CHAPTER ONE

THE NATURE, PURPOSE, AND FUNCTION OF CRIMINAL LAW

Brief History of California: Law and Justice

This chapter introduces the student to the development, structure and process of criminal law in California**.** It also includes a peek into the past of early California revealing a rich and exiting adventure, complete with Indians, stagecoaches, tough frontier town marshals, including such legends as Wyatt Earp, his brother Virgil Earp, "Judge" Roy Bean, the former Texas Ranger, Harry Love and Kit Carson. It includes even tougher outlaws, such as "Black Bart," Joaquin Murietta and Tiburcio Vasquez. It also includes famous lawmen, even private lawmen, such as the great James Hume, employed by Wells Fargo to hunt down stagecoach bandits. Count Agoston Haraszthy, a Hungarian Nobleman born in 1812, came to the United States in 1840, and became San Diego County's first Sheriff but also was a famous vintner who brought the wine industry to the Napa Valley.

Before California was actually "California," it had informal or common law, often regulated and enforced by indigenous peoples, and later by settlers, trappers, tradesmen, etc., with little thought to formal published, or "codified" laws. For centuries before the Spaniards or the white man came to what was to be known as California, the local Indian tribes had their own version of tribal or communal law that worked for eons, without ever having a written code. Only when Europeans, in the mid-1530s, began venturing into Baja California did the territory come under more formal laws, although it would be many years before the laws had any real impact on the local inhabitants.

Until Mexican independence in 1821 from the Spanish, California was a remote northern province of the nation of Mexico. It wasn't until the discovery of gold in 1848 near Sacramento that California really began to develop. This included not only the growth of population, but the civic systems, including the criminal justice system, that grew also.

When California was admitted as a state in 1850, law and law enforcement was still a challenge. The population had jumped from 100,000 in 1849 to 800,000 by 1877. Miners camped out in the hills next to their new mines, unwilling to leave their claim for a moment, fearful of "claim jumpers." Law enforcement during this period was delegated to the small mining towns that were policed by the *Alcalde*, which was a combination mayor-judge-sheriff who often made up laws, decided the case, and carried out sentences on the spot. More often than not, the miners took the law into their own hands, usually by hanging or running the accused out of town. Tough times needed tough lawmen and even tougher prisons. Alcatraz, San Quentin, and Folsom held the worst of the worst and become legends themselves. In 1851, the California legislature created a provision for *Judges of the Plains.* These were similar to a "circuit" judge and they were required to attend all rodeos or other gatherings of cattle and to decide disputes concerning ownership and the mark or brand of horses, mules, and cattle. By 1854, California's permanent capital was established in Sacramento.

Eventually, police reformers such as the great August Vollmer, and his protégé, O.W. Wilson changed not only the California police, but the entire police profession. California, under Vollmer's direction, became a model of police professionalism. University of California at Berkeley became the first school of police science, and also housed the first crime lab in the United State. The UCLA Criminology Department offered its first class in 1918.

Women in policing

Lola Baldwin[1] was named head of the Women's Protective Division of the Portland (Oregon) Police Bureau in 1908, and is considered to be the first woman hired by an American municipality to carry out regular enforcement duties. Not to be outdone, the Los Angeles Police hired Alice Stebbins Wells as their first police woman shortly afterwards. Interestingly, both agencies claim the rights to who had the first policewoman in the U.S., but this author has personally viewed the commission of Baldwin in 1908 which is in the Portland Police Bureau's Department Museum.

Ms. Wells was appointed officially on September 12, 1910 and assigned to Juvenile Probation. She was issued a Gamewell key (a key to open the fire alarm boxes), a book of rules, first aid book and a man's badge, replaced later by Policewoman's Badge #1. In 1915, she founded the International Association of Women Police which continues today to provide a forum for exchanging ideas and encouraging the use of women in important law enforcement roles. She was instrumental in the creation of the first class specifically dealing with the work of women officers. In 1928, Wells co-founded the Women Peace Officers Association of California, which still is an active organization, and served as its first president. [2]

This text will not only explore the development and application of criminal law in California but will compare it to national issues as well. This will include linking the state and federal systems of the administration of justice as they are interrelated.

THE NATURE OF CRIMINAL LAW

Historically, there is a clear evolutionary process from Common Law to codifying laws. The issue of actually defining what a crime is or is not, and setting punishments led to two key law enforcement concepts:

- The punishment must fit the crime. The 8th amendment's limitations on "excessive" bail and fines, and restrictions prohibiting "cruel and unusual" punishments are included.
- The more serious the crime, the more serious the punishment. This is articulated in California Penal Code 17, which defines the different crimes and punishments.

Defining Crime

How do we define a crime? As your text says, the easy answer is that a crime is whatever the law declares to be a criminal offense and punishes with a penalty. In effect, it's the societal forces that actually shape or mold, what is or is not socially acceptable in a given society. In our society, which is based on a largely Judeo-Christian history, our laws tend to reflect that heritage. Hence, certain acts are punishable due to violations of what today are called, "public morals," charges. In California, cities or counties may enact ordinances, referred to as either municipal or county ordinances.

Defining Crime In California

PC 15. Definition of Crime or Public Offense

A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments:

1. *Death*
2. *Imprisonment*
3. *Fine*
4. *Removal from office; or*
5. *Disqualification to hold and enjoy any office of honor, trust or profit in this State*

[1] http://www.portlandonline.com/

[2] http://www.wpoaca.com/archives/wells.html

SOURCES OF CRIMINAL LAW

Your text outlines the various sources of Criminal Law, including the development of statutory law, legislative or executive law to judicial law. There are three primary sources and California is no different. Laws are created by:

A. United States and State constitutions.
B. Statutes (Legislated)
C. Case law. This is also referred to as ***"Stare Decisis"*** or "the prior (legal) decision stands." It also is referred to as "Precedent." It may even be referred to as "Judicial Law."

A fourth source is "***Citizen Initiatives***" which can, by majority vote, and actually "create" law. California has had several of these that have been successful. They may be initiated by citizens but still must be voted on and legislated. For example, Californians recently attained a successful citizen's initiative to get "Jessica's Law," on the November, 2006 General Election ballot despite repeated defeated or refused hearings by the State Legislature. The Secretary of State certified that Jessica's Law has qualified by submitting well above the required amount of signatures necessary to place an initiative measure on the ballot.

Jessica's Law, if legislated, will increase penalties for violent and habitual sex offenders and child molesters. It would prohibit registered sex offenders from residing within 2,000 feet of any school or park, and requires lifetime Global Positioning System monitoring of felony registered sex offenders. More than 700,000 Californians signed the Jessica's Law petition which was double the 373,816 valid signatures needed. The California Secretary of State determined that over 524,000 signatures were valid – meaning more than 73% of the signatures collected were valid.

CRIMINAL AND CIVIL LAW

The text refers to the difference between civil and criminal actions. A civil action is more of an ability to seek "redress" for some wrong that is not a criminal violation. Civil actions are referred to as "***torts***," which are essentially some form of wrong to another. Typically this is some injury, damage or loss to a person or to his or her property. A tort is a means for redress, or a way to obtain compensation to the person who suffered some wrong as a result of the other person's actions. Consider the drunken driver who runs a red light and hits your car. The driver may be sued for civil actions (a tort) for negligently injuring you or damaging your property. In addition, the driver may also be criminally prosecuted for reckless driving.

The purpose of the civil action is to compensate you with money for the damage to your car and for the physical and emotional injuries you have suffered. In contrast, the criminal action punishes the driver for endangering society. Civil liability is based on a preponderance of the evidence standard while a criminal conviction carries a possible loss of liberty and is based on the higher standard of guilt: beyond a reasonable doubt.

Your text refers to the case of former football star O.J. Simpson, who was acquitted of murdering Nicole Brown Simpson and Ron Goldman in criminal court, but was found guilty in a civil court of wrongful death. As a result he was ordered to compensate the victims' families in the amount of $33.5 million. What if O.J. suddenly and publicly announced that he really did kill the victims? Would he be able to be retried? The answer is no, he would not be retried, since once you are acquitted, you cannot be charged for the same crime. This is a fundamental component of our 5th Amendment protection against "double jeopardy. In a similar case, the actor Robert Blake was acquitted also of the murder of his wife, and is also facing civil actions for her death.

COMMON LAW

Origins of California Law

While the California legal system is based on the English common law system, California law is less tied to tradition and more "people-oriented" than is the old common law. Common law is bound to the letter of the law. The California legal system is directed toward the spirit of the law. Usually when one refers to the letter of the law, one is addressing a harsh or rigid application of the law.

California recognizes no unwritten laws (i.e., no "common law"). For a law to be enforceable, it must be codified. This is referred to as "Statutory" law. For example, an arrest will not be valid under California law unless a written statute exists at the time of arrest which makes the suspect's conduct illegal and that there is a "sanction" or punishment proscribed.

PC§ 4. Rule of Common Law Has No Application

The rule of the common law, that penal statutes are to be strictly construed, has no application to this Code. All its provisions are to be construed according to the fair import of their terms, with a view to affect its objects and to promote justice.

Development of the California Penal Code

It wasn't until 1873 that the state's Penal Code was finally enacted.
PC§ 2. The California Penal Code took effect at twelve o'clock, noon, on the first day of January, eighteen hundred and seventy-three.

FEDERAL COURTS IN CALIFORNIA

Article III of the United States Constitution establishes the judicial branch as one of the three separate and distinct branches of the federal government. The other two are the legislative and executive branches.

Federal Trial Courts (District Courts)

The federal trial courts in California are part of the Ninth Federal Circuit. There are 94 federal judicial districts, including at least one district in each state, the District of Columbia and Puerto Rico. Three territories of the United States -- the Virgin Islands, Guam, and the Northern Mariana Islands -- have district courts that hear federal cases, including bankruptcy cases. In California, there are four districts; the North, South, Central and Eastern.

The largest geographical area of the four districts in California is the Eastern District. This district stretches from the Oregon border in the north to the Tehachapis in the south and from the Coastal Range in the west to the Nevada Border in the east. Main divisional offices are located in Sacramento and Fresno with outlying magistrate judges sitting in Yosemite, Redding/Susanville, South Lake Tahoe and Bakersfield.

Federal Appellate Courts (Circuit Courts)

There are 13 judicial circuits, each with a court of appeals. The smallest court is the First Circuit with six judgeships, and the largest court is the Ninth Circuit, which includes California, with 28 judgeships. A list of the states that compose each circuit is set forth in Title 28 of the U.S. Code, Section 41. The number of judgeships in each circuit is set forth in Title 28 of the U.S. Code, Section 44.

U.S. Supreme Court

California cases would have to be appealed in state appellate courts, the state Supreme Court, then the Federal Appellate courts, before being heard in the U.S. Supreme Court.

CALIFORNIA COURTS

On February 2, 1848, Mexico officially ceded California to the United States in exchange for $15 million. That same year, gold was discovered in California. The tumultuous events of the ensuing Gold Rush shaped many of the issues that would later be decided by the California Supreme Court. Law enforcement during this period was truly a rough and tumble endeavor, and not for the faint of hear.

Early Policing in California

Many of the small mining towns were policed by a local ***Alcalde*** **-** a combination mayor-judge-sheriff who often made up laws, decided the case, and carried out sentences on the spot. The **Vigilance Movements** of 1851 and 1856 were popular militia movements that arose in San Francisco during the California gold rush in response to crime and government corruption, but also had a strong element of anti-immigrant violence, and arguably created more lawlessness than they eliminated. Unfortunately, they lynched at least a dozen people, kidnapped hundreds of Irishmen and government militia members, and forced several elected officials to resign. Each subsequent ***Committee of Vigilance*** formally relinquished power after it decided the city had been "cleaned up," but the anti-immigrant aspects of its mob activity continued, later focusing on Chinese immigrants and leading to many race riots in the period leading up to the Chinese Exclusion Act of 1882.[3]

1849 Constitution

In September 1849, 48 delegates assembled at Colton Hall in Monterey to draft the State's first Constitution. Article VI of the new Constitution, covering the judicial branch, provided for a Supreme Court consisting of a Chief Justice and two associate justices. The Constitution provided that the first three justices would be elected by the state Legislature and that subsequent justices would be elected by the voters for six-year terms in contested elections. In December 1849, the new Legislature elected Serranus Clinton Hastings as California's first Chief Justice. On March 4, 1850, the court convened for the first time in San Francisco. That courtroom would later be destroyed in the Great Earthquake of 1906.

Judicial Selection in California

To be considered for appointment, a person must either have been an attorney admitted to practice in California for at least 10 years immediately preceding appointment or have served as a judge of a court of record in California. Today, the Chief Justice and six associate justices are appointed by the Governor, confirmed by the Commission on Judicial Appointments, and confirmed by the public at the next general election. A justice also comes before the voters at the end of his or her 12-year term.

[3] Wikipedia. Org: http://en.wikipedia.org/wiki/San_Francisco_Vigilance_Movement

The California judiciary has been reorganized several times to meet the needs of a growing state. Article VI of the California Constitution has been amended to not only expand the categories of cases the court could hear, but to also increase the number of Supreme Court justices from three to the current level of one Chief Justice and six associate justices, whose term of office is now 12 years. Today, the California court system is the largest in the nation, with more than 2,000 judicial officers, 19,000 court employees, and nearly 9 million cases and serves over 34 million people. The Supreme Court received 8,862 filings during fiscal year 2002–2003. Decisions of the Supreme Court are published in the California Official Reports.

Court Consolidation

In 1998, the California voters amended the Constitution to allow each county's trial judges to unify their courts, if desired, into a single countywide superior court system. Until then, separate municipal courts in each county had handled the less serious matters, such as misdemeanors, infractions, and minor civil cases. As a result, Superior Courts are the sole trial courts, and are also referred to as Courts of General Jurisdiction, for all crimes committed in the state, and appellate courts for lesser crimes - misdemeanors and infractions. All 58 counties have now consolidated their municipal courts with their respective superior courts. This restructuring has streamlined judicial branch operations statewide, resulting in improved services to the public.

California Supreme Court [4]

The California Supreme Court hears appeals from the six appellate divisions, as well as death penalty cases. Authorized by the State Constitution, the court is comprised of one Chief Justice and six Associate Justices who are appointed by the Governor, subject to confirmation by the Commission on Judicial Appointments. Their jurisdictional authority includes appeals in cases of equity, titles to and possession of real estate, taxation, probate, and death penalty cases. They may transfer cases on appeal from district courts to itself. It should be noted that all death penalty cases are automatically appealed to the Supreme Court. The court now hears cases in San Francisco, Sacramento and Los Angeles.

The California Highway Patrol provides protective services for the Supreme Court and its justices. These services include maintaining order and decorum in the courtroom during oral argument, staffing security posts at the court's quarters, ensuring the confidentiality of court work and papers, and working with other law enforcement agencies to provide security for justices traveling on court business.

Supreme Court Statistics

- The court issued 125 written opinions in 2004 –2005.
- Filings for the California Supreme Court totaled 8,990, and dispositions totaled 8,535, in 2004 –2005.
- Automatic appeals (Death Penalty) totaled 18 cases, and dispositions of automatic appeals numbered 29, in fiscal year 2004 –2005.
- Habeas corpus filings arising out of related automatic appeals totaled 40, and dispositions of such matters totaled 36, in fiscal year 2004 –2005.
- Petitions seeking review following Court of appeal decisions in appeals and writs totaled 5,410 in fiscal year 2004 –2005, while dispositions of such petitions totaled 5,135 in the same year.
  Original petitions for habeas corpus relief in noncapital cases filed in the Supreme Court totaled 3,066 in fiscal year 2004 –2005, while dispositions of this type totaled 2,849 during the same period.
- The Supreme Court ordered 16 Court of appeal opinions depublished in 2004 –2005.

[4] http://www.courtinfo.ca.gov/courts/supreme/

California Courts of Appeal

The California Appellate courts hear appeals from the county's Superior Courts. If an appeal is overturned at that level, the case may be appealed to the California Supreme Court via the U.S. There are six appellate divisions in California's court system.[5] Established by a constitutional amendment in 1904, the Courts of Appeal are California's intermediate courts of review. California has six appellate districts (two of which have multiple divisions) and a total of 105 justices. The district headquarters are situated as follows: First District, San Francisco; Second District, Los Angeles; Third District, Sacramento; Fourth District, San Diego; Fifth District, Fresno; and Sixth District, San Jose. The Legislature has constitutional authority to create new appellate districts and divisions.

Appellate Judicial Qualifications

Each district (or division, in the case of the Second and Fourth Districts) has a presiding justice and two or more associate justices. Appellate justices are appointed by the Governor and confirmed by the Commission on Judicial Appointments. The same rules that govern the selection of Supreme Court justices apply to those serving on the Courts of Appeal.

Appellate Court Statistics

- Filings for the Courts of appeal totaled 23,754 in fiscal year 2004 –2005. This figure is composed of 15,080 notices of appeal and 8,674 original proceedings.
- Filings of notices of appeal included 6,312 criminal cases, 6,142 civil cases, and 2,626 juvenile cases. Filings of original proceedings included 5,339 criminal matters, 2,517 civil matters, and 818 juvenile matters.
- Dispositions in the Courts of appeal totaled 24,358 in fiscal year 2004 –2005. Of these dispositions, 15,856 were appeals and 8,502 were original proceedings.
- Dispositions of appeals by written opinion totaled 10,975, and appeals disposed without written opinion totaled 4,881, in fiscal year 2004 –2005. Dispositions of original proceedings by written opinion totaled 772, and appeals disposed without written opinion totaled 7,730, in Fiscal year 2004 –2005.
- Of the cases disposed by written opinion in fiscal year 2004 –2005, 9,151 were affirmed, 1,198 were reversed, and 262 were dismissed.
- Statewide, 8 percent of Court of appeal majority opinions were published in 2004 –2005.

California Superior Courts [6] conduct arraignments, preliminary felony hearings, and all criminal trials. They also retain jurisdiction over juvenile matters. Since there are 58 counties in California, there are 58 Superior Court jurisdictions. [7] These courts hear both criminal and civil matters, including probate and juvenile cases. California's 58 superior courts have facilities in more than 450 locations, with about 1,600 judges.

Superior Court Statistics

- Superior court case filings across all case categories totaled 8,972,056, and dispositions totaled 7,582,573, in fiscal year 2004 –2005.

Within these aggregate numbers, the following totals in major case categories were recorded.

- Civil filings totaled 1,423,097, and civil dispositions totaled 1,294,900, in fiscal year 2004 – 2005.
- Criminal filings totaled 7,385,219, and criminal dispositions totaled 6,148,544, in fiscal year 2004 – 2005.
- Juvenile filings totaled 134,726, and juvenile dispositions totaled 112,493, in fiscal year 2004 –2005. Family filings totaled 473,205, and family dispositions totaled 392,665, in fiscal year 2004 –2005.

[5] http://www.courtinfo.ca.gov/courts/courtsofappeal/
[6] http://www.courtinfo.ca.gov/courts/trial/
[7] http://www.courtinfo.ca.gov/courts/

- Appeal filings in the superior courts totaled 4,649, and appeal dispositions in these courts totaled 4,281, in fiscal year 2004 –2005.
- Civil unlimited cases reached disposition at the following pace in fiscal year 2004 –2005: 64 percent were disposed within 12 months, 84 percent within 18 months, and 92 percent within 24 months. Civil limited cases reached disposition at a somewhat faster pace, with 83 percent disposed within 12 months, 91 percent within 18 months, and 94 percent within 24 months.
- Criminal cases reached disposition at the following pace in fiscal year 2004 –2005: 57 percent were disposed in less than 30 days, 67 percent were disposed in less than 45 days, 81 percent were disposed in less than 90 days, and 91 percent were disposed in less than 12 months.

A total of 9,952 jury trials were conducted across the state during fiscal year 2004 –2005. This represents about 4.8 trials per judicial position equivalent.

ATTORNEY GENERAL - State and Federal Roles

California has a state Attorney General. [8] Since there is also a Federal Attorney General, compare the differences from the Federal and State capacity. Both are under their respective Justice Departments (Executive branch), and are considered the top law enforcement officers within their jurisdictions. The U.S. Attorney General is appointed by the President of the United States. The Attorney General, as head of the Department of Justice and chief law enforcement officer of the Federal Government, represents the United States in legal matters generally and gives advice and opinions to the President and to the heads of the executive departments of the Government when so requested. The Attorney General appears in person to represent the Government before the U.S. Supreme Court in cases of exceptional gravity or importance.

California's Attorney General – Bill Lockyer

It is the duty of the Attorney General to see that the laws of the state are uniformly and adequately enforced (California Constitution, Article V, Section 13). The Attorney General carries out responsibilities of the office through the California Department of Justice.

In California, the Attorney General is elected by the state's citizens to a term of office.
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The Attorney General represents the people of California in civil and criminal matters before the trial, appellate, and supreme courts of California and the United States and also serves as legal counsel to state officers and (with few exceptions) to state agencies, boards, and commissions. Exceptions to the centralized legal work done on behalf of the state are listed in Section 11041 of the Government Code.

The Attorney General also assists district attorneys, local law enforcement, and federal and international criminal justice agencies in the administration of justice. To support California's law enforcement community, the Attorney General coordinates statewide narcotics enforcement efforts, participates in criminal investigations, and provides forensic science services, identification and information services, and telecommunication support.

In addition, the Attorney General establishes and operates projects and programs to protect Californians from

[8] California Attorney General's website at: http://caag.state.ca.us/

fraudulent, unfair, and illegal activities that victimize consumers or threaten public safety, and enforces laws that safeguard the environment and natural resources.

Attorney General Opinions [9]

In California, the Attorney General may issue legal opinions. While they do not have the same effect as "case law," they are used as general guidelines for local District Attorneys and the police. They are either "formal" or "informal" in nature and usually address a specific issue that has been called into question. Recent opinions can be accessed on the California Attorney General's website at: http://caag.state.ca.us/opinions/index.htm.

CALIFORNIA JURIES

In California, there are three kinds of juries: California Civil Procedure, Section 193.

(a) Grand juries
(b) Trial juries.
(c) Juries of inquest.

Grand Jury

The California Constitution requires that each county impanel a "regular" grand jury every year. Grand juries have broad powers to, among other things, investigate and report upon the conduct of local government.

For example, as early as 1890, San Francisco grand jurors issued a report denouncing extravagance and fraud in municipal government, calling attention to personal profits made by city officials on railway franchises, graft in street widening projects, padding payrolls and exorbitant prices paid for land to be used for public buildings.

Some critics say that the watchdog function of grand juries of most states have been weakened or discontinued.
A 1974 review of the California system found that "..only seven other states provide for any investigation of county government by a grand jury beyond cases alleging willful misconduct by public officials. Interestingly, only California and Nevada mandate that grand juries be impaneled annually to specifically function as a 'watchdog' over county government..".

Today, whenever the Attorney General of California considers that the public interest requires, he or she may, with or without the concurrence of the district attorney, petition the court to impanel a special grand jury to investigate, consider, or issue indictments as needed.

PC 888.2. Grand Jury; Required Number of Jurors

As used in this title as applied to a grand jury, "required number" means:

(a) Twenty-three in a county having a population exceeding 4,000,000.
(b) Eleven in a county having a population of 20,000 or less, upon the approval of the board of supervisors.
(c) Nineteen in all other counties.

[9] AG Opinions http://caag.state.ca.us/opinions/index.htm.

Indictment

PC 889. Indictment Defined
An indictment is an accusation in writing, presented by the grand jury to a competent court, charging a person with a public offense.

PC 951 Indictment or Information; Form
An indictment or information may be in substantially the following form: The people of the State of California against A. B. In the superior court of the State of California, in and for the county of ____. The grand jury (or the district attorney) of the county of ____ hereby accuses A. B. of a felony (or misdemeanor), to wit: (giving the name of the crime, as murder, burglary, etc.), in that on or about the ____ day of ____, 19__, in the county of ____, State of California, he (here insert statement of act or omission, as for example, "murdered C. D.").

The indictment must be approved by at least 12 of the 19 grand jurors (15 if it is a 23 member jury).

While surrounded by secrecy before publication, grand jury reports become public documents when signed by the grand jury foreman and the Superior Court judge. Copies are sent to all targeted government agencies, to interested officials, to public and private groups and individuals and to the press. At the end of the year, bound or loose-leaf copies of all reports are placed in all public libraries. However, prior to this procedure, remember that Grand Jury hearings are closed and essentially "secret." Keep in mind that this is a key difference between Grand Juries and Preliminary Hearings. The latter are heard in public courtrooms and open to the public, whereas the Grand Jury proceedings are closed to the public and "secret."

A "True Bill" is when the Grand Jury finds that there is enough probable cause to "bind" the person over for trial.

PC 940. Indictment; Requirements for; Procedures

An indictment cannot be found without concurrence of at least 14 grand jurors in a county in which the required number of members of the grand jury prescribed by Section 888.2 is 23, at least eight grand jurors in a county in which the required number of members is 11, and at least 12 grand jurors in all other counties. When so found it shall be endorsed, "A true bill," and the endorsement shall be signed by the foreman of the grand jury.

Grand Jury Service
Service as a grand juror is one year. Working collectively, they may investigate and respond to citizen complaints about governmental entities within their respective county, conduct studies of government operations, prepare reports of its investigations and serve as a watchdog to assure compliance with established law and regulations governing county agencies. They also complete audits of county governments, which can include inspection of county detention facilities and issue a final report.

Grand juries have jurisdiction over all local governmental entities within their county, which includes local government agencies and officials within their county.

Grand Jury Requirements
The only requirements to be a grand juror in California are that you:

- be a citizen of the United States
- be a resident of the county for at least one year prior to selection
- be 18 years or older
- possess ordinary intelligence

- have sound judgment
- be of good character
- possess sufficient knowledge of the English language to communicate both orally and in writing.

Note that there is a difference between a civil grand jury and a criminal grand jury. A criminal grand jury hears evidence of a criminal activity and returns an indictment if the evidence so dictates. A civil grand jury may investigate complaints against government entities and issues reports based on those investigations. A civil grand jury also performs a watchdog function of government activities to insure they are operating in the most efficient manner.

Grand Jury size depends on the population of the county. For example, in San Diego, there are 19 persons on the grand jury, eighteen members and a foreperson.

Citizens apply to become a member of the grand jury. Most counties now have an online or mail in application process. Applications are sent to the local office of the Jury Commissioner. The applications are reviewed by the Jury Commissioner's Office and those that qualify are made available to the Superior Court judges who may each nominate up to three people for grand jury service. An applicant may also contact any Superior Court judge and request a nomination. In San Diego for example, from the nominated applicants, a pool of 30 is drawn by lot. Then, the names of the 19 who will compose the grand jury are drawn at random and the remaining 11 are drawn to create the list of alternates.

Related Role of the Grand Jury
Grand juries potentially have a great deal of power, and this can include the power to remove a District Attorney or other city officials!

PC 922.Removal of District Attorney or County or Municipal Officers; Powers of Grand Jury
The powers and duties of the grand jury in connection with proceedings for the removal of district, county, or city officers are prescribed in Article 3 (commencing with Section 3060), Chapter 7, Division 4, Title 1, of the Government Code.

In California today, the grand jury is required by provisions of the Penal Code to:

(1) make an annual examination of the operations, accounts and records of the officers, departments or functions of the county, including any special district for which officers of the county are serving as ex-officio officers of the district;
(2) inquire into the condition and management of prisons within the county.

The grand jury may investigate or inquire into county matters of civil concern, such as the needs of county officers, including the abolition or creation of offices and the equipment for, or the method or system of performing the duties of the several offices.

Other powers permitted to the grand jury include

(1) free access, at reasonable times, to public prisons;
(2) the right to examine all public records within the county;
(3) the right to examine books and records of (a) any incorporated city or joint powers agency located in the county; (b) certain redevelopment agencies and housing authorities; (c) special-purpose assessing or taxing districts wholly or partly within the county; (d) non-profit corporations established by or operated on behalf of a public entity;
(4) the authority to investigate and report on operations and methods of performing duties in any such city or joint powers agency and to make recommendations as deemed proper;

(5) the ability, with permission of the Superior Court, to hire such experts as auditors and accountants;
(6) the right to inquire into the sale, transfer and ownership of lands which might or should escheat to the state.

The grand jury is also likely to receive a number of citizen complaints, many of which involve operations of county, city or special districts. Whether the complaint is civil or criminal, rules of secrecy apply, and the grand jury may not divulge the subject or methods of inquiry.

With so many possible investigations and a term limited to a single year, it is necessary for each grand jury to make hard decisions as to what it wishes to undertake during the term. Except for mandated duties to report on the financial condition of the county and on the conditions of county jails, the grand jury has great discretion in determining its agenda.

Most grand juries divide into committees for conducting investigations and for writing reports, but there seems to be a wide variation between counties as to the number and structure of committees; it is up to each grand jury to determine its own method of operation.

PC 924.2. Secrecy of Proceedings; Disclosure Upon Court Order

Each grand juror shall keep secret whatever he himself or any other grand juror has said, or in what manner he or any other grand juror has voted on a matter before them. Any juror, who breaks this silence, may be punished under PC 924. *Disclosure of Fact of Information or Indictment by Grand Juror; Punishment - Every grand juror who willfully discloses the fact of an information or indictment having been made for a felony, until the defendant has been arrested, is guilty of a misdemeanor.*

PC 924.1. Disclosure of Evidence by Grand Juror or Interpreter; Punishment

(a) Every grand juror who, except when required by a court, willfully discloses any evidence adduced before the grand jury, or anything which he himself or any other member of the grand jury has said, or in what manner he or she or any other grand juror has voted on a matter before them, is guilty of a misdemeanor.

Government agencies that are the subject of reports are required by law to respond to specific grand jury recommendations. However, the grand jury has no enforcement power, and the agencies are under no legal obligation to carry out the recommendations. While many recommendations are ignored, others are followed, particularly those that suggest greater efficiency for operations and that do not require the expenditure of large sums of money. Grand jury criticisms of public officials and agencies frequently attract press attention, bringing greater community awareness of what is happening in the public sector. Many grand jurors believe that public officials tend to be more accountable when they know an impartial, outside body is looking over their collective shoulders.

PC 949. First Pleading

In California, the first pleading on the part of the people in the superior court in a felony case is the indictment, information, or the complaint in any case certified to the superior court under Section 859a. The first pleading on the part of the people in a misdemeanor or infraction case is the complaint except as otherwise provided by law. The first pleading on the part of the people in a proceeding pursuant to Section 3060 of the Government Code is an accusation.

Jury Selection

California Civil Procedure: CCP 203**.** *(a) All persons are eligible and qualified to be prospective trial jurors,* ***except*** *the following:*

(1) Persons who are not citizens of the United States.
(2) Persons who are less than 18 years of age.
(3) Persons who are not domiciliaries (People who don't live in California) of the State of California, as determined pursuant to Article 2 (commencing with Section 2020) of Chapter 1 of Division 2 of the Elections Code.
(4) Persons who are not residents of the jurisdiction wherein they are summoned to serve.
(5) Persons who have been convicted of malfeasance in office or a felony, and whose ***civil*** *rights have not been restored.*
(6) Persons who are not possessed of sufficient knowledge of the English language, provided that no person shall be deemed incompetent solely because of the loss of sight or hearing in any degree or other disability which impedes the person's ability to communicate or which impairs or interferes with the person's mobility.
(7) Persons who are serving as grand or trial jurors in any court of this state.
(8) Persons who are the subject of conservatorship.

CCP 204.(a) No eligible person shall be exempt from service as a trial juror by reason of occupation, race, color, religion, sex, national origin, economic status, or sexual orientation, or for any other reason. No person shall be excused from service as a trial juror except as specified in subdivision (b). (b) An eligible person may be excused from jury service only for undue hardship, upon themselves or upon the public, as defined by the Judicial Council.

CCP 220. A trial jury shall consist of 12 persons, except that in ***civil*** *actions and cases of misdemeanor, it may consist of 12 or any number less than 12, upon which the parties may agree.*

Juror Challenges

CCP 225. A challenge is an objection made to the trial jurors that may be taken by any party to the action. These include:

Challenges for Cause:

- General disqualification--that the juror is disqualified from serving in the action on trial.
- Implied bias--as, when the existence of the facts as ascertained, in judgment of law disqualifies the juror.
- Actual bias--the existence of a state of mind on the part of the juror in reference to the case, or to any of the parties, which will prevent the juror from acting with entire impartiality, and without prejudice to the substantial rights of any party.

Peremptory challenge: A "peremptory" challenge means that either side need not articulate why the juror is excused. But, under CCP 231.5, neither the prosecution nor defense may use a peremptory challenge to remove a prospective juror on the basis of an assumption that the prospective juror is biased merely because of his or her race, color, religion, sex, national origin, sexual orientation, or similar grounds.

Public Defenders

" The mission of the San Francisco Public Defender's Office is to protect and defend the rights of our indigent clients through effective, vigorous, compassionate, and creative legal advocacy."

Public defenders have long suffered from a public perception as second rate lawyers who couldn't get a "real" job and had to "settle" for working for starvation wages as a public defender. Another "myth" is that public defenders suffer from the belief by some that they don't really work hard for their clients.

The truth is that these are "myths" or untrue stereotypes. The attorneys who chose to work as public defenders are some of the brightest, best educated, and most dedicated lawyers there are. Public Defenders practice nothing but criminal law. They don't do divorces or car accident cases or write wills. They may come from the finest law schools in the country including Harvard, Yale, Georgetown, U.C.L.A, Stanford, Boalt Hall and many others.

Because of California's system of providing indigent defense through the State and counties, salary ranges are generally commensurate with the local District Attorney's office. Public defenders tend to be passionate about their work and have dedicated their careers to criminal defense work. They believe in what they do and like doing it. Public defenders only represent their clients and are in court nearly every day. They know all the "ins and outs" of the courts in which they practice. They also try more jury trials in a year than most lawyers try in a lifetime. Because of this experience, they also know what a case is worth in a settlement. About 95% of all criminal cases settle before trial. Because they are salaried, they don't have to be concerned with the financial implications that going to trial may involve for a retained attorney and his or her client. If a public defender lawyer recommends a plea bargain, it is because he or she honestly believes it is in the client's best interest to settle the case, not because financial concerns require it. Because of state and county funding, many public defenders also have the benefit of in-house support services including professional investigative staff, an appellate division, paralegal and clerical staff, interns and law clerks. (San Diego County Public Defenders Office) [10]

Public Defender Services

- Provides indigent defendants their constitutionally guaranteed right to representation when in a court of law
- Defends persons accused of felonious crimes, including homicide and death penalty cases
- Represents clients in developmentally disabled and conservatorship cases
- Represents juveniles in delinquency cases
- Defends persons charged with misdemeanor offenses
- Provides program support in the form of legal research, investigative services, and administration

Basis for Indigent Defense in California

The move to provide indigent defense was initiated by the United States Supreme Court decision in Gideon v. Wainwright 372 U.S. 335 (1963). In Gideon, it was held that anyone facing the potential for significant incarceration if convicted of a criminal charge has the right to a free lawyer should they not be able to hire one. While this idea was not new to California, the publicity of the case created a dramatic increase in the number of defendants asking for lawyers and counties around the state and across the nation rushed to make

[10] http://www.co.san-diego.ca.us/public_defender/aboutus.html

use of long-standing laws allowing the creation of such offices. (Eventually. the facts of that case became a movie called ***Gideon's Trumpet*** starring Henry Fonda.)

Brief History of California's Public Defenders – Los Angeles County
The Public Defender concept was pioneered by the County of Los Angeles. Responding to the County Charter, the Public Defender's Office represented only those people who could not afford to retain their own attorneys.

In 1913, fifty years before Gideon v. Wainright in 1963[11], the Los Angeles Board of Supervisors appointed the first Public Defender in the United States, Walton J. Wood. The office was opened for business on January 9, 1914 and from that time has constituted a regular department of Los Angeles County government. Since then, the idea has spread and the Public Defender is now a well established concept servicing courts throughout the United States.

Today, Public Defender services in California are provided by legislative mandates and case law. The right of indigent persons to competent and effective counsel supplied by the government has been established by the United States Supreme Court in a number of specific areas: *Powell vs. Alabama* (1932) 287 U.S. 45; *Gideon vs. Wainwright* (1963) 273 U.S. 335 (felony cases); *Argersinger vs. Hamlin* (1972) 407 U.S. 25, 37-38 (misdemeanor cases); *In re Gault* (1967) 387 U.S. 1 (juvenile cases).

Additionally, California law requires a publicly funded legal defense in other proceedings: See Welfare and Institutions Code sections 317 and 300 (child dependency proceedings); Welfare and Institutions Code sections 5365 and 6500 (involuntary mental illness commitments), and Probate Code section 1470 et seq. (involuntary conservatorships).

In each of these situations, the federal constitution, state law, or both, require that counsel be provided to those who lack the means to provide their own attorneys. In California, both the state or counties are mandated to provide a legal defense for all indigent individuals who face the potential loss of significant liberty in criminal or other special proceedings initiated by local prosecutors. Legal defense services are to be provided by the local Public Defender office.

The California State Bar Act (Business and Professions Code sections 6000 through 6228) and the California Rules of Professional Conduct, govern the ethical and professional responsibilities of the Public Defender.[12]

A number of overlapping mandates apply: See the U.S. Constitution (Amendments VI and XIV); the Constitution of California (Article 1, Section 15); California Penal Code sections 686, 859, 982.2, and 987; Government Code sections 27700 and 27706; as well as local county charters.

California's State Public Defenders Office [13]

The Office of the State Public Defender was created by the California Legislature in 1976 to represent indigent criminal defendants on appeal. The office was formed in response to the need of the state appellate courts, for consistent, high-quality representation for defendants. For the first 13 years of its existence, OSPD's workload was predominantly complex non-capital felonies on appeal to the Courts of Appeal, with a

[11] Gideon v. Wainright,372 U.S. 335 (1963) This paved the way for t he Public Defender system as we know it today.
[12] http://www.acgov.org/defender/index.htm
[13] Office of the State Public Defender http://www.ospd.ca.gov/

handful of capital murder cases in the mix.

Throughout this decade, the number of condemned inmates sitting on Death Row awaiting appointment of counsel, often for years, has steadily increased. Due to this fact, since 1990, OSPD's mandate from all three branches of government has been redirected toward an exclusive focus upon death penalty cases. Cases are litigated both on appeal and habeas corpus in the California Supreme Court, and in the United States Supreme Court on certiorari petitions.

The work of the Public Defender's office is often at the cutting edge of criminal law. State Public Defenders have appeared in the California Supreme Court in over 250 cases and in the United States Supreme Court in a half dozen cases where certiorari review was granted. They have been responsible for major developments in the areas of capital litigation, due process, right to counsel, confessions, jury selection, search and seizure, sentencing and many other issues.

The agency has two regional law offices, located in Sacramento and San Francisco. The State Public Defender and the administrative staff are headquartered in San Francisco.

The office prides itself on the diversity of its lawyers and is striving to preserve and improve upon that diversity. OSPD's Outreach Directory has become a model for the State of California and has been borrowed and used by numerous government and non-government entities in their own outreach efforts. The agency draws its lawyers from many colleges, universities and law schools. The attorneys come from a wide variety of backgrounds: fresh out of law school, from county and federal public defender offices, appellate court staffs, other public interest agencies and groups, and the private sector. State Public Defender alumni include three state court judges, the directors and many of the staff members of the California Appellate Projects, the Central California Appellate Project and First District Appellate Project, as well as many prominent attorneys in the private criminal defense and civil bars.

The work of the Office of the State Public Defender is complex and challenging, and presents a unique personal and professional opportunity for those who choose a career in post-conviction criminal defense.

California's Crime Statistics

Most police departments report their crime statistics to state and federal criminal justice agencies, usually through the State's Department of Justice and or the State's Attorney General's Office. For example, California's 58 sheriffs' departments and nearly 400 police departments report their numbers on a monthly basis to the State's Justice Department. To see the most recent figures for the state's 58 counties, go to the Attorney General's website at: http://www.caag.state.ca.us/cjsc/index.htm http://www.caag.state.ca.us/cjsc/datatabs.htm.

While most crime statistics, both nationally and in California, have been showing downward trends in crimes, there are areas of "spiking," where crime rates will increase rapidly, even dramatically, due to local issues. Students should be able to access most local California police or sheriff's departments relatively easily today with web resources readily available. In California, the Criminal Justice Statistics Centers (CJSC) is responsible to:

- Collect, analyze, and report statistical data, which provide valid measures of crime and the criminal justice process;
- Examine these data on an ongoing basis to better describe crime and the criminal justice system;
- Promote the responsible presentation and use of crime statistics

THE PURPOSE OF CRIMINAL LAW

Criminal law primarily protects the interests of society while the civil law protects the interests of the individual. The primary purpose or function of the criminal law is to help to maintain social order and stability.

THE PRINCIPLES OF CRIMINAL LAW

The California legal system was derived from common law, which is largely attributed to the English. English common law originated as unwritten laws and traditions that governed the common people (working classes) of medieval England. As courts recorded their cases and decisions, a form of case law evolved. Eventually, through this evolutionary process, coupled with the increased demand for justice by the common people, a formalized legal system was developed. Criminal law is actually nothing more than an instrument of "social" control. Therefore, these social forces shape or "mold" the definition of what crime is or is not. After all, just because something wasn't written down as a "law," (*lex non scripta* – unwritten law, e.g., common law vs. *lexa scripta*- the written law or statutory, codified law) doesn't necessarily make the behavior socially acceptable. We cannot change law to fit something after the fact, as in ex post facto, but we do need to constantly be alert to the need to change law, to keep it current with modern influences. California does not recognize ex post facto laws, i.e., a retroactive criminal statute written after conduct has already occurred which would make the conduct illegal, increase the punishment, or remove a defense.

PC§ 3. Not Retroactive. No part of it (Penal Code) is retroactive, unless expressly so declared.

Today, California has become a state run by laws, codes, statutes, procedures and regulations. Virtually everything that you do in some way or another is regulated by some code. If you drink in a bar, you are under the umbrella of the state Alcohol and Beverage Control Act or Business and Professions Code. If you are smoking a cigarette, you are under the umbrella of the Health and Safety Code. If you're a minor, and smoking a cigarette or drinking while underage, even getting a tattoo, or your ears pierced, you may also be in violation of a Welfare and Institution Code, the Penal Code, the Vehicle Code or the Business and Professions code. Even sex is covered; if both parties are engaged in a sexual relationship, and even if both are consenting, but still minors (under 18), both are actually criminally liable. (PC 261.5 Unlawful Sexual Intercourse)

In addition to codes other than the Penal Code, there are a wide variety of regulatory codes, such as Fish and Game Code, Health and Safety Code, etc. Cities and counties often enact local laws (referred to also as Municipal codes, County Codes or "ordinances") to govern more specialized or localized problems and procedures. e.g., "Noise Abatement laws, Leash Laws, etc."

Defining what is or is not a crime

A definition of crime then would be; a social consideration harmful to individuals and to our institutions and therefore made punishable by law. Note the similarity to Calif. Penal Code Section 15:
PC§ 15. Definition of Crime or Public Offense
A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments:

1. *Death*
2. *Imprisonment*
3. *Fine*
4. *Removal from office or,*
5. *Disqualification to hold and enjoy any office of honor, trust or profit in this State.*

Essentially, a crime is simply an act (or omission) that has a "sanction" or punishment attached, and that the act or omission has been duly enacted under our legislative process.

Degrees of Crimes in California
The California Penal Code also separates the type and degree of crimes, from the most minor of offenses to the most severe. As a result, punishments vary from very mild, such as an "infraction," which only punishment can be a fine up to $250 and no jail time whatsoever, to jail and prison sentences, and even either life imprisonment or the death penalty.

PC§ 16. Kinds and Degrees of Crime
In California law, crimes and public offenses include:
1.Felonies
2.Misdemeanors and
3.Infractions

PC§ 17. Felony and Misdemeanor Defined
A felony is a crime which is punishable with death or by imprisonment in the state prison. Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions.

Criminal Negligence vs. Criminal Intent
In certain crimes, criminal negligence does meet the requirement of criminal intent. Negligence is the failure to exercise ordinary care. Criminal negligence is a negligent act that is aggravated or reckless and constitutes indifference to the consequences and thus, is punishable.

To clarify what "negligence" is, the California Penal Code Section 7, subsection 2, clarifies it in this way:
The words "neglect," "negligence," "negligent," and "negligently" import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

In effect, the facts must exhibit a degree of "wantonness" and a conscious disregard for life.

Review Questions

1. Why did the California courts consolidate? What was the net effect on the state?
2. Why are there both state and federal courts in California?
3. How many justices does the Supreme Court of California have and how are they selected?
4. When did the Penal Code of California go into effect?
5. What are the types of courts in California?

Web Resources

Lola Baldwin – Portland Policewoman
http://www.portlandonline.com/

Alice Wells – first Policewoman in California (LAPD)
http://www.wpoaca.com/archives/wells.html

California Case Briefs- Court Opinions
http://www.courtinfo.ca.gov/opinions/

California Case Citations: http://www.sdcpll.org/guides/2005/California%20Citations%2005.pdf

Briefing a case for appeal:
http://www.courtinfo.ca.gov/courts/courtsofappeal/2ndDistrict/proper/chapter_4.pdf

Court Info, including Statistics
California Supreme Court Historical Society: http://www.cschs.org/02_history/02_a.html
http://www.courtinfo.ca.gov/courts/trial/historic/hismariposa.htm
http://www.courtinfo.ca.gov/courts/supreme/
http://www.courtinfo.ca.gov/courts/courtsofappeal/
http://www.courtinfo.ca.gov/courts/trial/
http://www.courtinfo.ca.gov/reference/

California Attorney General
http://caag.state.ca.us/

Attorney General Opinions:
http://caag.state.ca.us/opinions/index.htm.

California Crime Statistics:
http://www.caag.state.ca.us/cjsc/misc/aboutus.htm
http://www.caag.state.ca.us/cjsc/index.htm
http://www.caag.state.ca.us/cjsc/datatabs.htm

California Department of Corrections and Rehabilitation
http://www.cdcr.ca.gov/

California Public Defender(s)
California Office of the State Public Defender
http://www.ospd.ca.gov/

Alameda County Public Defender's Office

http://www.acgov.org/defender/index.htm

Orange County Public Defenders Office
http://www.pubdef.ocgov.com/linkpdoc.htm (Links to CA PD's)

San Diego County Public Defenders Office
http://www.co.san-diego.ca.us/public_defender/aboutus.html

California Public Defenders Association
http://www.cpda.org/

National Association of Criminal Defense Lawyers
http://www.nacdl.org/public.nsf/freeform/publicwelcome?OpenDocument

California Bar Association http://www.calbar.ca.gov/

http://www.acgov.org/defender/index.htm

Office of the State Public Defender http://www.ospd.ca.gov/

Sacramento County Public Defenders Office – Organization Chart
http://www.publicdefender.saccounty.net/org-chart.html

Federal Courts: http://www.uscourts.gov/

Criminal Justice Education: http://www.cjed.com/citations.htm

Legal Research Info: http://www.publiclawlibrary.com/research.html

Findlaw: ***Chimel v. California*** http://laws.findlaw.com/us/395/752.html
Oyez.org: http://www.oyez.org/oyez/resource/case/71/

Findlaw: ***Schmerber v. California***: http://laws.findlaw.com/us/384/757.html
Oyez.org: http://www.oyez.org/oyez/resource/case/348/

Jessica's Law: www.JessicasLaw2006.com or http://jessicaslaw.com/

HOW TO FIND, INTERPRET AND BRIEF CASES

Citing Cases [14]

Assume we're going to review this case: Furman v. Georgia, and the citation is 408 U.S. 238 (1972).

Case Name
There are typically two names for a case. Usually, the first name identifies who is bringing the court action and the second name is the person against whom action is being brought. In a criminal law case action is almost always brought by the state (e.g., People or State) against a person (e.g., Joe) as in *People v. Joe* or *State v. Joe*.

However, the "defendant" may not always stay the same. In the *Furman v. Georgia* case, Furman was originally the defendant in a murder case being prosecuted in Georgia. However, Furman appealed his conviction and in doing so he became the person taking action against the state. If the state had appealed, it would be Georgia v. Furman.
The first item, the name of the case, tells us a couple of things. The first name is the person who is bringing the claim, suit or appeal forward. So Furman is the person (or entitity) bring the suit against the state of Georgia.

The first set of numbers tells us the Volume Number, 408.

The U.S., tells us the type of court the case was heard. In this case, the letters U.S. tell us it's a U.S. Supreme Court case.

The second set of numbers actually tell us on what page the case is found, in that particular volume.

The last set of numbers is the date. This case was heard in 1972. (Students should know this case anyway (Furman v. Georgia, 408 U.S. 238 (1972)as well as it's companion case, Gregg v. Georgia, 428 U.S. 153 (1976) since they were instrumental cases in regards to the death penalty. The year cited is the year in which the decision was delivered by the court. It may not be (and in appellate cases, probably isn't) the year in which the case was heard.

When using a direct quote from the case, it is important to provide the specific page on which that quote is found. In that case, the citation would have the page added as follows:

Furman v. Georgia, 408 U.S. 238, 240 (1972)

OR

Furman v. Georgia, 408 U.S. at 240 (1972)

- Because federal appeals courts (circuit courts) are found in one of twelve different districts, the specific district is typically added as follows:

  Cooper v. Pate, 382 F.2d 443 (7th Cir. 1967)

- Ninety-four federal district courts are spread throughout the country (there is at least one in every state and the more populated states have as many as four). The specific district should be identified:

  Howard v. United States, 864 F.Supp. 1019 (D. Colo. 1994)

[14] http://www.cjed.com/citations.htm

Name of Reporter
A "reporter" is a multi-volume publication where court decisions are found. The full name and abbreviations for the reporters are:

Full Name	Official Abbreviation	Type of Case Reported
United States Reports	U.S.	U.S. Supreme Court
Supreme Court Reporter	S.Ct.	U.S. Supreme Court
Federal Reporter (First through third series)	F., F.2d, and F.3d	Federal Appeals Courts
Federal Supplement (First and second series)	F.Supp, F.Supp2	Important decisions from Federal District Courts

Reading California cases [15]

Definition:
A citation is the case title of a published court decision, followed by numbers and letters in a standard format that tells where the case is located in the library. Published court decisions can serve as "precedent" to guide judges in deciding later cases that involve similar issues. Citations are used to find those precedents. A citation is the "address" that gives the case title, volume, page number, and set of books where the case is located. Many cases are published in more than one place.

For example:
Li v. Yellow Cab Co. (1975) 13 Cal.3d 804, 119 Cal.Rptr. 858, 532 P.2d 1226.
The official version of this 1975 California Supreme Court case is found in **Volume 13 of the California Reports, 3rd series at page 804**. Unofficial versions appear in Volume 119 of the California Reporter and Volume 532 of the Pacific Reporter, 2nd series.

Citation Elements:
- **Case Title.** Names of the parties (who is suing or prosecuting whom).
- **Reporter.** Abbreviated name of the set of books in which the case appears.
- **Series Number.** A publisher will periodically begin a new series of a reporter (e.g. 2nd
- Series). These are **totally new cases**, **not** a revised edition of earlier cases. A reporter without a series number is always the first series.
- **Volume and Page Number.** A volume number *precedes* the reporter abbreviation while the page number where a case begins *follows* the series number.
- **Date.** In California, the date of the decision in parentheses is placed immediately after the case title.
- **Parallel Citations.** Most California cases are published in more than one reporter. Parallel citations enable one to locate a case when the official reporter is unavailable.

Keep in mind that there are three levels to California courts:
- California Supreme Court
- California Appellate Courts
- California Superior Court

[15] http://www.sdcpll.org/guides/2005/California%20Citations%2005.pdf

THE CALIFORNIA APPELLATE COURT SYSTEM AND ITS REPORTERS: Reporters in boldface italics carry the official version of a case.

- ***California Reports*** = Cal. (1850-Present)
- Pacific Reporter = P. (1883-Present)
- California Reporter = Cal. Rptr. (1959-Present)
- ***California Appellate Reports*** = Cal.App. (1904-Present)
- Pacific Reporter = P. (1904-1959)
- California Reporter = Cal. Rptr. (1959-Present)
- No published cases
- ***California Supplement*** = Cal.App.Supp. (1930-Present)
- Pacific Reporter = P. (1930 - 1959)
- California Reporter = Cal.Rptr. (1959-Present)

California Appellate Reporters	Cal App. Cal App. 2nd Cal App. 3rd Cal App. 4th	Appellate level state court cases appear in one of the various state or regional reporters.
California Supreme Court	CA CA 2nd CA 3rd CA 4th	California cases heard by the California Supreme Court

DISPOSITION

So, what happened as a result of the court's decision? The most common dispositions include:

Affirmed; The appellate court agree with the opinion of the lower court from which the appeal came.

Reversed: The appellate court disagrees with the opinion of the lower court from which the appeal came and sets aside or invalidates that opinion. Reversals are often accompanied by a remand.

Remanded: The case is sent back to the court from which it came for further action consistent with the appellate court opinion. Remand often accompanies a reversal.

For example, in this chapter, we'll use a few California cases to review how to find and interpret cases. The first case, known as the "Arms Length" rule, established in Chimel v. California, 395 U.S. 752 (1969) basically tells us that the police can search in the immediate area under a persons control, for drugs, weapons or contraband. The second case, Schmerber v. California, 384 U.S 757, (1966) the issue was how much force can the police use to obtain a blood sample from a drunk driving suspect? Note also that once you research the cases, you'll see the progression through the California courts through the trial courts, the appellate courts and then the California Supreme Court. From there to the Federal appellate court to finally, the U.S. Supreme Court.

Case Study #1 Chimel v California 395 U.S. 752

Discussion Question: ***The Arms Length Rule*** – Just "where" can the police search when arresting someone?

In this case, police officers, armed with an arrest warrant but *not a search warrant*, were admitted to petitioner's home by his wife, where they awaited petitioner's arrival. When he entered he was served with the warrant. Although he denied the officers' request to "look around," they conducted a search of the entire house "on the basis of the lawful arrest." At petitioner's trial on burglary charges, items taken from his home were admitted over objection that they had been unconstitutionally seized.

What this case established what is now referred to as the "arms length rule." This allows police to search the arrestee's person to discover and remove weapons and to seize evidence to prevent its concealment or destruction, and may search the area *"within the immediate control"* of the person arrested, meaning the area from which they may gain possession of a weapon or destroy evidence. This would NOT include the routine search of rooms other than that in which an arrest occurs, or for searching desk drawers or other closed or concealed areas in that room itself. For that, a search warrant would be required. The case was overturned by the Supreme Court as they held that the scope of the search was unreasonable under the Fourth and Fourteenth Amendments, as it went beyond petitioner's person and the area from within which he might have obtained a weapon or something that could have been used as evidence against him, and there was no constitutional justification, in the absence of a search warrant, for extending the search beyond that area, thus establishing the "arms length rule."

Facts
The relevant facts are essentially undisputed. Late in the afternoon of September 13, 1965, three police officers arrived at the Santa Ana, California, home of the petitioner with a warrant authorizing his arrest for the burglary of a coin shop. The officers knocked on the door, identified themselves to the petitioner's wife, and asked if they might come inside. She ushered them into the house, where they waited 10 or 15 minutes until the petitioner returned home from work. When the petitioner entered the house, one of the officers handed him the arrest warrant and asked for permission to "look around." The petitioner objected, but was advised that [395 U.S. 752, 754] "on the basis of the lawful arrest," the officers would nonetheless conduct a search. No search warrant had been issued.

Accompanied by the petitioner's wife, the officers then looked through the entire three-bedroom house, including the attic, the garage, and a small workshop. In some rooms the search was relatively cursory. In the master bedroom and sewing room, however, the officers directed the petitioner's wife to open drawers and "to physically move contents of the drawers from side to side so that [they] might view any items that would have come from [the] burglary." After completing the search, they seized numerous items - primarily coins, but also several medals, tokens, and a few other objects. The entire search took between 45 minutes and an hour. At the petitioner's subsequent state trial on two charges of burglary, the items taken from his house were admitted into evidence against him, over his objection that they had been unconstitutionally seized. He was convicted, and the judgments of conviction were affirmed by both the California Court of Appeal, 61 Cal. Rptr. 714, and the California Supreme Court, 68 Cal. 2d 436, 439 P.2d 333. Both courts accepted the petitioner's contention that the arrest warrant was invalid because the supporting affidavit was set out in conclusory terms, 1 but held that since the arresting officers had procured the warrant "in good faith," and since in any event they had had sufficient information to constitute probable cause for the petitioner's arrest, that arrest had been lawful. From this conclusion the appellate courts went on to hold that the search of the petitioner's home [395 U.S. 752, 755] had been justified, despite the absence of a search warrant, on the ground that it had been incident to a valid arrest. We granted certiorari in order to consider the petitioner's substantial constitutional claims. 393 U.S. 958 .

Issue

Without deciding the question, we proceed on the hypothesis that the California courts were correct in holding that the arrest of the petitioner was valid under the Constitution. This brings us directly to the question whether the warrantless search of the petitioner's entire house can be constitutionally justified as incident to that arrest. The decisions of this Court bearing upon that question have been far from consistent, as even the most cursory review makes evident.

Approval of a warrantless search incident to a lawful arrest seems first to have been articulated by the Court in 1914 as dictum in Weeks v. United States, 232 U.S. 383 , in which the Court stated:
"What then is the present case? Before answering that inquiry specifically, it may be well by a process of exclusion to state what it is not. It is not an assertion of the right on the part of the Government, always recognized under English and American law, to search the person of the accused when legally arrested to discover and seize the fruits or evidences of crime." Id., at 392.

That statement made no reference to any right to search the place where an arrest occurs, but was limited to a right to search the "person." Eleven years later the case of Carroll v. United States, 267 U.S. 132 , brought the following embellishment of the Weeks statement:
"When a man is legally arrested for an offense, whatever is found upon his person or in his control which it is unlawful for him to have and which may be used to prove the offense may be seized and held [395 U.S. 752, 756] as evidence in the prosecution." Id., at 158. (Emphasis added.)

Still, that assertion too was far from a claim that the "place" where one is arrested may be searched so long as the arrest is valid. Without explanation, however, the principle emerged in expanded form a few months later in Agnello v. United States, 269 U.S. 20 - although still by way of dictum:
"The right without a search warrant contemporaneously to search persons lawfully arrested while committing crime and to search the place where the arrest is made in order to find and seize things connected with the crime as its fruits or as the means by which it was committed, as well as weapons and other things to effect an escape from custody, is not to be doubted. See Carroll v. United States, 267 U.S. 132, 158 ; Weeks v. United States, 232 U.S. 383, 392 ." 269 U.S., at 30

And in Marron v. United States, 275 U.S. 192 , two years later, the dictum of Agnello appeared to be the foundation of the Court's decision. In that case federal agents had secured a search warrant authorizing the seizure of liquor and certain articles used in its manufacture. When they arrived at the premises to be searched, they saw "that the place was used for retailing and drinking intoxicating liquors." Id., at 194. They proceeded to arrest the person in charge and to execute the warrant. In searching a closet for the items listed in the warrant they came across an incriminating ledger, concededly not covered by the warrant, which they also seized. The Court upheld the seizure of the ledger by holding that since the agents had made a lawful arrest, "[t]hey had a right without a warrant contemporaneously to search the place in order to find and seize the things used to carry on the criminal enterprise." Id., at 199. [395 U.S. 752, 757]

That the Marron opinion did not mean all that it seemed to say became evident, however, a few years later in Go-Bart Importing Co. v. United States, 282 U.S. 344 , and United States v. Lefkowitz, 285 U.S. 452 . In each of those cases the opinion of the Court was written by Mr. Justice Butler, the author of the opinion in Marron. In Go-Bart, agents had searched the office of persons whom they had lawfully arrested, 2 and had taken several papers from a desk, a safe, and other parts of the office. The Court noted that no crime had been committed in the agents' presence, and that although the agent in charge "had an abundance of information and time to swear out a valid [search] warrant, he failed to do so." 282 U.S., at 358 .

In holding the search and seizure unlawful, the Court stated:
"Plainly the case before us is essentially different from Marron v. United States, 275 U.S. 192 . There, officers executing a valid search warrant for intoxicating liquors found and arrested one Birdsall who in pursuance of

a conspiracy was actually engaged in running a saloon. As an incident to the arrest they seized a ledger in a closet where the liquor or some of it was kept and some bills beside the cash register. These things were visible and accessible and in the offender's immediate custody. There was no threat of force or general search or rummaging of the place." 282 U.S., at 358 .

This limited characterization of Marron was reiterated in Lefkowitz, a case in which the Court held unlawful a search of desk drawers and a cabinet despite the fact that the search had accompanied a lawful arrest. 285 U.S., at 465 .

The limiting views expressed in Go-Bart and Lefkowitz were thrown to the winds, however, in Harris v. United [395 U.S. 752, 758] States, 331 U.S. 145 , decided in 1947. In that case, officers had obtained a warrant for Harris' arrest on the basis of his alleged involvement with the cashing and interstate transportation of a forged check. He was arrested in the living room of his four-room apartment, and in an attempt to recover two canceled checks thought to have been used in effecting the forgery, the officers undertook a thorough search of the entire apartment. Inside a desk drawer they found a sealed envelope marked "George Harris, personal papers." The envelope, which was then torn open, was found to contain altered Selective Service documents, and those documents were used to secure Harris' conviction for violating the Selective Training and Service Act of 1940. The Court rejected Harris' Fourth Amendment claim, sustaining the search as "incident to arrest." Id., at 151.

Only a year after Harris, however, the pendulum swung again. In Trupiano v. United States, 334 U.S. 699 , agents raided the site of an illicit distillery, saw one of several conspirators operating the still, and arrested him, contemporaneously "seiz[ing] the illicit distillery." Id., at 702. The Court held that the arrest and others made subsequently had been valid, but that the unexplained failure of the agents to procure a search warrant - in spite of the fact that they had had more than enough time before the raid to do so - rendered the search unlawful.

The opinion stated:
"It is a cardinal rule that, in seizing goods and articles, law enforcement agents must secure and use search warrants wherever reasonably practicable. . . . This rule rests upon the desirability of having magistrates rather than police officers determine when searches and seizures are permissible and what limitations should be placed upon such activities. . . . To provide the necessary security against unreasonable intrusions upon the private lives of [395 U.S. 752, 759] individuals, the framers of the Fourth Amendment required adherence to judicial processes wherever possible. And subsequent history has confirmed the wisdom of that requirement. . . . . .
"A search or seizure without a warrant as an incident to a lawful arrest has always been considered to be a strictly limited right. It grows out of the inherent necessities of the situation at the time of the arrest. But there must be something more in the way of necessity than merely a lawful arrest." Id., at 705, 708.
In 1950, two years after Trupiano, 3 came United States v. Rabinowitz, 339 U.S. 56 , the decision upon which California primarily relies in the case now before us. In Rabinowitz, federal authorities had been informed that the defendant was dealing in stamps bearing forged overprints. On the basis of that information they secured a warrant for his arrest, which they executed at his one-room business office. At the time of the arrest, the officers "searched the desk, safe, and file cabinets in the office for about an hour and a half," id., at 59, and seized 573 stamps with forged overprints. The stamps were admitted into evidence at the defendant's trial, and this Court affirmed his conviction, rejecting the contention that the warrantless search had been unlawful.

The Court held that the search in its entirety fell within the principle giving law enforcement authorities "[t]he right `to search the place where the arrest is made in order to find and seize things connected with the crime . . . .'" Id., at 61. Harris was regarded as "ample authority" for that conclusion. Id., at 63. The opinion rejected the rule of Trupiano that "in seizing goods and articles, law enforcement agents must secure and use search

warrants [395 U.S. 752, 760] wherever reasonably practicable." The test, said the Court, "is not whether it is reasonable to procure a search warrant, but whether the search was reasonable." Id., at 66.
Rabinowitz has come to stand for the proposition, inter alia, that a warrantless search "incident to a lawful arrest" may generally extend to the area that is considered to be in the "possession" or under the "control" of the person arrested. 4 And it was on the basis of that proposition that the California courts upheld the search of the petitioner's entire house in this case. That doctrine, however, at least in the broad sense in which it was applied by the California courts in this case, can withstand neither historical nor rational analysis.

Even limited to its own facts, the Rabinowitz decision was, as we have seen, hardly founded on an unimpeachable line of authority. As Mr. Justice Frankfurter commented in dissent in that case, the "hint" contained in Weeks was, without persuasive justification, "loosely turned into dictum and finally elevated to a decision." 339 U.S., at 75 . And the approach taken in cases such as Go-Bart, Lefkowitz, and Trupiano was essentially disregarded by the Rabinowitz Court.

Nor is the rationale by which the State seeks here to sustain the search of the petitioner's house supported by a reasoned view of the background and purpose of the Fourth Amendment. Mr. Justice Frankfurter wisely pointed out in his Rabinowitz dissent that the Amendment's proscription of "unreasonable searches and seizures" [395 U.S. 752, 761] must be read in light of "the history that gave rise to the words" - a history of "abuses so deeply felt by the Colonies as to be one of the potent causes of the Revolution . . . ." 339 U.S., at 69 . The Amendment was in large part a reaction to the general warrants and warrantless searches that had so alienated the colonists and had helped speed the movement for independence. 5 In the scheme of the Amendment, therefore, the requirement that "no Warrants shall issue, but upon probable cause," plays a crucial part.

As the Court put it in McDonald v. United States, 335 U.S. 451 :
"We are not dealing with formalities. The presence of a search warrant serves a high function. Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. This was done not to shield criminals nor to make the home a safe haven for illegal activities. It was done so that an objective mind might weigh the need to invade that privacy in order to enforce the law. The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals. . . . And so the Constitution requires a magistrate to pass on the desires of the police before they violate the privacy of the home. We cannot be true to that constitutional requirement and excuse the absence of a search warrant without a showing by those who seek exemption from the constitutional mandate that the exigencies of the situation made that course imperative." Id., at 455-456. [395 U.S. 752, 762]

Even in the Agnello case the Court relied upon the rule that "[b]elief, however well founded, that an article sought is concealed in a dwelling house furnishes no justification for a search of that place without a warrant. And such searches are held unlawful notwithstanding facts unquestionably showing probable cause." 269 U.S., at 33 . Clearly, the general requirement that a search warrant be obtained is not lightly to be dispensed with, and "the burden is on those seeking [an] exemption [from the requirement] to show the need for it . . . ." United States v. Jeffers, 342 U.S. 48, 51 .

Only last Term in Terry v. Ohio, 392 U.S. 1 , we emphasized that "the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure," id., at 20, 6 and that "[t]he scope of [a] search must be `strictly tied to and justified by' the circumstances which rendered its initiation permissible." Id., at 19. The search undertaken by the officer in that "stop and frisk" case was sustained under that test, because it was no more than a "protective . . . search for weapons." Id., at 29. But in a companion case, Sibron v. New York, 392 U.S. 40 , we applied the same standard to another set of facts and reached a contrary result, holding that a policeman's action in thrusting his hand into a suspect's pocket had been neither motivated by nor limited to the objective of protection. 7 Rather, the search had been made in order to find narcotics, which were in fact found.

A similar analysis underlies the "search incident to arrest" principle, and marks its proper extent. When an [395 U.S. 752, 763] arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area "within his immediate control" - construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.

There is no comparable justification, however, for routinely searching any room other than that in which an arrest occurs - or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself. Such searches, in the absence of well-recognized exceptions, may be made only under the authority of a search warrant. 8 The "adherence to judicial processes" mandated by the Fourth Amendment requires no less.

This is the principle that underlay our decision in Preston v. United States, 376 U.S. 364 . In that case three men had been arrested in a parked car, which had later been towed to a garage and searched by police. We held the search to have been unlawful under the Fourth Amendment, despite the contention that it had [395 U.S. 752, 764] been incidental to a valid arrest. Our reasoning was straightforward:
"The rule allowing contemporaneous searches is justified, for example, by the need to seize weapons and other things which might be used to assault an officer or effect an escape, as well as by the need to prevent the destruction of evidence of the crime - things which might easily happen where the weapon or evidence is on the accused's person or under his immediate control. But these justifications are absent where a search is remote in time or place from the arrest." Id., at 367. 9

The same basic principle was reflected in our opinion last Term in Sibron. That opinion dealt with Peters v. New York, No. 74, as well as with Sibron's case, and Peters involved a search that we upheld as incident to a proper arrest. We sustained the search, however, only because its scope had been "reasonably limited" by the "need to seize weapons" and "to prevent the destruction of evidence," to which Preston had referred. We emphasized that the arresting officer "did not engage in an unrestrained and thoroughgoing examination of Peters and his personal effects. He seized him to cut short his flight, and he searched him primarily for weapons." 392 U.S., at 67 .

It is argued in the present case that it is "reasonable" to search a man's house when he is arrested in it. But that argument is founded on little more than a subjective view regarding the acceptability of certain sorts of police [395 U.S. 752, 765] conduct, and not on considerations relevant to Fourth Amendment interests. Under such an unconfined analysis, Fourth Amendment protection in this area would approach the evaporation point. It is not easy to explain why, for instance, it is less subjectively "reasonable" to search a man's house when he is arrested on his front lawn - or just down the street - than it is when he happens to be in the house at the time of arrest. 10

As Mr. Justice Frankfurter put it:
"To say that the search must be reasonable is to require some criterion of reason. It is no guide at all either for a jury or for district judges or the police to say that an `unreasonable search' is forbidden - that the search must be reasonable. What is the test of reason which makes a search reasonable? The test is the reason underlying and expressed by the Fourth Amendment: the history and the experience which it embodies and

the safeguards afforded by it against the evils to which it was a response." United States v. Rabinowitz, 339 U.S., at 83 (dissenting opinion).

Thus, although "[t]he recurring questions of the reasonableness of searches" depend upon "the facts and circumstances - the total atmosphere of the case," id., at 63, 66 (opinion of the Court), those facts and circumstances must be viewed in the light of established Fourth Amendment principles. [395 U.S. 752, 766]

It would be possible, of course, to draw a line between Rabinowitz and Harris on the one hand, and this case on the other. For Rabinowitz involved a single room, and Harris a four-room apartment, while in the case before us an entire house was searched. But such a distinction would be highly artificial. The rationale that allowed the searches and seizures in Rabinowitz and Harris would allow the searches and seizures in this case. No consideration relevant to the Fourth Amendment suggests any point of rational limitation, once the search is allowed to go beyond the area from which the person arrested might obtain weapons or evidentiary items. 11 The only reasoned distinction is one between a search of the person arrested and the area within his reach on the one hand, and more extensive searches on the other. 12 [395 U.S. 752, 767]

The petitioner correctly points out that one result of decisions such as Rabinowitz and Harris is to give law enforcement officials the opportunity to engage in searches not justified by probable cause, by the simple expedient of arranging to arrest suspects at home rather than elsewhere. We do not suggest that the petitioner is necessarily correct in his assertion that such a strategy was utilized here, 13 but the fact remains that had he been arrested earlier in the day, at his place of employment rather than at home, no search of his house could have been made without a search warrant. In any event, even apart from the possibility of such police tactics, the general point so forcefully made by Judge Learned Hand in United States v. Kirschenblatt, 16 F.2d 202, remains:

"After arresting a man in his house, to rummage at will among his papers in search of whatever will convict him, appears to us to be indistinguishable from what might be done under a general warrant; indeed, the warrant would give more protection, for presumably it must be issued by a magistrate. True, by hypothesis the power would not exist, if the supposed offender were not found on the premises; [395 U.S. 752, 768] but it is small consolation to know that one's papers are safe only so long as one is not at home." Id., at 203. Rabinowitz and Harris have been the subject of critical commentary for many years, 14 and have been relied upon less and less in our own decisions. 15 It is time, for the reasons we have stated, to hold that on their own facts, and insofar as the principles they stand for are inconsistent with those that we have endorsed today, they are no longer to be followed.

Application of sound Fourth Amendment principles to the facts of this case produces a clear result. The search here went far beyond the petitioner's person and the area from within which he might have obtained either a weapon or something that could have been used as evidence against him. There was no constitutional justification, in the absence of a search warrant, for extending the search beyond that area. The scope of the search was, therefore, "unreasonable" under the Fourth and Fourteenth Amendments, and the petitioner's conviction cannot stand. 16

Decision: Reversed.

Case Study #2: Schmerber v. California 384 U.S 757

Discussion Question: In drunk driving cases, (Driving while intoxicated - DUI) can a blood sample taken without consent violate the Fifth Amendment guarantee against self-incrimination?

Facts: Schmerber was hospitalized following an accident involving an automobile which he had been driving. He and a companion had been drinking at a tavern and bowling alley. There was evidence showing that Schmerber was driving from the bowling alley about midnight November 12, 1964, when the car skidded, crossed the road and struck a tree. Both he and his companion were injured and taken to a hospital for treatment. A police officer smelled liquor on his breath and noticed other symptoms of drunkenness at the accident scene and at the hospital, placed him under arrest, and informed him that he was entitled to counsel, that he could remain silent, and that anything he said would be used against him. At the officer's direction a physician took a blood sample from petitioner ***despite his refusal on advice of counsel to consent thereto.*** A report of the chemical analysis of the blood, which indicated intoxication, was admitted in evidence over objection at petitioner's trial for driving while intoxicated. Petitioner was convicted and the conviction was affirmed by the appellate court which rejected his claims of denial of due process, of his privilege against self-incrimination, of his right to counsel, and of his right not to be subjected to unreasonable searches and seizures.

The court said that the privilege against self-incrimination is not available to an accused in a case such as this, where there is not even a shadow of compulsion to testify against himself, or otherwise provide the State with evidence of a testimonial or communicative nature. In addition, his limited claim that he was denied his right to counsel by virtue of the withdrawal of blood over his objection on his counsel's advice, is rejected, since he acquired no right merely because counsel advised that he could assert one. The court held that in view of the substantial interests in privacy involved, petitioner's right to be free of unreasonable searches and seizures applies to the withdrawal of his blood, but under the facts in this case there was no violation of that right. The court said that there was probable cause for the arrest and the same facts as established probable cause justified the police in requiring [384 U.S. 757, 758] him to submit to a test of his blood-alcohol content. In view of the time required to bring petitioner to a hospital, the consequences of delay in making a blood test for alcohol, and the time needed to investigate the accident scene, there was no time to secure a warrant, and the clear indication that in fact evidence of intoxication would be found rendered the search an appropriate incident of petitioner's arrest. The test chosen to measure petitioner's blood-alcohol level was a reasonable one, since it was an effective means of determining intoxication, imposed virtually no risk, trauma or pain, and was performed in a reasonable manner by a physician in a hospital. This case also established that certain obtaining “compelled” “real evidence," like drawing blood, fingerprinting, and line-ups *do not violate fifth amendment provisions of self-incrimination.*

Issue: Did the blood test violate the Fifth Amendment guarantee against self-incrimination?

Decision: Affirmed (Meaning the conviction was “Upheld.”) No. Justice Brennan argued for a unanimous Court that the protection against self-incrimination applied specifically to compelled communications or testimony. Since the results of the blood test were neither "testimony nor evidence relating to some communicative act or writing by the petitioner, it was not inadmissible on *privilege grounds*."

Answers to Review Questions
Chapter 1

1. Why did the California courts consolidate? What was the net effect on the state?
A. In 1998, the California voters amended the Constitution to allow each county's trial judges to unify their courts, if desired, into a single countywide superior court system. Until then, separate municipal courts in each county had handled the less serious matters, such as misdemeanors, infractions, and minor civil cases. As a result, Superior Courts are the sole trial courts, and are also referred to as Courts of General Jurisdiction, for all crimes committed in the state, and appellate courts for lesser crimes - misdemeanors and infractions. All 58 counties have now consolidated their municipal courts with their respective superior courts. This restructuring has streamlined judicial branch operations statewide, resulting in improved services to the public.

2. Why are there both state and federal courts in California?
A. Since there are two separate entities involved, there are two separate systems. They are interdependent of each other. State courts try cases, and hear appeals on state law violations. Federal courts try and hear appeals on Federal matters. However, once state appeals are exhausted, Federal appellate courts and the U.S. Supreme Court may be involved. This is also the nature of "federalism."

3. How many justices does the Supreme Court of California have and how are they selected?
A. The court is comprised of one Chief Justice and six Associate Justices who are appointed by the Governor, subject to confirmation by the Commission on Judicial Appointments. The appointments are confirmed by the public at the next general election; justices also come before voters at the end of their 12-year terms.

4. When did the Penal Code of California go into effect?
PC§ 2. The California Penal Code took effect at twelve o'clock, noon, on the first day of January, eighteen hundred and seventy-three.

5. What are the types of courts in California?
A. Trial Courts, Appellate Courts and the California Supreme Court.