discharge sewage into a body of water must first advise the Regional Water Quality Control Board so that it can set up treatment requirements for the sewage prior to discharge.

4. If the party fails to meet these requirements, then the Board is required to hold a hearing and if it finds that pollution has occurred, then it must order immediate correction.

5. If pollution continues, then the county district attorney must seek a court injunction to prevent further pollution. If he fails to act, the State Attorney General must seek such action.

6. Pollution and contamination of a body of water, by endangering the comfort and health of people, are considered an invasion of those peoples' rights.

7. Even though the fish in a polluted or contaminated river are affected, the Department of Fish and Game cannot take separate legal action, but must work through the Water Quality Control Board and appropriate legal representatives.

8. The court cannot order a city or county to install a specific type of sewage treatment facility. The court can order a city or county to stop the polluting discharge and impose a fine on the responsible party.

9. The court has the right to act before an act of pollution or contamination occurs; the threat of pollution or contamination is sufficient for injunction.

By comparing the above legal principles and the fact situation, it is clear that the city of Santa Ramona did indeed violate the minimum, measurable requirements for sewage discharge imposed by the Water Quality Control Board. It is also clear that the Attorney General had the right to request the writ of prohibition against the city in response to the threat of further pollution during the tomato canning season. However, the city had the responsibility to oppose treatment requirements which it felt were arbitrary and unrealistic given the underdeveloped state of sewage treatment technology. After hearing its arguments opposing the issuance of the writ, the city of Santa Ramona hoped that the court would order the Board to lower its pollution standards to a more realistic level.

Arguments for both the Appellant and Respondent covering such diverse points as economics, esthetics, public health, technology, and invasion of rights can be developed by considering the rights of the interested parties:

1. State Attorney General -- Appellant
   Regional Water Quality Control Board
   Department of Public Health
   Department of Fish and Game
   Treatment Plant Neighborhood Association

2. City of Santa Ramona -- Respondent
   Consulting Engineers
   Dow Chemical Company
   Tomato Growers' and Canners' Associations
   City Taxpayers' Association