Instructional Resources
California Supreme Court Special Oral Argument Session
December 2 and 3, 2003

Superior Court of Santa Clara County
161 North First Street
San Jose, California 95113

The following Instructional Resources have been compiled through the efforts of the Court of Appeal, Sixth Appellate District, with assistance from the Court of Appeal, Fifth Appellate District, and the Santa Clara County Office of Education.

I. a. SUPREME COURT CALENDAR
SPECIAL SESSION—SAN JOSE
DECEMBER 2 and 3, 2003

The following cases are placed upon the calendar of the Supreme Court for a special session at the Superior Court of California, County of Santa Clara, 161 North First Street, San Jose, California, on December 2 and 3, 2003.

TUESDAY, DECEMBER 2, 2003—9:00 A.M.

Opening Remarks: Historical Special Session
(Morning session to be televised.)

(1) S099822 *Catholic Charities v. Superior Court, County of Sacramento; Department of Managed Health Care (R.P.I.)*
(2) S106843 *In re Jesusa V.*
(3) S109609 *E.M.M.I. Inc. v. Zurich American*

2:00 P.M.

(4) S111998 *Casa Herrera v. Beydoun*
(5) S113803 *People v. Johnson*

WEDNESDAY, DECEMBER 3, 2003—9:00 A.M.

(6) S106906 *People v. Pena*
(7) S103417 *Martin v. Szeto*
(8) S102965 *People v. Holmes*

1:30 P.M.

(9) S102371 *Metropolitan Water District v. Superior Court, County of Los Angeles; Cargill (R.P.I.)*
(10) S105078 *Richmond v. Shasta Community Services*

GEORGE
Chief Justice

If exhibits are to be transmitted to this court, counsel must comply with Rule 18(c), California Rules of Court.

I. b. CALIFORNIA SUPREME COURT SPECIAL ORAL ARGUMENT SESSION

BROADCAST SCHEDULE
December 2, 2003
8:30 a.m. to 12:30 p.m.

California Channel

8:30-9:00 1. Welcoming Remarks
California Supreme Court Special Oral Argument Session
2. Video-"Inside The California Supreme Court" and "Supreme Court Justices' Biographies"

9:00-9:10 Welcoming Remarks
Chief Justice Ronald M. George, California Supreme Court

9:10-9:30 Students Ask Questions of the California Supreme Court

9:30-10:30 **S099822, *Catholic Charities v. Superior Court, County of Sacramento; Department of Managed Health Care (R.P.I.)***

This case presents issues concerning the validity, under the provisions of the state and federal Constitutions guaranteeing the free exercise of religion, of statutes requiring employers who provide health insurance prescription coverage to include coverage for prescription contraceptives.

10:30-11:30 **S106843, *In re Jesusa V.***

This case presents the following issues: (1) Does biological paternity of one presumed father defeat a presumption of paternity of a non-biological father? (2) Does an incarcerated biological father have a statutory or due process right to be present at any hearing on paternity status?

11:30-12:30 **S109609, *E.M.M.I. Inc. v. Zurich American***

This case presents the following issue: Does a jeweler's block insurance policy provide coverage for theft of jewelry from a vehicle when an insured's employee is standing outside the vehicle at the moment it and the jewelry it contains are taken?

JUSTICES OF THE CALIFORNIA SUPREME COURT
Chief Justice
Ronald M. George

Associate Justices
Joyce L. Kennard
Marvin R. Baxter
Kathryn M. Werdegar
Ming W. Chin
Janice R. Brown
Carlos R. Moreno

For information on the California Supreme Court, including biographical information on individual Justices, visit **www.courtinfo.ca.gov/courts/supreme/**

I. c. CASE SUMMARIES
California Supreme Court of Appeal
December 2, 2003

9:30 a.m. ***Catholic Charities of Sacramento, Inc. v. Superior Court,*** **S099822**

In this case, a religious organization is challenging as unconstitutional a state law that regulates the terms of health insurance plans. The religious organization is Catholic Charities of Sacramento, Inc., a nonprofit social service organization. The law that Catholic Charities is challenging is the Women's Contraception Equity Act (the "WCEA"), also known as Health and Safety Code section 1367.25. To comply with the WCEA, health insurance plans that cover prescription drugs must also cover prescription contraceptives, such as birth control pills and intrauterine devices (IUDs). Catholic Charities' adversary in this case is the California Department of Managed Health Care, the governmental agency responsible for enforcing the WCEA.

Catholic Charities is subject to the WCEA because its employee health care plan covers prescription drugs. According to Catholic Charities' religious beliefs, however, artificial contraception is sinful. Thus, Catholic Charities cannot offer its employees coverage for prescription contraceptives, as the WCEA requires, without violating its religious beliefs. Although the WCEA contains an exception for employers who oppose artificial contraception on religious grounds, Catholic Charities does not qualify for the exception. The exception applies only to religious organizations whose purpose is the inculcation (or teaching) of religious values, who primarily hire and serve members of the same religion, and who qualify under a specific federal tax exemption for churches. Catholic Charities does not meet these requirements because it engages in a wide variety of social services other than the teaching of religion, because it hires employees and serves members of the public without regard to their religion, and because it does not qualify as a church under the relevant federal tax law.

Catholic Charities argues the WCEA violates the establishment clause and the free exercise clause of the United States and California Constitutions. These clauses are contained in the First Amendment to the United States Constitution and in article I, section 4, of the California Constitution. The *establishment clause* preserves the separation of church and state by forbidding the government from favoring one religion over another, from taking positions on matters of religious doctrine, and from interfering in the internal affairs of churches. In contrast, the *free exercise clause* protects churches and religious individuals by forbidding the government from targeting religiously motivated conduct for unfavorable treatment, for example, by prohibiting or punishing certain acts because they are done for religious reasons.

Relying on these principles, Catholic Charities contends the WCEA is unconstitutional because it rejects Catholic teachings on contraception, interferes with the internal affairs of the Catholic Church, and targets Catholic employers for unfavorable treatment by forcing them to violate their religious beliefs. In opposition, the Department of Managed Care contends the WCEA does not interfere with religious matters; instead, the law is intended to eliminate gender discrimination by reducing the costs of health care for women, who typically spend a greater percentage of their income for health care than do men.

This case raises the additional issue of whether the California Constitution provides greater protection for conduct motivated by religious belief than the United States Constitution provides. Under the United States Constitution's free exercise clause, laws that are religiously neutral and that apply generally to all persons are constitutional, even if they happen to burden the free exercise of religion. This was the United States Supreme Court's conclusion in the 1990 case of *Employment Division v. Smith* (494 U.S. 872). The California Constitution may or may not provide greater protection. Catholic Charities argues that the California Constitution's free exercise clause invalidates laws that burden religiously motivated conduct, even if the laws are neutral and generally applicable.

10:30 a.m. ***In re Jesusa V.*****, S106843**

This case centers on which of two men should be designated the legal father of a four-year-old girl named Jesusa V. Should it be Heriberto C., who is the child's biological father, who was living with the mother at the time Jesusa was born, but who cannot live with the child right now because he has been convicted of raping Jesusa's mother and is in prison? Or should it be Paul B., who has been married to the child's mother for 18 years and was married to her at the time Jesusa was born, who lives with and is the biological father of Jesusa's five half-siblings, and who currently has custody of Jesusa? (Initials are used in family law cases to protect the privacy of the persons involved.) The court will also decide whether Heriberto, who was in prison, had a statutory or constitutional right to attend the hearings on this matter or whether it was sufficient that he was represented at the hearings by his attorney.

The family court became involved in this situation when Heriberto was charged with raping and beating Jesusa's mother. Heriberto was arrested and put in jail. The mother was hospitalized. The Los Angeles County Department of Children and Family Services immediately filed a dependency petition, which enables a court to take charge of Jesusa (who was not quite two years old) to protect her from harm. The court temporarily ordered that Jesusa be placed with Paul B. The court also scheduled a hearing to determine which man—Paul B. or

Heriberto C.—should be deemed the "presumed father" of Jesusa, which is the term used for the man who has the legal right to seek custody of the child. Because Heriberto was then in jail, the court issued an order directing the county sheriff to arrange for Heriberto to come to that hearing.

In the meantime, Heriberto was convicted of the rape and sent to prison outside of Los Angeles County. As a result, Heriberto was not present at the hearing held to determine Jesusa's presumed father, although Heriberto's attorney was. At the hearing, Heriberto's attorney argued that Heriberto, as the biological father who had already established a relationship with the child, should be found to be the presumed father. Paul's attorney argued that Paul, as the mother's husband, the father of the child's five half-siblings, and the current caregiver who had also established a relationship with the child, should be found to be the presumed father. Jesusa's attorney supported Paul, as did Jesusa's mother. The family court found that both men had a good claim to be the presumed father but determined that Paul had the weightier and more logical claim.

The family court then determined that Jesusa's mother had failed to protect Jesusa, who was at home at the time of the rape, from Heriberto and ordered that Jesusa continue to live with Paul.

The Supreme Court must decide whether Heriberto had a right to be present at the hearing where the court selected Paul as the presumed father, and may also decide whether the trial court could properly find that Paul should be treated as Jesusa's legal father. The court will hear from Heriberto's attorney and the attorney for the Los Angeles County Department of Children and Family Services and may also hear from the attorney for the child, Jesusa V.

11:30 a.m. ***E.M.M.I, Inc. v. Zurich American Insurance Co.*****, S109609**

On February 17, 2000, jewelry salesperson Brian Callahan left his home with two bags containing jewelry in the trunk of his car. Some of the jewelry belonged to plaintiff E.M.M.I., Inc., a manufacturer and marketer of jewelry. Shortly after leaving his home, Callahan heard a "clanking noise" coming from the rear of the vehicle. He stopped and got out of the car to investigate the source of the noise. He left the engine running, but closed the car door. When he reached the back of the vehicle, he crouched down to look at the tailpipe. As he did this, he felt someone pass him by and then saw that person get into the vehicle and drive away. Callahan was no more that two feet from the car when the thief entered the vehicle. E.M.M.I. believes Callahan was the victim of a crime gang that lured him out of his automobile by tampering with the vehicle before he entered it.

At the time of the theft, E.M.M.I. was insured under a "Jeweler's Block" insurance policy, issued by defendant Zurich American Insurance Co. The policy insured E.M.M.I. against loss or damage to the jewelry, but did not cover jewelry stolen from a vehicle unless the salesperson was "actually in or upon such vehicle at the time of the theft." Based upon that exclusion, Zurich denied insurance coverage for the theft. E.M.M.I. sued Zurich, contending that the insurance policy covered the theft.

The Supreme Court is asked to answer two questions: (1) Must the insured company's agent be inside the vehicle at the time the theft is actually completed or is coverage provided if the agent is in the vehicle at some point between the commencement of the theft and the completion of the theft? and (2) Does the insurance policy apply only if Callahan was inside the car when the jewelry was stolen, or is it enough that he was immediately next to the vehicle?

E.M.M.I. maintains that the thief was a member of an organized crime gang that tampered with Callahan's car in order to lure him out. It argues that the insurance policy covers the theft here because the policy language "at the time of the theft" "describes a period of time starting with the commencement of a theft [tampering with the car] and ending with the culmination of the theft [driving the car away]." Under this interpretation, Callahan was "in or upon the vehicle" at some point during the theft. Zurich disagrees. It argues that the "at the time of theft" language refers only to the moment when the thief took unlawful control of Callahan's car.

Alternatively, E.M.M.I. contends that Callahan was "in or upon the vehicle" when the thief entered his car and drove away because he was "upon" the car at the time. It argues that the definition of "upon," which is interchangeable with "on," includes "in close proximity." Zurich, on the other hand, contends that Callahan was not "actually in or upon" the vehicle because he was not in direct contact with the car. According to Zurich, mere proximity is not enough.

II. b. BIOGRAPHIES OF THE SUPREME COURT JUSTICES

Ronald M. George
Chief Justice of California

The 27th Chief Justice of California, Ronald M. George, took office as Chief Justice of the state judicial system in 1996. He has served at every level of the state court system. He was Associate Justice, California Supreme Court, 1991-1996; Associate Justice, Court of Appeal, Second Appellate District (Los Angeles), 1987-1991; judge, Los Angeles County Superior Court, 1977-1987; and judge, Los Angeles Municipal Court, 1972-1977.

Chief Justice George received a J.D. from Stanford Law School and an A.B. from Princeton University. As Chief Justice, he is Chair of the Judicial Council of California, the policymaking body for state courts, and the Commission on Judicial Appointments, the panel that reviews the Governor's appointments to the state appellate courts.

Joyce L. Kennard
Associate Justice

Justice Kennard was appointed to the state's high court in 1989. She served as an Associate Justice of the Court of Appeal, Second Appellate District (Los Angeles), 1988-1989; judge of the Los Angeles County Superior Court, 1987-1988; and judge of the Los Angeles County Municipal Court, 1986-1987.

She served as a senior attorney on the state Court of Appeal, Second Appellate District, 1979-1986, and a Deputy Attorney General in Los Angeles, 1975-1979. In 1974, she graduated from the University of Southern California's Gould School of Law and at the same time received a master of public administration degree from USC's School of Public Administration.

Marvin R. Baxter
Associate Justice

Justice Baxter was appointed to the California Supreme Court in 1991. He served as Associate Justice of the Court of Appeal, Fifth Appellate District (Fresno), 1988-1991, and was Judicial and Executive Appointments Secretary for Governor George Deukmejian, 1983-1988. Before that, he was in private law practice in Fresno, 1968-1983, and served as a Fresno County Deputy District Attorney, 1966-1968. Justice Baxter received a J.D. from Hastings College of the Law and a B.A. from California State University at Fresno. After completing his undergraduate degree, he was selected in a national competition as a Coro Foundation Fellow in Public Affairs.

Kathryn M. Werdegar
Associate Justice

Justice Werdegar was appointed to the state's high court in 1994. She served on the Court of Appeal, First Appellate District (San Francisco), 1991-1994. Her legal background includes positions with the U.S. Department of Justice; Director, Criminal Law Division of California Continuing Education of the Bar; Senior Staff Attorney, California Supreme Court and Court of Appeal; and Associate Professor and Associate Dean, University of San Francisco School of Law. Justice Werdegar received law degrees from the University of California at Berkeley's Boalt Hall School of Law and George Washington University School of Law. She received a B.A. from the University of California at Berkeley.

Ming W. Chin
Associate Justice

Justice Chin was appointed to the Supreme Court in 1996. He served as Presiding Justice, Court of Appeal, First Appellate District, Division Three (San Francisco), 1994-1996; Associate Justice, Court of Appeal, First District, Division Three, 1990-1994; and judge, Alameda County Superior Court, 1988-1990. Before becoming a judge, he was partner in Aiken, Kramer & Cummings, Inc., 1976-1988, and an associate, 1973-1976. He was an Alameda County Deputy District Attorney, 1970-1972; captain in the U.S. Army, 1967-1969; and served in the Army Reserves, 1969-1971. Justice Chin received his J.D. from the University of San Francisco School of Law and B.A. from the University of San Francisco.

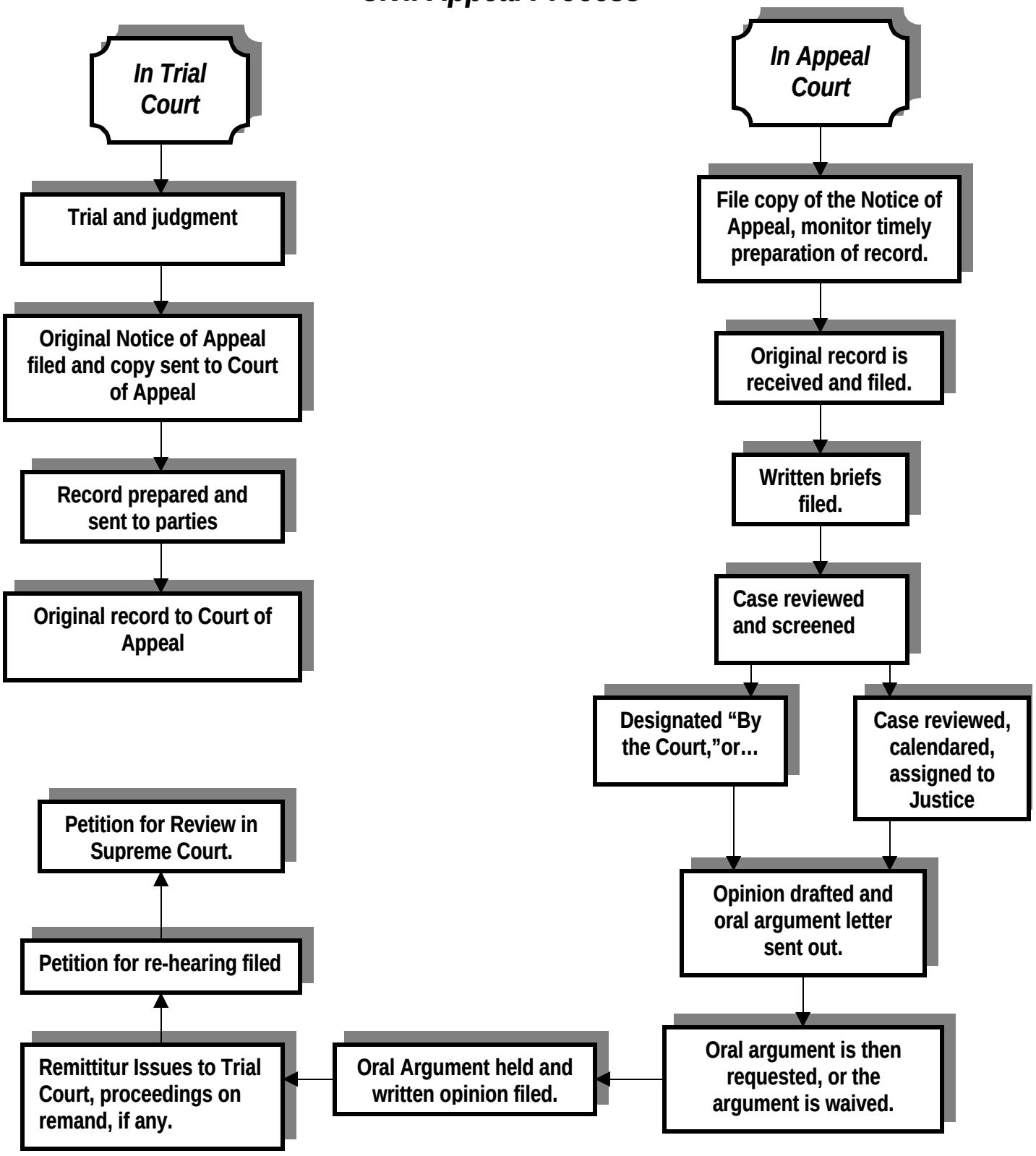
Janice R. Brown
Associate Justice

Justice Brown was appointed to the court in 1996. She served as an Associate Justice on the Court of Appeal, Third Appellate District (Sacramento), 1994-1996, and was Governor Pete Wilson's Legal Affairs Secretary, 1991-1994. Before joining the Governor's staff, Justice Brown was a senior associate at the law firm of Nielson, Merksamer, Parrinello, Mueller & Naylor, in Sacramento, 1990-1991. She previously served as Deputy Secretary and General Counsel for the state's Business, Transportation and Housing Agency for approximately three years, then worked for eight years in the Attorney General's Office, in both the criminal and civil divisions, 1979-1987.

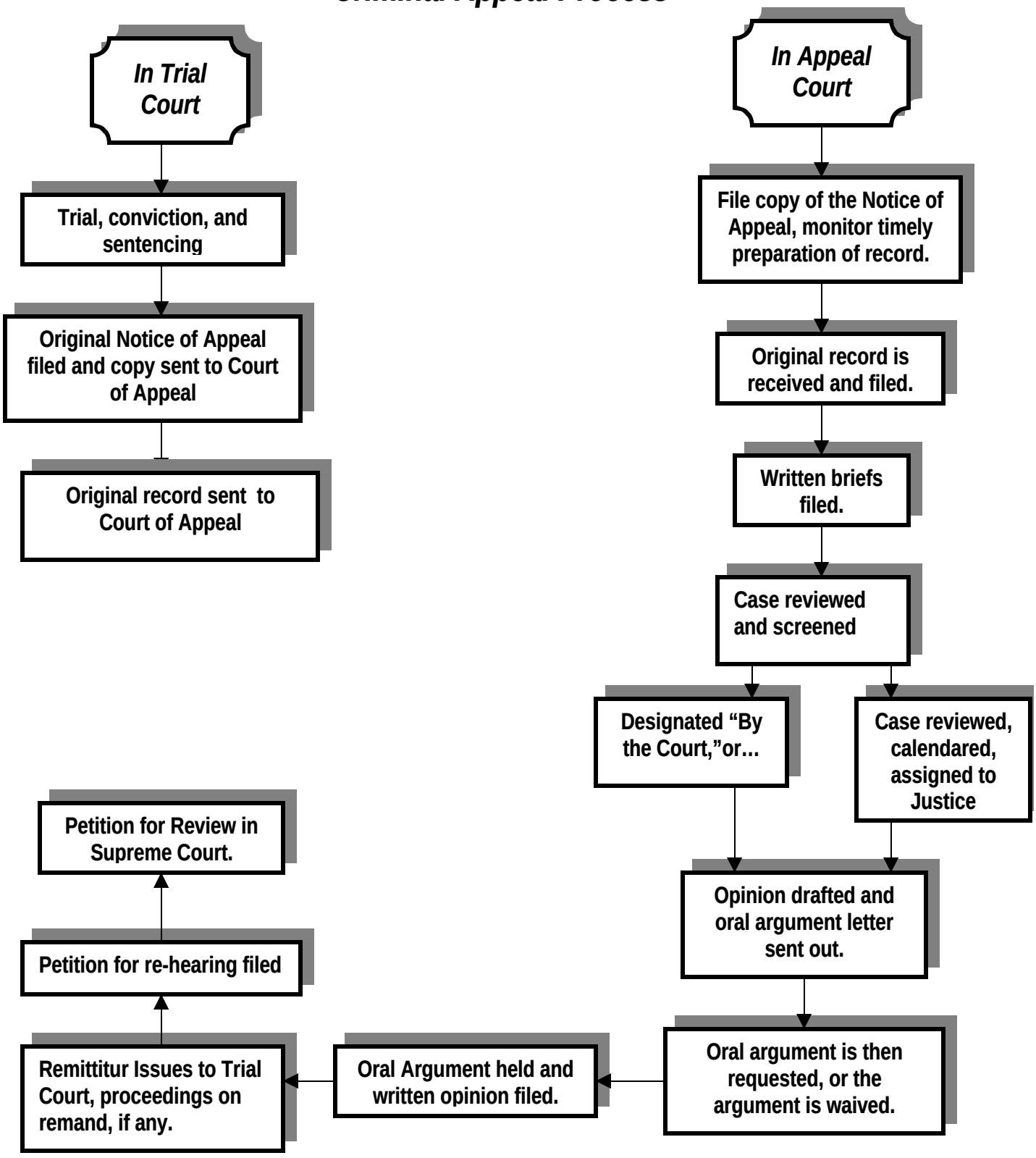
Carlos R. Moreno
Associate Justice

The most recent justice appointed to the California Supreme Court, Justice Moreno took office in October 2001. Justice Moreno was previously a judge on the United States District Court, Central District of California, 1998-2001, and served as a judge on the Los Angeles County Superior Court, 1993-1998, and the Compton Municipal Court, 1986-1994. Before his appointment to the bench, he was a Deputy City Attorney in the Los Angeles City Attorney's office and was an attorney at Kelley Drye & Warren in Los Angeles. He received his J.D. from Stanford Law School and his B.A. from Yale University.

Civil Appeal Process



Criminal Appeal Process



IV. What to Expect At Oral Argument
An Overview of the Process

Before Oral Argument:

It is important to know that oral argument is only one part of what happens when a case is reviewed by the Supreme Court. When review is granted (e.g. when the Supreme Court decides to hear a case), the record (which includes a transcript of the trial or hearing, documents filed in the lower courts, and exhibits presented at trial) and the decisions of the lower courts are transferred to the Supreme Court. The attorneys for all parties are asked to file documents called "briefs," which tend to be many pages long. In a brief, the attorney will summarize the case, identify the issues that need to be decided, and present a detailed legal argument for his or her client.

After the briefs are filed, the court schedules the case for oral argument. Before argument, the justices read the briefs and do research on the issues presented. They may also read all or part of the record. Their goal is to know the case well and to identify any questions they want to ask the attorneys.

At Oral Argument:

On the day of oral argument, usually only the attorneys appear in court. Rarely do the parties come. No evidence will be taken, no witnesses called. Oral argument is confined to a discussion of the legal issues raised by the case.

When the case is "called" (stating the name of the case and its number), the attorneys will come forward and state their names and the parties they represent. Each side has only a set amount of time in which to argue, normally 30 minutes. The appellant (or petitioner) will begin, followed by the respondent, with a short rebuttal by the appellant.

Sometimes the attorneys will begin with a statement of the facts, but often, because the court already knows the facts, the argument will begin with a short summary of a party's position, and then a justice will immediately jump in and ask a question of the attorney. Although this may appear rude, it is not. The lawyers all know that the purpose of oral argument is to answer any questions the court might have after the justices have read the briefs and reviewed the record. The issues may raise important considerations for society in general. Sometimes the discussion will become heated. The justices may not all agree with one another. The justices and the attorneys all know that this is an important process, and they value a lively, intense exchange of ideas. The

argument is taped so that if they want to, the justices can listen to the argument again later.

At the end of oral argument, the court will normally declare the matter "submitted," which simply means that the case is now ready for decision. Sometimes, the court may ask for additional briefing or ask the attorneys to provide some other information to the court for consideration. Once this information is filed, then the case will be submitted for decision.

V. Alignment to History-Social Science Content Standards

California Supreme Court Special Oral Argument Session December 2-3, 2003

Preparing students to hear the California Supreme Court oral argument and leading discussions of the event offer excellent learning opportunities that address 12th grade standards for Principles of American Democracy.

Students can build on the intellectual and participatory skills gained in previous years of study. For instance, 8th Grade Standards include "Judicial Power and Review" (8.2, 8.3); "Pluralism" (8.6, 8.7, 8.8); and "Equal Rights" (8.1, 8.11, and 8.12) Eleventh Grade Standards include "Judicial Activism" (11.10, 11.11); "Pluralism" (11.11); and "Equal Rights" (11.5, 11.10).

Study of the workings of the judicial process and some of the important issues facing our courts will add an important piece to the students' understanding of political and governmental institutions. The judiciary is one of three branches of government. The judicial power of this State is vested in the Supreme Court, the Courts of Appeal, and the Superior Courts. In a democratic society, the legislatures, and not the court, have the role of responding to the will and consequently the moral values of the people. However, our courts are the "watchdogs" of the Constitution and play an important role in the identification, definition, and protection of individual rights. This is the "enduring understanding" that students will gain from this experience.

Students can draw on their studies of United States and world history to compare different systems of government and courts in the world today. Students can also explore and understand local government with an emphasis on the importance of civic participation in community affairs. Students will be equipped with the knowledge and skills necessary to assume their responsibility as participating citizens in our democracy.

Essential Questions:

- What is the judicial branch of government? How is it organized? What is the appeal process?
- Where do the cases come from? What is "jurisdiction?"
- What role does an individual citizen have in this judicial process?
- How do courts' decisions influence our daily life?

The cases set for the California Supreme Court's Special Oral Argument Session cover a wide range of issues of great interest. Does a state law violate the doctrine of separation of church and state? Does it burden the free exercise of religious beliefs? Does the state constitution provide greater rights than the federal Constitution? To what extent can the government interfere in family affairs? What are the fundamental rights of a parent to care for his or her child? What are the essential characteristics of fatherhood? What is "due process?" How do the courts interpret written documents that affect us all in our daily lives?

California 12th Grade Standards

12.1 Students explain the fundamental principles and moral values of American Democracy as expressed in the U.S. Constitution and other essential documents of American Democracy.

12.2 Students evaluate and take and defend positions on the scope and limits of rights and obligations as democratic citizens, the relationships among them, and how they are secured.

12.3 Students evaluate and take and defend positions on what the fundamental values and principles of civil society are (i.e., the autonomous sphere of voluntary personal, social, and economic relations that are not part of government), their interdependence, and the meaning and importance of those values and principles for a free society.

12.4 Students analyze the unique roles and responsibilities of the three branches of government as established by the U.S. Constitution.

12.5 Students summarize landmark U.S. Supreme Court interpretations of the U.S. Constitution and its amendments.

12.6 Students evaluate issues regarding campaigns for national, state, and local elective offices.

12.7 Students analyze and compare the powers and procedures of the national, state, tribal and local governments.

12.9 Students analyze the development of different political systems, including human rights practices, and legitimacy of authority.

Source: Education for Democracy: California Civic Education Scope & Sequence. Los Angeles County Office of Education, CA: 2003.

VI. a. STUDY GUIDE AND BACKGROUND MATERIALS
Catholic Charities of Sacramento, Inc. v. Superior Court of Sacramento County
[*Department of Managed Health Care (Real Party in Interest)*]

The case of ***Catholic Charities of Sacramento, Inc. v. Superior Court*** will be argued before the California Supreme Court on December 2, 2003, in a special oral argument session in San Jose. The Supreme Court has prepared a summary of the case, which is included at the beginning of these materials.

This case pits the constitutional right to religious freedom against a state law involving birth control. The state law is the Women's Contraception Equity Act. It is designed to promote equity, or fairness, for women in health care coverage. It requires employers to include contraceptives in their employee health benefit plans if they offer other prescription drugs. The issue in this case is whether the state law unconstitutionally forces a church-affiliated organization, which is morally opposed to contraception, to violate its religious beliefs by including contraceptives in health care coverage provided to its women employees.

This study guide explores some of the issues presented by this important constitutional case. It is divided into four sections:

I. Summary of the Case, prepared by the Supreme Court

II. The Legal Background

A. What constitutional provisions are involved in this controversy?

B. What law is being challenged here?

III. Procedural Background—How did this case reach the California Supreme Court?

IV. Legal Issues

A. What are the primary questions that the Court will address?

B. What standards will the Supreme Court use to decide the case?

C. What other issues may arise?

I. Supreme Court Summary of the Case

In this case, a religious organization is challenging as unconstitutional a state law that regulates the terms of health insurance plans. The religious organization is Catholic Charities of Sacramento, Inc., a nonprofit social service organization. The law that Catholic Charities is challenging is the Women's Contraception Equity Act (the "WCEA"), also known as Health and Safety Code section 1367.25. To comply with the WCEA, health insurance plans that cover prescription drugs must also cover prescription contraceptives, such as birth control pills and intrauterine devices (IUDs). Catholic Charities' adversary in this case is the California Department of Managed Health Care, the governmental agency responsible for enforcing the WCEA.

Catholic Charities is subject to the WCEA because its employee health care plan covers prescription drugs. According to Catholic Charities' religious beliefs, however, artificial contraception is sinful. Thus, Catholic Charities cannot offer its employees coverage for prescription contraceptives, as the WCEA requires, without violating its religious beliefs. Although the WCEA contains an exception for employers who oppose artificial contraception on religious grounds, Catholic Charities does not qualify for the exception. The exception applies only to religious organizations whose purpose is the inculcation (or teaching) of religious values, who primarily hire and serve members of the same religion, and who qualify under a specific federal tax exemption for churches. Catholic Charities does not meet these requirements because it engages in a wide variety of social services other than the teaching of religion, because it hires employees and serves members of the public without regard to their religion, and because it does not qualify as a church under the relevant federal tax law.

Catholic Charities argues the WCEA violates the establishment clause and the free exercise clause of the United States and California Constitutions. These clauses are contained in the First Amendment to the United States Constitution and in article I, section 4, of the California Constitution. The establishment clause preserves the separation of church and state by forbidding the government from favoring one religion over another, from taking positions on matters of religious doctrine, and from interfering in the internal affairs of churches. In contrast, the free exercise clause protects churches and religious individuals by forbidding the government from targeting religiously motivated conduct for unfavorable treatment, for example, by prohibiting or punishing certain acts because they are done for religious reasons.

Relying on these principles, Catholic Charities contends the WCEA is unconstitutional because it rejects Catholic teachings on contraception, interferes with the internal affairs of the Catholic Church, and targets Catholic employers for

unfavorable treatment by forcing them to violate their religious beliefs. In opposition, the Department of Managed Care contends the WCEA does not interfere with religious matters; instead, the law is intended to eliminate gender discrimination by reducing the costs of health care for women, who typically spend a greater percentage of their income for health care than do men.

This case raises the additional issue of whether the California Constitution provides greater protection for conduct motivated by religious belief than the United States Constitution provides. Under the United States Constitution's free exercise clause, laws that are religiously neutral and that apply generally to all persons are constitutional, even if they happen to burden the free exercise of religion. This was the United States Supreme Court's conclusion in the 1990 case of *Employment Division v. Smith* (494 U.S. 872). The California Constitution may or may not provide greater protection. Catholic Charities argues that the California Constitution's free exercise clause invalidates laws that burden religiously motivated conduct, even if the laws are neutral and generally applicable.

II. Legal Background

A. What constitutional provisions are involved in this controversy?

Catholic Charities raises both federal and state constitutional protections.

The federal right to religious freedom derives from the First Amendment to the United States Constitution. (The First Amendment also protects free speech, the press, the right of peaceful assembly, and the right to petition the government.) With respect to religious freedom, the First Amendment provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Our state's guarantee of religious liberty is found in article I, section 4 of the California Constitution. The relevant part of that section reads: "Free exercise and enjoyment of religion without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or safety of the State. The Legislature shall make no law respecting an establishment of religion."

Both the federal and state constitutions thus contain (1) an **establishment clause**, which preserves the separation of church and state; and (2) a **free exercise clause**, which protects churches and individuals from government interference with the practice of their religions.

B. What law is being challenged here?

Catholic Charities is attacking a law that was passed in 1999, which is called the Women's Contraception Equity Act or WCEA. The WCEA requires employers who provide prescription drug benefits also to include coverage for FDA-approved prescription contraceptive methods. The WCEA applies to employee health plans, as set forth in the Health & Safety Code (section 1367.25). It also applies to disability insurance plans, as set forth in the Insurance Code (section 10123.196).

The WCEA provides an exemption for religious employers, which permits them to avoid covering contraceptive methods that are contrary to their religious tenets or beliefs. For an entity to qualify for exemption as a religious employer, all four of the following criteria must be true: "(A) The inculcation of religious values is the purpose of the entity. (B) The entity primarily employs persons who share the religious tenets of the entity. (C) The entity serves primarily persons who

share the religious tenets of the entity. (D) The entity is a nonprofit organization as described in Section 6033(a)(2)(A)i or iii, of the Internal Revenue Code of 1986, as amended." (The Internal Revenue Code section mentioned in the WCEA refers to a *religious* non-profit organization. Other types of non-profit entities, such as fraternal, public benefit, and educational organizations, fall under different IRS provisions.)

Catholic Charities opposes the entire law. It also claims that the exemption is unlawfully arbitrary, discriminatory, and intrusive into religious affairs.

Related Questions:

- *Is religious freedom given the same protection under the state constitution as it is under the First Amendment?*

That's one of the questions that the Supreme Court may decide in this case. Catholic Charities makes the argument that California's constitutional provision is stronger than its federal counterpart. Catholic Charities bases that argument first on differences in the language of the two provisions. It notes that the federal provision merely restricts the government from interfering with religious freedom while the state provision guarantees the free exercise of religion. Catholic Charities also cites the legislative history of the state constitutional provision in arguing that the California Legislature actually intended to offer *more* protection for religion than the First Amendment provides.

This issue has already been before the California Supreme Court in a 1990 case involving school prayer. The opinion in that case included this statement: "The California Constitution contains guarantees of the separation of religion and state in addition to those found in the federal Constitution." (*Sands v. Morongo Unified School Dist*. (1991) 53 Cal.3d 863, 882.) But that statement was made in a "lead" opinion, signed by only three of the seven members of the court; unlike a majority opinion (signed by at least four Justices), it doesn't create binding precedent. For that reason, one justice writing separately in that case observed, "any resolution of the state constitutional issues will necessarily await another day." (*Id.* at p. 902.) With the Catholic Charities case now before the Supreme Court, that day may be here.

- *Will the Supreme Court rule on the state constitutional question?*

Not necessarily. If the Supreme Court finds the WCEA unconstitutional under the federal constitution, it can invalidate the law on that ground. If the court does that, then it would not need to also decide whether the WCEA is

unconstitutional on independent state grounds. As a general rule, for reasons of judicial policy, courts don't like to extend their rulings any further than necessary.

- *If the WCEA is so controversial, how did it get passed?*

Actually, it took a while. The effort to get the law passed started in the 1993-1994 session of the California Legislature. Two bills similar to the WCEA were passed in the 1997-1998 session and reached the governor's desk. But they were vetoed. Finally, the WCEA was passed and signed into law in 1999, becoming effective January 1, 2000. Based on the legislative history of the two bills that became the WCEA, Catholic Charities claims that the Legislature specifically targeted the Catholic Church's beliefs on contraception.

- *The law applies only to employers who offer prescription drug benefits as part of their employee health and disability insurance coverage. So why doesn't Catholic Charities just avoid the law by not giving its employees a prescription drug benefit?*

The Catholic Church teaches that all employers must provide fair wages and benefits, including adequate health care coverage. A decision withholding a prescription drug benefit from its employees therefore would be inconsistent with Catholic Charities' religious beliefs.

III. Procedural Background

How did this case get to the California Supreme Court?

Only a very small number of cases end up at the California Supreme Court. For the most part, the Supreme Court can decide whether to hear a case or not. (There are a few exceptions to this rule of discretionary review, such as death penalty appeals.) Because review in the Supreme Court is discretionary, parties who want a decision from the state's highest court must first persuade the court to hear their case. The odds are very much against the Supreme Court's granting review – the Court rejects about 95% of all requests – but it may decide to hear a case if the particular area of law is unsettled or if the issue is extremely important. But before the matter has a chance of getting to the Supreme Court, it's first heard in the lower courts.

Like most cases, this one began in the trial court. There, Catholic Charities lost its bid to prevent enforcement of the Women's Contraception Equity Act. Catholic Charities then took its case to the Court of Appeal, where it lost again. However, it did succeed in persuading the Supreme Court to hear its case.

Here is a road map of the parties' procedural journey to the California Supreme Court.

How did this case begin?

Catholic Charities started this action in July 2000, by filing suit in Sacramento County. The suit was brought in the superior court, which is the state trial court. Catholic Charities sued the State of California, and more specifically its Department of Managed Health Care, the state agency responsible for enforcing the WCEA.

In its lawsuit, Catholic Charities asked the court to declare that the WCEA violates its constitutional right to religious freedom. The suit also asked for a permanent injunction against enforcement – that is, a court order that would "enjoin" (prevent) the state from ever enforcing the law. Catholic Charities also requested a **preliminary injunction**, which would temporarily prevent enforcement of the WCEA until a trial could be held.

What happened in the trial court?

The trial court refused to grant the preliminary injunction. The trial judge determined that Catholic Charities did not qualify for a preliminary injunction because it had not shown a reasonable probability that it would ultimately prevail when the case was tried. That determination was based on the trial judge's conclusion that the WCEA is constitutional. Catholic Charities asked the judge to reconsider his decision, but he did not change his mind.

Catholic Charities then sought relief in the Court of Appeal.

What happened in the Court of Appeal?

The procedural tool that Catholic Charities used to obtain appellate review is called a **petition for a writ of mandate**, which is available in some urgent cases and which usually results in a faster decision than an ordinary appeal. The Court of Appeal agreed to hear the case in this expedited fashion. But after it considered the merits of the case, the appellate court ruled against Catholic Charities.

The Court of Appeal agreed with the trial court, ruling that the WCEA is constitutional and thus there is no reasonable probability that Catholic Charities would prevail in the lawsuit. The appellate court explained its reasoning in a 58-page opinion.

- First, the court decided that the religious employer exemption in the WCEA is neutral: it applies equally to all religions and does not target the Catholic faith. That decision affected how closely the court examined the WCEA.
- Next, the court said, Catholic Charities failed to establish that the WCEA violated the federal constitutional guarantee of free exercise of religion.
- Finally, the court rejected the claims by Catholic Charities that were independently based on the California Constitution.

Having decided against Catholic Charities, the Court of Appeal denied the petition for writ of mandate. It published its decision in July 2001.

Catholic Charities asked the appellate court to reconsider its decision, by filing what's called a **petition for rehearing**. The court denied the petition, although it did modify its opinion slightly in response to some points raised in the petition. The result was still the same, however: Catholic Charities lost.

What happened next?

In August 2001, Catholic Charities filed a **petition for review**, which is a formal request to the Supreme Court, asking it to decide the case. The Supreme Court granted the petition the following month.

Once the petition for review was granted, each side filed briefs with the Supreme Court in an attempt to persuade the court to decide the case in its favor. Since then, the court has been analyzing the case. Now, the Supreme Court is ready to hear the parties' oral arguments.

Related Questions:

- *Why was the suit brought in Sacramento County?*

The place where a lawsuit is filed is called its "**venue**." In some cases, there are several counties where venue is proper. Because many state agencies are headquartered in the state capitol, suits against them are often tried in Sacramento.

- *Why is the name of the case **Catholic Charities v. Superior Court?** And why is the Department of Managed Care called a "**real party in interest**"?*

When the procedural tool used to get appellate review is a petition for a writ of mandate (as here), the **petitioner** (Catholic Charities) is asking the court of appeal to make the trial court respond and do something. So the trial court is called the "**respondent**." Here Catholic Charities is asking the Court of Appeal to order the superior court to grant the injunction. But it's the petitioner's opponent in the initial lawsuit (the Department of Managed Health Care) who is really interested in the action and will be affected by the outcome. So the Department is called the "**real party in interest**" (or RPI for short).

- *How does a petition differ from a regular appeal?*

A petition to the Court of Appeal for a writ of mandate is a way to get early appellate review of an issue, before the case has been fully and finally decided in the trial court. It's appropriate in cases where an important right may be lost if the petitioner has to wait for appellate review until the lawsuit has run its normal course through trial and appeal.

If the appellate court agrees with the petitioner that the matter is urgent, it issues either an "**alternative writ**" or an "**order to show cause**" (abbreviated OSC). The alternative writ says to the trial court: either correct the mistake that

the petitioner says you made or we might do so. By contrast, the order to show cause does not give the trial court the option of simply changing its decision. Instead, the OSC tells the trial court: show cause (convince us) why we shouldn't overturn your decision.

Even though the OSC technically is directed to the trial court, usually it's the petitioner's opponent (the real party in interest) who responds. Once that happens, the appellate court most often goes on to decide the case on the merits just as if it were a regular appeal – after written briefs and oral argument – but on a faster track.

- *Do the appellate courts have discretion to refuse to hear cases, like the Supreme Court?*

No. Unlike the Supreme Court, the Courts of Appeal must review every case that is properly presented to them.

- *The appellate court in this case published its decision. Are all appellate court opinions published?*

No. Appellate courts are required by law to issue a *written* decision in most cases, but they *publish* only the relatively small number of opinions that meet publication standards. To warrant publication, an appellate court's decision must establish new law, create or resolve a conflict in the law, involve a legal issue of continuing public interest, or make a significant contribution to legal literature. By contrast, *all* Supreme Court cases are published. When a case is published, it becomes precedent (authority) with respect to the issues it decides. Unpublished opinions are not precedent, but they are available to the public.

More than 132,000 published opinions of the Supreme Court and the Courts of Appeal from as far back as 1850 are available in law libraries or online. (www.findlaw.com)

- *Why are there both written briefs and oral arguments?*

Each has a different purpose.

Written briefs give the court information about the facts of the case, its procedural history (if it's relevant), and the legal issues presented. In the written briefs, the parties can fully and cogently argue their respective positions. And parties are required to support their arguments with legal authority, which may include statutes, case law precedent, or treatises (books written by respected legal experts). After analyzing the information in the briefs and conducting its own

research, the court has usually reached a tentative decision even before oral argument takes place.

Oral argument gives the parties the opportunity to emphasize their most important points and to respond to specific questions from the justices. In the Courts of Appeal, the parties also may present oral arguments, but they are not required to do so.

IV. Legal Issues

A. What are the primary questions that the Supreme Court will address?

In its written briefing in the Supreme Court, Catholic Charities claims that the Women's Contraception Equity Act burdens the free exercise of its religious beliefs and violates the separation of church and state. Catholic Charities complains that the Legislature "has compelled undeniably Catholic institutions to directly fund artificial contraception, a practice clearly condemned by the Catholic Church." It calls the law "an unprecedented assault upon the religious freedoms of the Catholic Church in California."

The principal issue raised by Catholic Charities is whether the law is an unconstitutional burden on the free exercise of religion, under either the federal or the state constitution.

Federal Issues:

Catholic Charities first argues that the WCEA is categorically unconstitutional under the First Amendment to the United States Constitution, because the law makes it impossible for Catholic Charities to avoid conduct that it condemns as sinful, and because the law allows state government to entangle itself in religion. According to United States Supreme Court precedent, "a law targeting religious beliefs as such is never permissible." (*Church of Lukumi Babalu Aye, Inc. v. City of Hialeah* (1993) 508 U.S. 520, 533. In that case, the nation's high court overturned a city ordinance outlawing a church's ritual animal sacrifices.)

As a fallback position, Catholic Charities argues that even if the law is not categorically unconstitutional, it still must be overturned because there is no rational basis for it.

State Issues:

In addition to its federal constitutional arguments, Catholic Charities uses the California Constitution as an independent basis for attacking the WCEA. Catholic Charities contends that California's constitutional provision protects religious liberty to an even greater degree than the First Amendment does. It argues that the WCEA is invalid under state constitutional law, even if it does not violate federal constitutional law.

B. What standards will the Supreme Court use to decide the case?

Catholic Charities wants the Supreme Court to examine the WCEA using the **"strict scrutiny" standard**. That standard applies when a law substantially burdens a sincerely held religious belief. If the law isn't neutral, or if it doesn't apply generally – in other words, if it is targeted at a religious group or practice – then it is subject to strict scrutiny. To survive a court's strict scrutiny, the law must be (1) justified by a compelling interest and (2) narrowly tailored to advance that interest. Catholic Charities argues that the WCEA would fail the strict scrutiny test.

As Catholic Charities acknowledges, however, the United States Supreme Court has abandoned the strict scrutiny test for most federal claims based on the free exercise of religion clause. The case where it did so, which the parties will probably discuss at oral argument, is called *Employment Division v. Smith* (1990) 494 U.S. 872.

If the California Supreme Court declines to apply the strict scrutiny test, it will most likely judge the WCEA against the more relaxed **"rational basis" test**. Using the rational basis test gives greater "deference" (or respect) to choices made by the Legislature. Under that less rigorous review standard, the WCEA will be upheld if the court finds that the Legislature had a rational basis for the law.

C. What other issues may arise?

As another fallback argument, Catholic Charities asserts a **"hybrid rights"** claim. A hybrid right is one that combines the right of religious freedom with another constitutional right, such as freedom of speech. According to Catholic Charities, if a law burdens a hybrid right, the court can apply the strict scrutiny test, even if that law is otherwise neutral and generally applicable. For this argument, Catholic Charities relies on an earlier California Supreme Court case that suggested the possibility that a hybrid rights claim might be valid. (That case is *Smith v. Fair Employment & Housing Com.* (1996) 12 Cal.4th 1143.)

Discussion Questions:

- Does it weaken Catholic Charities' case to make "fallback" arguments?

- As a matter of policy, should laws affecting important constitutional rights be subjected to more stringent review ("strict scrutiny") by the courts?

- The United States Supreme Court has said: “The Free Exercise Clause commits government itself to religious tolerance.” Do you think that the Women’s Contraception Equity Act shows religious tolerance?

VI. b. STUDY GUIDE AND BACKGROUND MATERIALS
In re Jesusa V.

This case, ***In re Jesusa V.***, will be argued before the California Supreme Court at a special session on December 2, 2003, in San Jose. The Supreme Court has prepared a summary of the case, which is included at the beginning of these materials.

The purpose of this study guide is to provide an overview of the area of the law known as **juvenile dependency law**, and to provide an analysis of the issues that will be considered by the Supreme Court in this case, so that students can gain a deeper understanding as they listen to the oral argument. The study guide is also intended to generate discussion in the classroom about enduring concepts in American society and in our justice system: the role of government and the courts in determining family values; the fundamental rights of individual family members versus the need to protect those unable to protect themselves; and the flexible nature of due process under the law.

The study guide is divided into the following sections:

I. Supreme Court Summary of *In Re Jesusa V.*

This case centers on which of two men should be designated the legal father of a four-year-old girl named Jesusa V. Should it be Heriberto C., who is the child's biological father, who was living with the mother at the time Jesusa was born, but who cannot live with the child right now because he has been convicted of raping Jesusa's mother and is in prison? Or should it be Paul B., who has been married to the child's mother for 18 years and was married to her at the time Jesusa was born, who lives with and is the biological father of Jesusa's five half-siblings, and who currently has custody of Jesusa? (Initials are used in family law cases to protect the privacy of the persons involved.) The court will also decide whether Heriberto, who was in prison, had a statutory or constitutional right to attend the hearings on this matter or whether it was sufficient that he was represented at the hearings by his attorney.

The family court became involved in this situation when Heriberto was charged with raping and beating Jesusa's mother. Heriberto was arrested and put in jail. The mother was hospitalized. The Los Angeles County Department of Children and Family Services immediately filed a dependency petition, which enables a court to take charge of Jesusa (who was not quite two years old) to protect her from harm. The court temporarily ordered that Jesusa be placed with Paul B. The court also scheduled a hearing to determine which man—Paul B. or Heriberto C.—should be deemed the "presumed father" of Jesusa, which is the term used for the man who has the legal right to seek custody of the child. Because Heriberto was then in jail, the court issued an order directing the county sheriff to arrange for Heriberto to come to that hearing.

In the meantime, Heriberto was convicted of the rape and sent to prison outside of Los Angeles County. As a result, Heriberto was not present at the hearing held to determine Jesusa's presumed father, although Heriberto's attorney was. At the hearing, Heriberto's attorney argued that Heriberto, as the biological father who had already established a relationship with the child, should be found to be the presumed father. Paul's attorney argued that Paul, as the mother's husband, the father of the child's five half-siblings, and the current caregiver who had also established a relationship with the child, should be found to be the presumed father. Jesusa's attorney supported Paul, as did Jesusa's mother. The family court found that both men had a good claim to be the presumed father but determined that Paul had the weightier and more logical claim.

The family court then determined that Jesusa's mother had failed to protect Jesusa, who was at home at the time of the rape, from Heriberto and ordered that Jesusa continue to live with Paul.

The Supreme Court must decide whether Heriberto had a right to be present at the hearing where the court selected Paul as the presumed father, and may also decide whether the trial court could properly find that Paul should be treated as Jesusa's legal father. The court will hear from Heriberto's attorney and the attorney for the Los Angeles County Department of Children and Family Services and may also hear from the attorney for the child, Jesusa V.

II. Overview of Juvenile Dependency Law

Juvenile dependency law is a special area of law designed to protect children and to preserve families. Dependency proceedings are governed by their own set of rules and statutes, mostly contained in the California Welfare and Institutions Code starting with section 300. Proceedings take place before a judge in juvenile court, a division of superior court. Unlike criminal law, where the State prosecutes a criminal for committing a crime and the punishment can be imprisonment, and unlike civil law, where one person sues another for money or other relief, juvenile dependency law neither prosecutes crimes nor provides a forum for adversaries to litigate their claims. Instead, it sets forth a legally enforceable system to protect children from harm and to assist the families of those children in providing the best possible environment to enable a child to grow and thrive.

It is generally recognized that the dependency system has **three fundamental goals**:

- the protection of the child;
- the preservation of the family; and
- the provision in a timely manner of a stable and permanent home for the child.

The underlying purpose of the dependency system is to serve the **"best interests of the child."**

The following is an overview of the juvenile dependency process. (See Appendix A, Flowcharts)

Emergency Response

A dependency proceeding is triggered when the county social services agency, generally called the Department of Children and Family Services, learns that a child has been harmed or is at risk of harm. This can happen through reporting to the agency by school personnel, neighbors, police, or other family members. The report is investigated and if the social worker or police officer believes the child is in immediate danger of harm, the child is removed from the family and placed in temporary protective custody.

The Dependency Petition

Within two days of removing the child, the social services agency must file a petition with the juvenile court, containing factual allegations that the child has suffered or will likely suffer physical harm, emotional damage, sexual abuse or severe neglect. Based on these allegations, the agency asks the juvenile court judge to find the child to be a "dependent child of the court," under the court's protection.

The California Legislature has determined the circumstances that justify a finding that a child should be protected by the court. These are listed in the 10 subdivisions of section 300 of the Welfare and Institutions Code. Such circumstances include the following: the child has been, or is at risk of being, physically abused; the parent has failed to supervise or protect the child; there has been sexual abuse; there has been severe emotional abuse; or the child is without any provision for support.

The allegations of the petition must fall within the descriptions contained in section 300. The petition is therefore often called a "**section 300 petition**." Once the petition is filed, it sets in motion a series of hearings before the juvenile court along a strict timeline.

The Detention Hearing

If the child has been removed from the home, a detention hearing must be held no later than one court day after the petition is filed. At this hearing the social services agency must make a preliminary showing that the child should continue to be detained. The juvenile court may rely upon police reports, reports of the social worker, and statements of the parents. If the court decides the child should continue in protective custody, the court allows for regular supervised visits between the parents and the child.

At the detention hearing, the court may also make an interim placement of the child with a relative, or, as in Jesusa's case, with another parental figure, if the court finds it is safe to do so. The court may also appoint attorneys for the parents if they are unable to afford their own attorneys, and it may appoint an attorney to represent the child. And, as is important in the case of ***In re Jesusa V.***, the court must inquire at this time as to the paternity of the child.

The Jurisdiction Hearing

If the court has ordered the child to continue to be detained in protective custody, the next hearing, the jurisdiction hearing, must be set within 15 court days. The purpose of the jurisdiction hearing is for the court to determine whether the allegations of the dependency petition are true so that the child can be made subject to the jurisdiction and protection of the court. The social services agency submits a written report to the court with recommendations based upon its investigation of the case. Similar to a regular trial, the case social worker is available to testify and be cross-examined. The parents may also testify and may call witnesses and submit any relevant documentary evidence.

If the court finds that the allegations are not true or do not fall within the circumstances described by section 300, the petition is dismissed and the case is closed. If the court finds the allegations are true and fall within the definitions of section 300, the court sustains the petition and finds that juvenile court jurisdiction over the child is proper. The court must then set the case for the next hearing, the disposition hearing, within 10 days. Often the two hearings are held together, as the juvenile court did in this case.

Disposition Hearing

At the disposition hearing, the juvenile court considers all of the evidence and charts a course for the family. The court has various options at this juncture. It may order the child to be returned to the parent who had custody. It may order the child placed outside the home either with a relative or in foster care. It may order the child placed with a parent who did not previously have custody. In addition, the juvenile court orders various services to be provided by the agency, with a goal to reunify the family.

If the child is placed outside the home, the social services agency must develop a service plan and a timeline for reunifying the family. In addition to arranging and monitoring regular visitation with the child for the parents, siblings and in some cases grandparents, services ordered by the court and provided by the agency may include parenting classes, anger management classes, domestic violence classes, drug or alcohol programs, and counseling or psychotherapy. The parent has a limited amount of time to complete the services in order to reunify with the child. This is called **the reunification period**. The outside time limit for reunification is 18 months, although services may be terminated earlier if it does not appear that the parent or parents will be able to reunify within that time. For very

young children under three years old, such as Jesusa, the reunification period is six months.

Termination of Reunification

The juvenile court reviews the progress of the case at least every six months at regular review hearings. At the end of the reunification period, a hearing is held to determine whether the child can safely be returned home. If the court finds that the parents have not completed their reunification plan and the child cannot safely be returned home, the court orders that reunification services be terminated. The case is then set for the next hearing, which must occur within 120 days and at which a parent's parental rights may be terminated forever.

Selection and Implementation Hearing

At this hearing, the court selects the best possible permanent plan for the child. If the child is found to be adoptable, adoption is considered to be the best option. In that case the parental rights of the parents are terminated so that the child can be adopted. The court may instead appoint a guardian for the child, or it may order the child placed in long-term foster care. With either of these options, parental rights are not terminated.

Related Questions and Issues for Discussion

Why is the case called ***In re Jesusa V.***? Most court proceedings are known by the names of the parties, separated by a "v." standing for "versus"--for example, *Roe v. Wade*, or *People v. Simpson.* Dependency proceedings are not considered to be adversarial in nature; rather, they are about the protection of the child. Therefore the title is the name of the child. "In re" is Latin for "*in the case of*." Initials for the last names of the child and other family members are used instead of their full names in order to protect confidentiality.

In addition to the title, dependency cases have subtitles, identifying the agency and the parent. The subtitle of this case is ***Los Angeles Department of Children and Family Services v. Heriberto C.*** Juvenile dependency proceedings are to be conducted in an informal and nonadversarial atmosphere, with the goal of cooperation of all persons interested in the child's welfare. In actuality, however, the parents and social services agencies may often be at odds and may fail to work well

together. Sometimes the case becomes "the agency against the parent," as the subtitle denotes.

Although a dependency is not a criminal proceeding, isn't it like one? The agency files a document containing allegations against the parent, often resulting in the child being removed. As a parent involved in a dependency proceeding, would this not feel like an adversarial situation to you?

Are there inherent conflicts among the three fundamental goals of the dependency law? How can the law simultaneously protect the child and preserve the family if the family situation has resulted in the child's removal?

In some dependency cases, a separate criminal proceeding may parallel the dependency proceeding. That is what happened in this case, where Heriberto was convicted of charges relating to this incident, and was sent to prison. Should an incarcerated parent still have parental rights? Does it depend on what the crime is? One court has said that "There is no 'Go to jail, lose your child' rule in California." Another court has said that the parents' fundamental interest in the care and custody of their children "does not evaporate simply because they have not been model parents." But if the parent's prison term is longer than the reunification period, is there any reason to provide the incarcerated parent with reunification services?

A citizen's privacy interests are protected by our country's Constitution. Our society also recognizes that a parent has a fundamental right to the care and custody of his or her child. What are the circumstances justifying governmental interference with these rights? Are the circumstances described in section 300 of the Welfare and Institutions Code too broad, or too narrow? For instance, what kinds of behavior could constitute "emotional abuse" sufficient to remove a child from his or her family? Or what if a family holds strict religious beliefs that include corporal punishment as a form of discipline? Who should determine what is the "best interests of child?"

III. Presumptions of Paternity—Family Code 7611

Before analyzing the issues in this case, it is necessary to have an understanding of the legal presumptions of paternity that are set forth in the Family Code, at section 7611.

Under this statute, a man is "presumed to be the natural father of a child" if he meets certain conditions. The conditions that apply in our case are that:
"(a) He and the child's natural mother are or have been married to each other and the child is born during the marriage," or
"(d) He receives the child into his home and openly holds out the child as his natural child."

In our case, Paul qualifies as a presumed father of Jesusa under subdivision (a), and Heriberto qualifies as a presumed father under subdivision (d). In addition, Heriberto is Jesusa's biological father.

A presumption under section 7611 is considered to be a **"rebuttable presumption."** Thus it may be "rebutted," meaning defeated, by clear and convincing evidence that it is not true.

The Supreme Court has recently explained that the term "natural father" in section 7611 does not *necessarily* mean biological father. Therefore, at least in dependency proceedings, "presumed father" status is not necessarily rebutted by evidence that the presumed father is not in fact the biological father of the child.

Although more than one individual may qualify under section 7611, there can be only one legally recognized "presumed father." If two or more conflicting presumptions arise under section 7611, section 7612 instructs the court to consider all the facts and to determine which presumption "is founded on the weightier considerations of policy and logic."

The man who is found by the juvenile court to be the "presumed father" is considered to be the legal father and has more rights in the dependency proceeding than a man who is "merely" the biological father, including the right to custody of the child and to receive reunification services.

A principal issue in this case is whether the juvenile court properly applied and weighed the presumptions in determining that Paul was the presumed father and not Heriberto. Heriberto argues that his status as

biological father should have carried more weight, since both men qualified as presumed fathers under the statute. He relies on California and United States Supreme Court cases recognizing that the unique relationship between parent and child is constitutionally protected and that the right to conceive and raise one's child is deemed to be an "essential" right.

The Los Angeles Department of Children and Family Services, on the other hand, argues that it is the actual parent/child relationship that is most important, regardless of biological ties. The presumptions should be used to further the purposes of dependency law, by identifying the relationship that is most likely to give the child strength and stability and to provide the best environment for the child's development.

Related Questions and Issues for Discussion

This is a developing and changing area of the law. Historically, the statutory presumptions were a means to determine who was presumed to be the natural or biological father. In recent years it has become relatively easy to establish through blood tests who is the biological father. And some courts have found that biology has become a less "weighty" factor in determining "presumed father" status. The important consideration is the nature of the parent/child relationship. How do these changes reflect social policy and family values?

The Supreme Court, in the case of *In re Nicholas H.*, held last year that if a man has established a presumption of fatherhood under 7611, the presumption cannot be defeated by a finding that he is not the biological father. In *Nicholas*, however, there was only one person seeking presumed father status. The biological father was not competing for presumed father status, as Heriberto is in this case, and the Supreme Court did not address the question whether biology should tip the scales if there are *two* competing presumed fathers, one of whom is also the biological father.

Since paternity can be established through blood tests, what purpose do the statutory presumptions serve? Why not just have the juvenile court hear all of the evidence and choose who would make the best father?

Could the language of section 7611 be clarified? For instance, would it help if the term "legal father" were substituted for "natural father?"

Can the application of the presumptions infringe on a parent's constitutional rights? The same Court of Appeal that decided ***In re Jesusa V.*** recently addressed the provision in section 7611 conditioning presumed father status on a man receiving the child into his home and holding the child out as his own. The court found this violated federal constitutional guarantees of equal protection and due process because it allowed the mother or a third party, by withholding the child, to prevent the man from demonstrating he is a presumed father. (See *In re Jerry P.* (2002) 95 Cal.App.4th 793.)

What if a man is unaware he is the biological father because the mother doesn't tell him? What if he comes forward promptly when he finds out, and is willing to assume parental responsibilities, but by that time the dependency proceedings are well underway and someone else has been declared the presumed father?

Under dependency law a presumed father has more rights than a man who is simply the biological father. He has the right to services, the right to an attorney, and the right to reunification services, whereas a mere biological father has none of these rights. If a man can establish that he has a parental relationship with the child, and has stepped up to assume family obligations, even if he is unrelated to the child, it is thought to be in the child's best interests to be with that person rather than someone related only by bloodline. Do you agree with this policy?

Just how much weight should be given to the fact that a man is the biological father? One author has written, "The parent-child connection is not spun from DNA." But where a biological father has actually participated in a child's life, should the biological tie have greater consideration? Might it be important to the child in later years to know who the biological father was, for medical history or other reasons?

Should a man who has impregnated a woman by force have any rights to the child, even if he wishes to take on parental responsibilities?

IV. What Happened in This Case in the Juvenile Court Proceedings?

According to Jesusa's mother, she had been living with Heriberto C. for "about three years" at the time this case began. She was living with Heriberto when Jesusa was born and she said he was Jesusa's biological father. The mother had been married to another man, Paul B., for 18 years. She had five children with him, the oldest of whom was 17. All of these children lived with Paul. Although the mother had been separated from Paul for several years, they still maintained friendly relations.

Heriberto's relationship with the mother was a stormy one. He became violent with her when he was drinking and the mother often took Jesusa and went to stay with Paul and the other children to get away from Heriberto's violence. The mother testified, however, that Heriberto did not harm Jesusa. She said he had "always been very loving and gentle" to his daughter.

On April 1, 2001, Heriberto beat and raped the mother. When he went out for beer, she went to the hospital, leaving two-year-old Jesusa asleep at home. The mother was seven months pregnant at the time. Heriberto was arrested and Jesusa was taken into protective custody.

The Los Angeles County Department of Children and Family Services filed a section 300 petition alleging that the child had been "exposed to violent confrontations" between her mother and Heriberto, that Heriberto had a history of violence and that the mother had been unable to protect her child from exposure to violence.

At the detention hearing, Paul B. made an appearance in court but Heriberto, who was in jail, did not. Paul asked to have Jesusa placed temporarily with him, and the mother agreed with this. The mother told the court that Heriberto was the biological father of Jesusa but that she was still married to Paul. The court released Jesusa to Paul and asked that both men submit written arguments as to who should be declared to be the legal father of Jesusa. The court also ordered that Heriberto be transported to the next hearing.

In written argument, Heriberto denied the allegations of the section 300 petition, and he asked the court to declare him to be the "presumed father" of Jesusa. He stated he had been living with the mother during Jesusa's conception, birth, and infancy, that he had received her into his home as his daughter, and that he was her biological father. Paul also asked the court for "presumed father" status. He argued that he had spent "a significant amount of time" with Jesusa

when the mother sought shelter with him due to conflicts with Heriberto. Jesusa had bonded with him and with her half-siblings. He had provided emotional and financial support to Jesusa and to the mother. The mother, the attorney representing Jesusa, and the social worker for the Department all supported Paul's position.

When the hearing to decide paternity convened, Heriberto was not present. He had been transferred to a prison out of the county. His attorney read a letter from Heriberto stating that he wanted to be present personally and he asked that the hearing be rescheduled. The court denied the request and proceeded with the hearing.

On the issue as to who was the legal father of Jesusa, the juvenile court judge found that Heriberto was the biological father and that both Heriberto and Paul qualified as presumed fathers under Family Code 7611. However, the court concluded that Paul's claims carried more weight and found Paul to be the presumed father. The court then sustained the petition and took jurisdiction over Jesusa. The court ordered Jesusa to be placed in Paul's home, ordered reunification services for the mother, and denied any reunification services for Heriberto.

Heriberto appealed his case to the Court of Appeal for Los Angeles County, which is one of six appellate districts in the state.

Related Questions and Issues for Discussion

The juvenile court found that even though the mother and Paul had been separated for three years, they had a "familial relationship." The mother, Heriberto and Jesusa also had a "familial" relationship since she was their biological child and they all lived together. If "preserving the integrity of the family" is a goal of the dependency system, did the court accomplish this? Would there be any situation where "preservation of the family" could mean both families could be preserved?

Since there can be only one legal father under dependency law, the juvenile court was required to choose between Paul and Heriberto, and decide which placement would be in Jesusa's best interests. Did it matter that Heriberto was a convicted felon and Paul was not? Did the court, as Heriberto claims, simply choose the man who seemed to be "the better person?"

Why did the court refuse to postpone the hearing until Heriberto could be transported from prison, especially since the court had issued an order at the

previous hearing to have him transported to court? Could Heriberto have made a stronger case for himself if he had been there in person?

Since Heriberto's prison term was longer than the reunification period in this case, and he could therefore not take custody of Jesusa, how would he have benefited in this case by being declared the "presumed father?"

V. What Did The Court of Appeal Decide?

Heriberto basically argued two points in his appeal. 1) The juvenile court should have found he was the "presumed father." If both he and Paul qualified under the statutory presumptions, the fact that he was Jesusa's biological father should tip the scales in his favor. 2) The juvenile court should not have conducted the hearing to decide who was the legal father and to determine jurisdiction over Jesusa without him being present personally. He claimed this violated his constitutional right to due process and his rights under dependency law to be present and have a meaningful opportunity to be heard.

The Court of Appeal affirmed the juvenile court's decision on the first question, but reversed the lower court's decision to determine jurisdiction without Heriberto present.

1) The Court of Appeal upheld the juvenile court's decision declaring Paul the "presumed father." The court found that although the Family Code presumptions may initially have had the purpose of establishing who is a child's "natural father," in dependency proceedings their purpose is to determine which man has demonstrated a sufficient commitment to his parental responsibilities to be entitled to the rights of a father. Thus a presumption of paternity established under section 7611 cannot be defeated ("rebutted") by a finding that another man is the biological father. The court said that the term "presumed father" is a "term of convenience" used in dependency proceedings to identify a "preferred class of fathers."

The court of appeal agreed with the juvenile court that between Paul and Heriberto, Paul had shown he had assumed the parental responsibilities for Jesusa. He had provided safe shelter for her, he had welcomed her into the family, and he had demonstrated a bond with her. Furthermore, Paul had stable employment in the military and had never been convicted of a crime. The best interests of the child were better served by awarding presumed father status to Paul rather than to Heriberto.

2) The second question concerns Heriberto's rights to be present at the hearing to decide paternity, and at the hearing that immediately followed, where the juvenile court sustained the section 300 petition and took jurisdiction over Jesusa. Both the state and federal Constitutions provide a due process right to a meaningful opportunity to be heard in court. In addition, the California Penal Code provides that a prisoner who is a parent has a right to be present at certain dependency hearings. The court analyzed Heriberto's constitutional and statutory rights separately as to the two hearings.

As to **the paternity hearing** to determine who was the presumed father in this case, the juvenile court found that Heriberto's **constitutional due process rights** were satisfied. He had a meaningful opportunity to be heard because he had been able to submit written arguments, respond to opposing arguments and have his attorney represent him in court. His **statutory right** to be present is determined by Penal Code section 2625. Section 2625 provides that a prisoner has a right to be personally present at the key hearings in the dependency process; but for other hearings, it is up to the court to decide, in the court's discretion, whether the prisoner should be transported to court. A paternity hearing falls within the discretionary portion of the statute. Because the juvenile court had received the written arguments and because Heriberto's attorney was present, the juvenile court was entitled to exercise its discretion to proceed without him being personally present.

As to the **jurisdiction hearing**, where the juvenile court sustained the allegations of the petition and took jurisdiction over Jesusa, the Court of Appeal decided to reverse the decision of the juvenile court. Again, the Court of Appeal found that Heriberto's **constitutional due process rights** were not violated because he had a meaningful opportunity to be heard, through his attorney. However, in regard to his **statutory right** under Penal Code section 2625, the Court of Appeal found that this statute provided Heriberto an absolute right to be personally present, if he wished to, at a hearing where the court was to decide whether to take jurisdiction over his child. Therefore, the Court of Appeal reversed the juvenile court's order finding jurisdiction and sent the case back to the juvenile court for a new hearing on jurisdiction to be held with Heriberto present.

Related Questions and Issues for Discussion

What did the Court of Appeal mean by saying that the term "presumed father" is a "term of convenience"? Does this suggest that the court felt the statutory presumptions are no longer relevant in dependency proceedings? Without the statutory presumptions, does this allow the court more leeway to decide who is the better "presumed father?"

The federal Constitution sets the standard for due process. A state, by its own constitution, or by statutes enacted by its Legislature, can provide greater rights than are provided to every American under the federal Constitution. Thus, even if Heriberto's federal constitutional rights were satisfied by the process here, he nonetheless had a separate, and stronger, right to be present under the

California Penal Code. Can a state enact laws providing that its citizens have fewer rights than under the federal Constitution?

Standards of review—Courts of appeal defer to a lower court's decision on the facts. This is because the trial court is in a better position to make credibility determinations. The trial court hears live testimony, whereas the court of appeal has only the "cold" record. If the trial court has made a decision on the facts of the case, the court of appeal must affirm it if it is supported by evidence in the record. This is called **"the substantial evidence rule."**

A related standard of review is the **"abuse of discretion standard."** Certain decisions made by a trial court involve the exercise of the court's discretion. These decisions will be affirmed on appeal unless the appellate court finds that the trial court made a decision that was irrational or arbitrary.

The third standard of review involves issues categorized as legal issues, in which case the courts of appeal apply a **"de novo review"** standard, meaning they review the issue "anew" and independently of the trial court's ruling. The interpretation of a statute is considered a legal issue, because it does not involve any live witnesses or evidence. Thus the court of appeal is in the same position as the trial court.

What standards of review come into play in this case?

VI. Issues Presented to the Supreme Court

Heriberto filed a petition asking the Supreme Court to review the decision of the Court of Appeal that he was not the presumed father in this case. He also contended that he had a constitutional due process right to be present when the juvenile court determined paternity status.

The Los Angeles Department of Children and Family Services also filed a petition for review in the Supreme Court. The Department contended that the Court of Appeal incorrectly interpreted Penal Code section 2625 to find that Heriberto had a right to be present personally at the jurisdiction hearing. The requirements of 2625 were satisfied, the Department argues, if Heriberto's attorney was present. Therefore the Court of Appeal should not have sent the case back to the juvenile court for another hearing.

Attorneys representing Jesusa in this case submitted written argument on her behalf. Jesusa argued that Heriberto was not the presumed father. Furthermore, once the juvenile court found that Paul was the presumed father and not Heriberto, Heriberto had no further right to be present personally for the other hearings because Jesusa was no longer considered his legal child. Therefore, section 2625 was not violated.

A. Who Should be the "Real" Father Here?

Heriberto's attorney will stress the importance of a biological parent's fundamental liberty interest in the care, custody and companionship of his child. He contends that the Court of Appeal did not correctly apply the presumptions, by finding that presumed father status was simply a "**term of convenience**" in dependency proceedings. By downplaying the presumptions, he argues, the court denied him his parental rights and simply chose a father who appeared to be the "better person."

Heriberto points out that there was no evidence that he ever harmed Jesusa. In fact, the mother stated that he was always gentle with Jesusa. He was not a "mere" biological father, who had simply planted a biological seed and done nothing else. He had lived with Jesusa since birth, shared his home with her, and held her out as his daughter. Therefore, he was also a presumed father under section 7611. His position is that where there are competing presumptions, the biological connection should be given greater weight.

The Department's argument is that the real father should be the one who conducts himself most like a father, because the state's interest is in protecting a parent-child relationship that provides the child stability and strength. If there are

competing presumptions, the fact of biological paternity should not necessarily determine which should prevail. Here Paul was able to offer comfort, safety, and stability for Jesusa, as well as emotional and financial support. In addition, she would have the opportunity in his home to bond with her half-siblings. The Department argues that under established rules and standards of review, the juvenile court's decision on the facts of this case must be affirmed.

B. The Right to be Personally Present in Court—Does "Or" Really Mean "And"?

This issue calls for the Supreme Court to interpret the language of a statute, namely Penal Code section 2625. That statute provides that a dependency petition concerning a child of a prisoner may not be considered by the juvenile court "without the physical presence of the prisoner *or* the prisoner's attorney" unless the prisoner does not wish to be present. Does this mean that either the prisoner must be present *or* the prisoner's attorney, but not both? Or does it mean that the prisoner *and* his attorney must be present?

The Court of Appeal rejected the "ordinary understanding" of the word "or." Instead the court found that the Legislature must have intended for the prisoner himself to be physically present in court and not just his attorney. This is because the statute otherwise provides that if the prisoner desires to be present, the juvenile court *must* issue an order to have him transported to the court for the hearing. If the court is required to issue an order to transport the prisoner to court if he so desires, then it follows that the hearing should not proceed without him. Furthermore, if "or" actually meant "or" in the statute, this would lead to an absurd result because it would mean that the hearing could proceed if only the prisoner were there and his attorney were *not* present. Based on this reasoning, the Court of Appeal in this case decided that the juvenile court did not have the authority to go ahead with the jurisdiction hearing without Heriberto present.

The Los Angeles Department of Children and Family Services asks the Supreme Court to reject the interpretation of the Court of Appeal, and to accept the ordinary meaning of the word "or." The Department points out that other district Courts of Appeal in this state have interpreted section 2625 to mean that the prisoner himself need not be present so long as his attorney is present. The opinion in ***In re Jesusa V.*** thus created conflict among the courts on this issue, which the Supreme Court must resolve.

The Supreme Court will look at the language and the overall context of section 2625 in order to determine whether the Legislature meant that the prisoner has an *absolute* right to be present at the hearing or whether it is sufficient if his attorney is present. The court may also consider other cases where it has

interpreted similar language. And the court may consider which interpretation furthers important policy. For instance, there is a policy underlying juvenile dependency cases that section 300 petitions should be heard and decided as quickly as possible because any delay can be a long time in a young child's life. Requiring a prisoner to be transported from another county could cause delay. On the other hand, a biological parent's constitutionally protected right to the care and companionship of his child also reflects important policy. The court must decide whether a parent's right to be present outweighs the interest in avoiding delay in this case.

Related Questions and Issues for Discussion

Although a criminal defendant has certain due process rights under the United States and California Constitutions, this is not a criminal proceeding. Courts have found that parents in a dependency proceeding are entitled to due process, but not the full range of due process rights accorded to a criminal defendant who faces loss of liberty. Is a loss of your child any less important and deserving of less protection?

Due process is a flexible concept in dependency proceedings, depending in part on the nature of the hearing in question. Deciding what process is due involves a balancing of various interests: the state's interest in efficient disposition of cases; the parent's interest in preserving a relationship with the child; and the best interests of the child, which include a placement in a permanent home in a timely manner.

What process was "due" under the circumstances here? Were the paternity hearing and the jurisdiction hearing both crucial hearings for Heriberto? Heriberto argues that a paternity finding is essentially equivalent to an order terminating his parental rights forever, because once he is found not to be the presumed father, he is not entitled to participate in reunification. Was a delay to secure his physical presence likely to be a long delay? Would a delay have harmed Jesusa, who was living with Paul? Were Heriberto's rights adequately protected by having his attorney present at the hearings? What could he have added by being present and testifying? Would he have hurt his own case more than helping it?

Does it make a difference that the juvenile court in this case had previously issued an order to have Heriberto transported to the dependency hearings? By the time of this hearing, he had been transferred to another county and the juvenile court refused to postpone the hearing so that he could be located and brought to court. Did the court have a duty to follow through with its own order?

The Supreme Court's opinion in this case will not just affect the people in this case. It will have an impact on the rights of presumed fathers, biological fathers, and incarcerated parents in other cases which may follow. Appellate courts and trial courts throughout the state will rely on the Supreme Court's reasoning and conclusions. Under a doctrine called "*stare decisis*" all courts of appeal and trial courts must follow the decisions of the Supreme Court. If the Supreme Court disagrees with the decision of a Court of Appeal, the Court of Appeal's decision is no longer considered as law.

In addition, the Supreme Court's interpretation of the various statutes involved here may also impact future legislative action. How could the Legislature improve on the language in Penal Code 2625 to make it more clear? Should the Legislature rewrite the statutory presumptions in Family Code 7611 to reflect changing concepts of family values?

VII. Other Questions That May Arise at Oral Argument

Did the Juvenile Court Proceed Backward?

The Court of Appeal stated that the juvenile court in this case "proceeded backward" by holding the paternity hearing before the jurisdiction hearing. The court found that a jurisdiction hearing should be held *first*, reasoning that if the juvenile court does not find jurisdiction and thus dismisses the petition, the paternity hearing would not be necessary.

The Department argues that the paternity hearing should be held first because the court must determine who is the child's legal father before proceeding with any of the other dependency hearings.

Heriberto contends that jurisdiction must be decided first because without taking jurisdiction in the case, the juvenile court has no *authority* to decide the issue of paternity.

Did Heriberto Have Standing to Participate in the Jurisdiction Hearing?

"Standing" is a legal term meaning the right to be involved in the proceeding. Both the Department and Jesusa argue that once the court found that Heriberto was not the presumed father, he had no further rights in the case. Therefore, he did not have "standing" to be present at the jurisdictional hearing, and the Court of Appeal erred by reversing the jurisdictional order because of his absence.

Jurisdiction Based on Allegations as to the Mother

Both the Department and Jesusa argue that under established dependency law, a juvenile court can sustain a petition and take jurisdiction based on allegations against only one parent. Here the allegations as to the mother were found to be true. She exposed her daughter to violence in the home and failed to adequately protect Jesusa. The court was entitled to find jurisdiction on this basis regardless of whether Heriberto established himself as a "presumed father" or appeared in court. Since the allegations regarding the mother provided an independent basis for jurisidiction, the Court of Appeal was incorrect in reversing the jurisdiction order.

But Heriberto argues that the allegations of the section 300 petition stemmed from his alleged conduct against the mother. Therefore, the juvenile

court could not find the allegations in the petition to be true without allowing him the opportunity to appear and to defend himself.

Harmless Error

Jesusa's attorney may also argue that even if the juvenile court's refusal to allow Heriberto to be personally present violated his due process rights, this was **harmless error.** In other words, his presence would not have made a difference in these proceedings, because the evidence so overwhelmingly favored Paul as the presumed father. Furthermore, since Heriberto was incarcerated for a period of time lasting beyond the reunification period, any error in failing to find him the presumed father and offer him services was entirely harmless.

VIII. Glossary of Pertinent Terms, Statutes, and Cases

***Adoption of Kelsey S.* (1992) 1 Cal.4th 816—**In this case the mother placed a newborn child for adoption, and the biological father, who was not married to the mother, had no opportunity to establish a relationship with the child, although he indicated a desire to do so. The Supreme Court found that the adoption could not go forward without the biological father's consent. If he demonstrated a commitment to his parental responsibilities, he must be allowed to establish himself as a presumed father. This is a landmark case extending federal constitutional guarantees of due process and equal protection to unwed fathers. Unwed fathers who promptly come forward and demonstrate a commitment to their parental responsibilities are sometimes called "*Kelsey* fathers."

Alleged Father—An alleged father is a man who is thought to be the father of a child, but whose biological paternity has not been established and who has not achieved "presumed father" status. An alleged father must be given notice that he could be the father of the child and that the child is the subject of dependency proceedings. He has no right to custody or to reunification services unless he can establish himself as a presumed father.

Biological Father—A biological father has more rights than an alleged father. The court may order some services for a biological father if this would benefit the child. However, in order to be entitled to custody and reunification services, a biological father must establish that he is the "presumed father." In a dependency proceeding, a "presumed father" has greater rights than a biological father.

Presumed Father—A presumed father is one who qualifies under the statutory presumptions set forth in Family Code section 7611. There can be more than one person who qualifies, but in a dependency proceeding there can be only one legal father, who is entitled to custody and reunification services. Therefore the court must decide on the facts which person has demonstrated the strongest case for being the presumed father.

Dependency Law—A body of law designed to protect children and to preserve the family. Dependency law is a relatively recent legal development. Its beginnings in this state are generally attributed to a 1980 Child Welfare Act. The rules governing dependency law are contained in the California Welfare and Institutions Code, in sections 300 through 395.

Presumption—In general a "presumption" in the law is where the finding of one fact or group of facts gives rise to the existence of a *presumed* fact. For example, if a letter is stamped, addressed and mailed, it is presumed it was

received. A presumption is **"rebuttable"** if it can be defeated by sufficient proof that the presumed fact is not true—for example, the person the letter was addressed to swears he did not receive it. A "**conclusive presumption**" is where proof of the underlying fact or facts makes the presumption true in all cases. An example is the rule in the law that a child under the age of seven is presumed to be incapable of committing a felony.

Jurisdiction—"Jurisdiction" generally refers to a court's authority to act. In dependency law, when a juvenile court takes "jurisdiction" over a child, it means that the court has found that one or more of the circumstances listed in Welfare and Institutions Code section 300 apply to that child. The court can then make orders pertaining to the child's safety and other needs, including placing the child in a new home. When a court has taken jurisdiction over a child, that child is known as a "**dependent child**."

Disposition—"Disposition" in a dependency proceeding happens when the juvenile court decides whether to place the child outside the home and whether to order reunification services for the parents.

In re Axsana S. (2000) 78 Cal.App.4th 262—The Court of Appeal in this case interpreted Penal Code 2625 and found that it "does not expressly require the physical presence of the incarcerated parent at the critical hearings, but recognizes that the appearance of the parent's attorney is sufficient."

In re Jerry P. (2002) 95 Cal.App.4th 793—The Court of Appeal in this case found that section 7611 was unconstitutional if it allowed the mother, or another party, to prevent the father from establishing presumed father status by keeping the child from him.

In re Kiana A. (2001) 93 Cal.App.4th 1109—The Court of Appeal in this case considered who should be declared the presumed father of a 13-year-old girl. The child had developed a relationship with the man who had lived with her and her mother off and on over the years, and she had no similar relationship with the man who was her biological father and had later married the mother. The court stated that "as between two men both of whom qualify as presumptive fathers, biological paternity does not necessarily determine which presumption will prevail under section 7612."

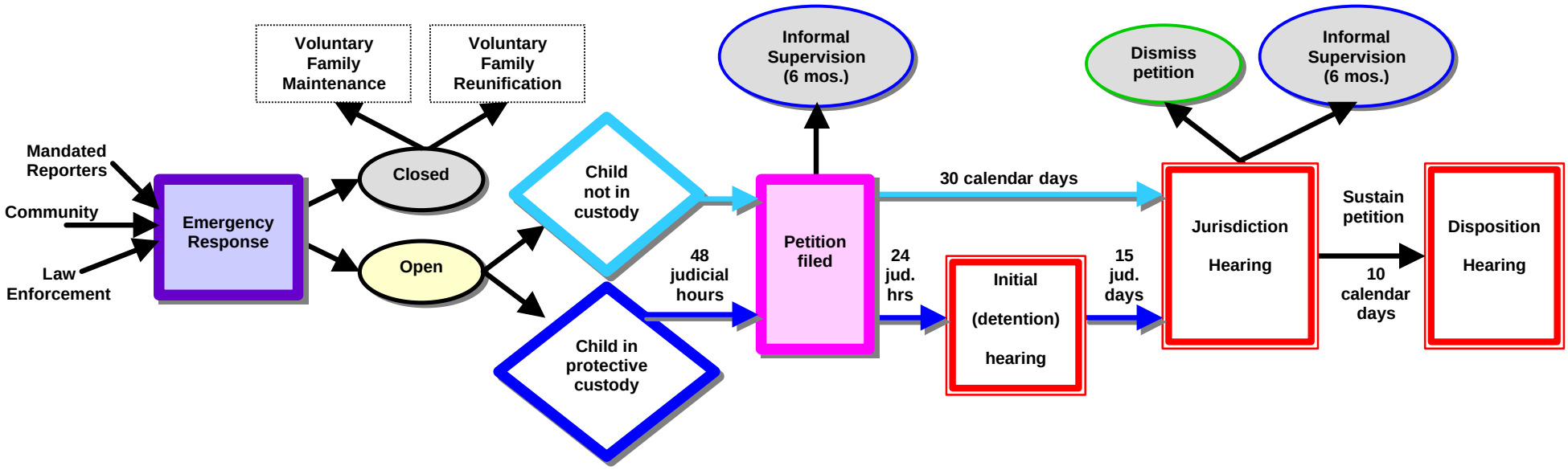
In re Nicholas H. (2002) 28 Cal.4th 56—The Supreme Court held that a man's "presumed father" status under the section 7611 statutory presumptions was not defeated by his admission that he was not the biological father.

Family Code section 7611—Contains presumptions for determining who is the legal father of a child.

Family Code section 7612—Provides that where there are two or more conflicting presumptions under section 7611, the one which "is founded on the weightier considerations of policy and logic controls."

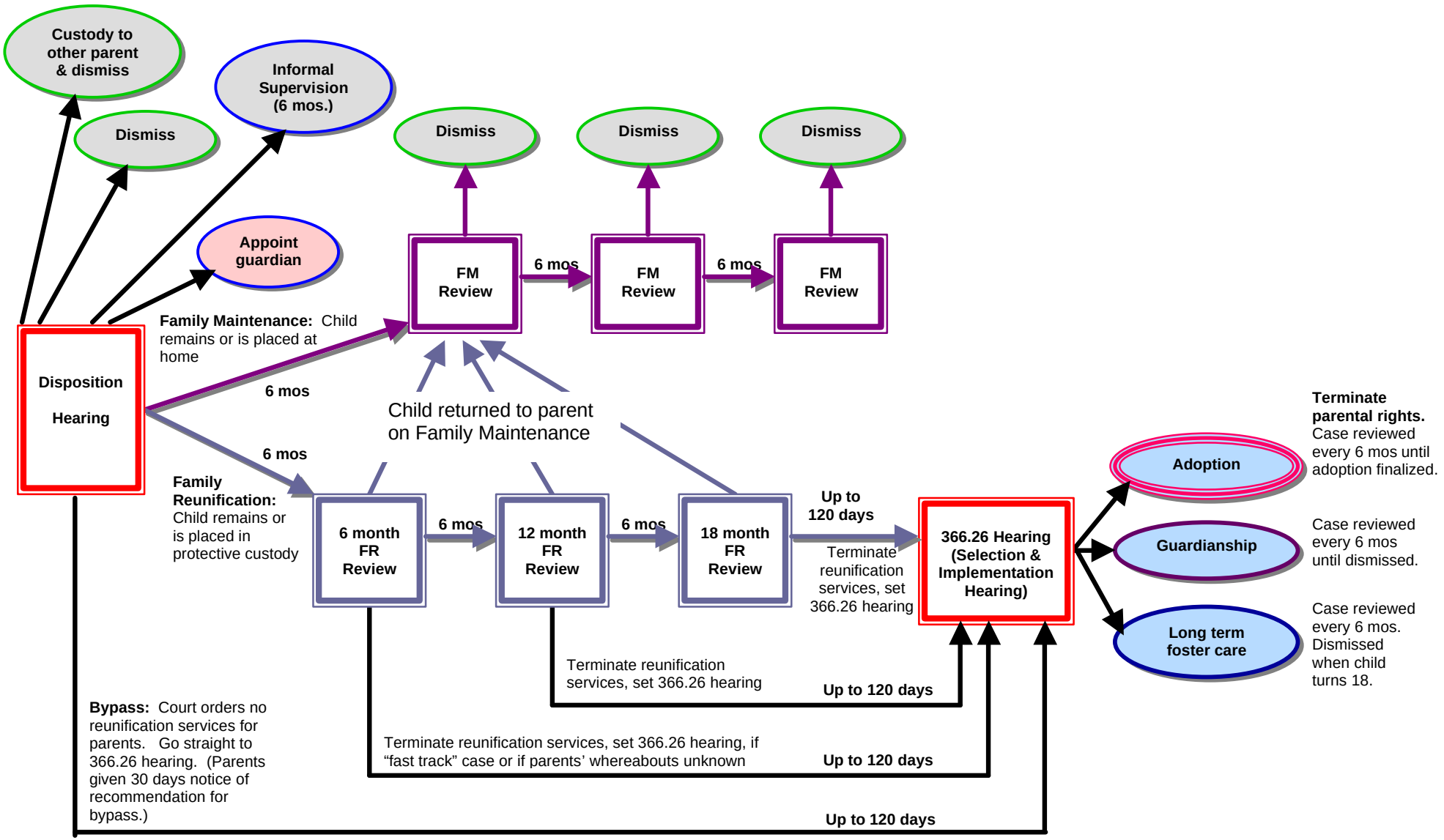
Penal Code section 2625—This statute requires that the juvenile court must issue an order to transport to court a prisoner who is the parent of a child in a dependency proceeding for certain important hearings in the dependency process. It further provides that a hearing to determine the child to be a dependent child under section 300 may not proceed "without the physical presence of the prisoner or the prisoner's attorney."

The Juvenile Dependency Court Process

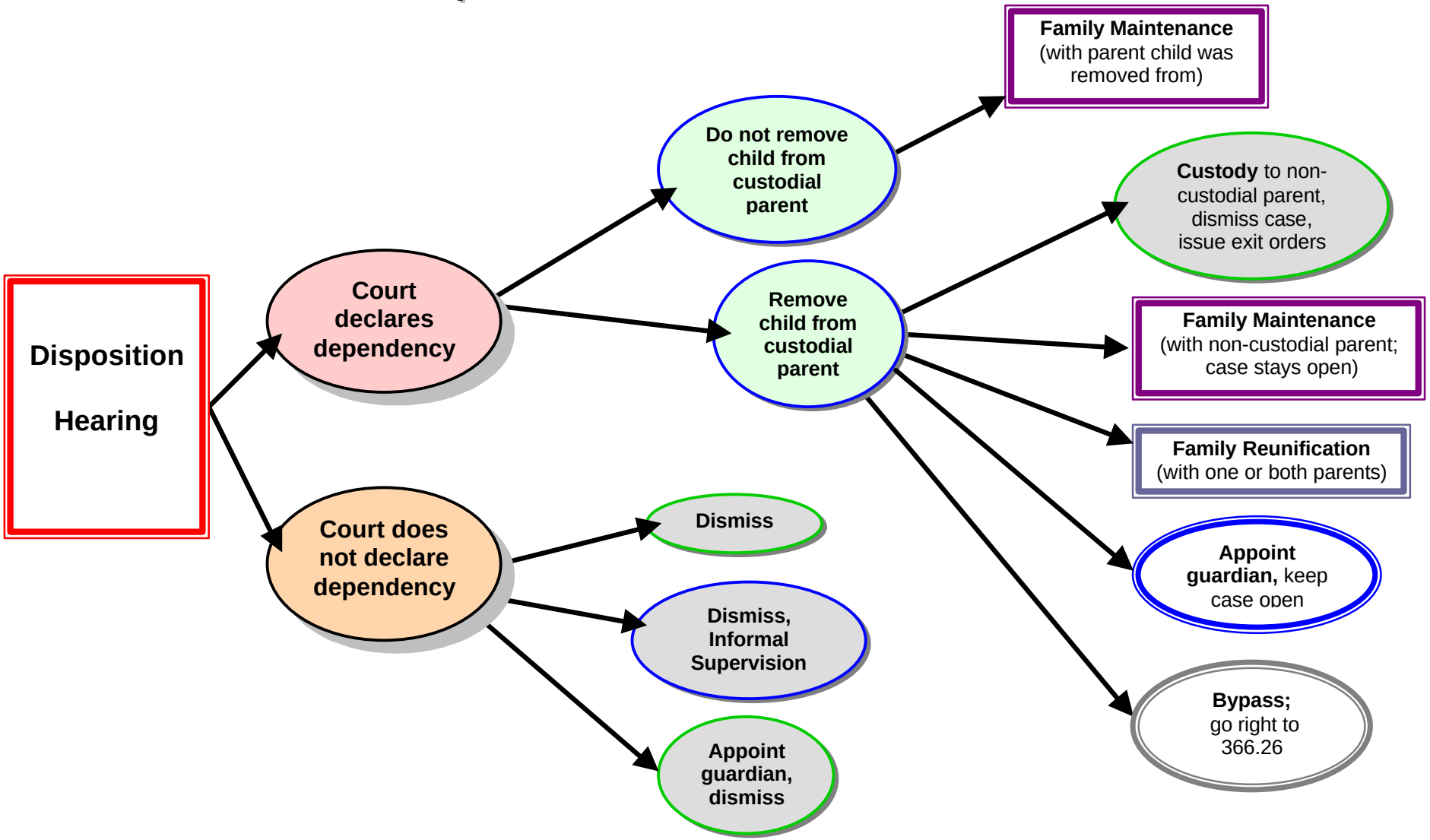


Compiled by Commissioner Shawna Schwarz
Juvenile Dependency Division
Santa Clara County Superior Court
July 2003
v.1.1

Dependency Court Process



Disposition: A closer look



VI. c. STUDY GUIDE

EMMI, Inc. v. Zurich American Insurance Company

Imagine you have been robbed. You cannot identify the robber and you never recover the stolen items. Fortunately, you have insurance that covers losses due to theft. However, the insurance company denies your claim, saying it isn't the kind of theft that is covered by the insurance policy. That's what happened to EMMI in this case.

This is a classic **insurance coverage dispute**: a lawsuit between an insurance company and someone who bought an insurance policy, about whether a specific event is covered by the policy. Sound a little boring? These kinds of disputes are very common and are important both to the person who has suffered the loss and to the insurance companies. The material in this study guide is designed to help you understand the issues presented in this insurance coverage case, as well as the roles of insurance companies and the courts in our society.

EMMI, Inc. v. Zurich American Insurance Co. will be argued before the California Supreme Court at a special session on December 2, 2003.

The material in this study guide is organized as follows:

I. Insurance Jargon & General Information Regarding Insurance

II. Case Summary, prepared by the Supreme Court

III. What is this lawsuit about?

IV. Who will decide what the words in this contract mean?

V. How did this case get to the California Supreme Court?

VI. What rules will the Supreme Court apply to resolve this dispute?

VII. Pertinent Cases

VIII. If the theft occurred in Illinois, why is the case being heard in California?

IX. Other Issues the Court May Discuss

I. Insurance Jargon & General Information Regarding Insurance

Almost everyone purchases insurance. Chances are if you are driving a car, you have automobile liability insurance. Your parents probably have homeowners' insurance or renters' insurance. If anyone in your family owns a business, he or she probably has insurance to protect the business from fire, theft, injuries on the premises, an employee's negligence, or malpractice. Individuals, businesses, partnerships, corporations, non-profit organizations, and governmental entities *all* buy insurance.

Insurance coverage law, like most specialty areas, has its own jargon. Learning some of the jargon will make it easier for you to follow the discussion at oral argument.

Insured: The person or entity that purchases an insurance policy (sometimes also called the **policyholder**) and anyone else who is covered by the policy. In this case, the insureds are EMMI, Inc. and its sales agent, Brian Callahan.

Insurer: The insurance company that provides the insurance coverage, also known as the insurance **carrier**. The carrier in this case is Zurich American Insurance Company (Zurich, for short).

Insurance Policy: A written contract in which an insurer agrees to pay up to a specified amount of money in the event a certain type of loss occurs. In exchange, the insured pays the insurance company regular premiums for protection against the risk of a loss.

Loss: Loss or damage to property, monetary losses, injury to persons, or death. Each insurance policy will specify the types of losses that are covered by the policy.

Premium: The amount of money the insured pays for the insurance coverage.

Risk: The peril against which the insured is protected under the insurance policy. These are the events that cause a loss. Examples include: fire, flood, the negligent operation of a motor vehicle, theft, and malpractice. There are numerous types of insurance policies that

cover all kinds of risks. The insurance policy in this case was a **"Jeweler's Block Policy,"** an insurance policy that covers losses associated with the operation of a jewelry business.

Insurance policies cover specific kinds of losses. They do not cover every loss or calamity that occurs and it is not uncommon for an insurance company to deny a claim because it is not covered by the policy. When the parties cannot agree on whether a loss is covered by the policy, they often turn to the courts to help them resolve their dispute. This area of the law is known as **insurance coverage litigation**. Sometimes the insurance company is right and the loss is not covered; sometimes the insurance carrier is wrong and the loss is covered. This case presents many of the issues that occur in a typical insurance coverage dispute.

Before delving further into the discussion, you will want to read the following case summary that was prepared by the Supreme Court staff for release to the public. The summary discusses both the interesting facts and the legal issues in the case.

Discussion Question:
Why would an insurance company limit the kinds of losses that are covered by the policy?

II. Supreme Court Case Summary

On February 17, 2000, jewelry salesperson Brian Callahan left his home with two bags containing jewelry in the trunk of his car. Some of the jewelry belonged to plaintiff E.M.M.I., Inc., a manufacturer and marketer of jewelry. Shortly after leaving his home, Callahan heard a "clanking noise" coming from the rear of the vehicle. He stopped and got out of the car to investigate the source of the noise. He left the engine running, but closed the car door. When he reached the back of the vehicle, he crouched down to look at the tailpipe. As he did this, he felt someone pass him by and then saw that person get into the vehicle and drive away. Callahan was no more than two feet from the car when the thief entered the vehicle. E.M.M.I. believes Callahan was the victim of a crime gang that lured him out of his automobile by tampering with the vehicle before he entered it.

At the time of the theft, E.M.M.I. was insured under a "Jeweler's Block" insurance policy, issued by defendant Zurich American Insurance Co. The policy insured E.M.M.I. against loss or damage to the jewelry, but did not cover jewelry stolen from a vehicle unless the salesperson was "actually in or upon such vehicle at the time of the theft." Based upon that exclusion, Zurich denied insurance coverage for the theft. E.M.M.I. sued Zurich, contending that the insurance policy covered the theft.

The Supreme Court is asked to answer two questions: (1) Must the insured company's agent be inside the vehicle at the time the theft is actually completed or is coverage provided if the agent is in the vehicle at some point between the commencement of the theft and the completion of the theft? and (2) Does the insurance policy apply only if Callahan was inside the car when the jewelry was stolen, or is it enough that he was immediately next to the vehicle?

E.M.M.I. maintains that the thief was a member of an organized crime gang that tampered with Callahan's car in order to lure him out. It argues that the insurance policy covers the theft here because the policy language "at the time of the theft" "describes a period of time starting with the commencement of a theft [tampering with the car] and ending with the culmination of the theft [driving the car away]." Under this interpretation, Callahan was "in or upon the vehicle" at some point during the theft. Zurich disagrees. It argues that the "at the time of theft" language refers only to the moment when the thief took unlawful control of Callahan's car.

Alternatively, E.M.M.I. contends that Callahan was "in or upon the vehicle" when the thief entered his car and drove away because he was "upon" the car at the time. It argues that the definition of "upon," which is interchangeable with "on," includes "in close proximity." Zurich, on the other hand, contends that Callahan was not "actually in or upon" the vehicle because he was not in direct contact with the car. According to Zurich, mere proximity is not enough.

III. What is this Lawsuit About?

Every insurance policy is a written **contract.** Most insurance coverage disputes involve the interpretation of the words of the insurance contract to determine whether the loss is covered by the insurance policy. The particular words at issue in this dispute are from a policy provision that states that the insurance company will not pay any loss resulting from:

> "Theft from any vehicle unless [the insured], an employee or other person whose only duty is to attend the vehicle are *actually in or upon* such vehicle *at the time of theft*." (Italics added.)

The dispute turns on the meaning of the phrases "actually in or upon the vehicle" and "at the time of theft." The parties' arguments focus on the meaning of the word "upon." Was Mr. Callahan "upon" the vehicle when he was crouching on the pavement two feet behind the car examining the tailpipe? EMMI relies on a dictionary definition of the term "upon" and argues that "upon" means in close proximity to, alongside of, or adjacent to and that Callahan was therefore *upon* the vehicle when the theft occurred.

Zurich argues that the use of the word "actually" is very important, indicating that the policy requires that the insured be inside the vehicle or have physical contact with the car in order for a theft loss from a vehicle to be covered.

The issues boil down to:

- "What did the parties agree to when they entered into the insurance contract?" and
- "Who should bear the risk of this loss, the insurer or the insured?"

Insurance is, after all, a system for allocating and distributing risk.

Discussion Questions: What does the word "upon" mean to you? Under what circumstances would you say that you are "upon your car"?

At the time of the theft, Mr. Callahan had in the car jewelry from two different manufacturers. The jewelry owned by the other manufacturer was insured by a different insurer. This insurer did not contest the loss and paid the claim. Does this information make EMMI's claim here stronger?

IV. Who Will Decide What the Words in this Contract Mean?

In the United States, the parties in most civil and criminal cases are entitled to a jury trial. In many parts of the world, there is no right to trial by jury and the judges of the courts decide cases. In addition, in this country, the parties are entitled to give up their right to a jury trial, and many people do for a variety of reasons.

Although the parties are entitled to a jury trial in this case, that does not mean that a jury will decide every issue in the case. In a jury trial, both the judge and the jury take part in the decision-making process.

- **Issues of fact**, including matters related to the credibility of the witnesses, are for the **jury** to decide. Most cases involve some disputed factual issues.

- **Questions of law** are for the **judge** to decide. In this context, lawyers also refer to the judge as "the court." Questions of law include such things as which rules of law to apply to the facts of the case, the interpretation of statutes, and the interpretation of contracts.

For example, a jury in this case would decide any disputed factual issues relating to the theft of the jewelry. It is up to the judge, however, to determine the meaning of the words in the insurance contract.

> ***Discussion Questions:*** Why do judges and courts, and not juries, decide questions of law? What happens if a court makes a decision that the public or the Governor or the Legislature doesn't like?

V. How did this Case get to the California Supreme Court?

A. Nature of the Lawsuit

After Zurich denied EMMI's claim, EMMI sued Zurich in the Superior Court for breach of contract, breach of the covenant of good faith and fair dealing, and unfair business practices.

The **breach of contract** claim alleges that Zurich broke its promise to pay for losses due to the theft. If EMMI proves that the loss was covered by the policy, it will be entitled to recover the value of the stolen jewels, up to the amount of the policy limits, under the breach of contract claim.

Every insurance policy contains a **covenant of good faith and fair dealing**, a provision in which the parties promise to deal with each other fairly and in good faith. EMMI claims Zurich broke that promise when it denied the claim. If EMMI proves Zurich acted in bad faith, it may be entitled to recover **punitive damages** from Zurich for its alleged bad faith conduct in denying the claim. Punitive damages are designed to punish the defendant or set an example for other wrongdoers. Punitive damages, if any, would be paid in addition to any damages sustained as a result of the theft.

B. Pretrial Motions for Summary Judgment and Summary Adjudication

While they were preparing the case for trial, both EMMI and Zurich filed pretrial motions in the superior court. EMMI filed a motion for summary adjudication of the cause of action for breach of contract. The motion addressed only the breach of contract claim. Basically, the motion argued that there were no disputed issues of fact that would need to be decided by a jury in a trial. EMMI asked that the judge find, based on undisputed facts that had been developed before trial, that Zurich had breached the insurance contract by failing to pay EMMI for the theft loss.

Zurich filed a pretrial motion for summary judgment. A motion for summary judgment is similar to a motion for summary adjudication, but is designed to dispose of the entire lawsuit, not just one claim in the lawsuit. In its summary judgment motion, Zurich alleged that there were no disputed issues of fact that required a trial by a jury and asked the court to find that there was no merit to any of EMMI's claims because the loss was not covered by the insurance policy.

A summary judgment motion may be based on the testimony of witnesses at depositions, written declarations by witnesses under oath, records, documents, or other evidence gathered before trial. There is no live witness testimony at a hearing on a motion for summary judgment or summary adjudication. The parties present their evidence and arguments through written papers that are filed with the court. The parties' attorneys may argue the motion orally before the court and thus attempt to persuade the court to accept their points of view.

Motions for summary judgment are common in insurance coverage cases, since these cases often involve the interpretation of a contract, which is a question of law for the judge to decide, and there is rarely a factual dispute regarding the terms of the contract. If the motion is granted, it disposes of the lawsuit, without having to go through a trial. If the motion is denied, then the parties may proceed with a trial or they may settle the lawsuit.

Since the motion for summary judgment disposes of a lawsuit without a trial, the parties must comply with strict procedural rules in order for the motion to be granted. If the court finds that there are disputed facts that are material to the issues in the case that should be decided by a jury (referred to as **"triable issues of material fact"**), the court must deny the motion.

C. Trial Court Rulings on Motions

Both Zurich's and EMMI's motions asked the court to interpret the phrase "actually in or upon the vehicle at the time of the theft." The superior court judge concluded that Callahan was not "in or upon" the car at the time of the theft and that Zurich's policy therefore did not cover the loss. The court found that there were no triable issues of material fact. The court granted Zurich's motion and denied EMMI's motion.

D. Appeal to Court of Appeal

EMMI appealed the trial court's ruling to the Court of Appeal for the Second District in Los Angeles. Since the interpretation of a contract is a question of law to be determined by the court, the court reviewed the parties' arguments, the evidence filed in the trial court, and the case law **"de novo."** This means the appellate court looked at the evidence and arguments anew and was not bound by the interpretation or the ruling of the trial court.

The Court of Appeal looked at dictionary definitions for the word "upon," the historical purpose of the unattended vehicle exclusion in a jeweler's block policy, and cases from California and other states interpreting the same or similar

language in jeweler's block policies. The court concluded that some of the cases that EMMI cited were inapplicable since they were interpreting the phrase "in or upon" in the context of uninsured motorists coverage, which is entirely different from a jeweler's block policy.

The court also concluded that the language at issue in this case was unambiguous. Contract language is said to be **ambiguous** when it is subject to two different interpretations, both of which are reasonable. The existence or non-existence of an ambiguity in an insurance contract is important, since an ambiguity in the policy language can trigger special rules of interpretation.

The court concluded that under the **plain language** of the insurance policy, theft from an automobile in which no person is actually present is excluded and is not covered by the policy. The court stated: "Although Mr. Callahan was in close proximity to the car, he was not actually in or upon it. The thief seized the moment of Mr. Callahan's absence from the car to steal it." The Court of Appeal thus agreed with the trial court and affirmed the trial court's judgment.

E. Petition for Review in the California Supreme Court

EMMI has asked the California Supreme Court to review the Court of Appeal's ruling. While the Courts of Appeal are required to review every case in which an appeal is filed, review of most cases in the Supreme Court is **discretionary**. This means the Supreme Court can decide whether or not it wants to review the case.

This results in a two-step process in the Supreme Court. First, EMMI had to persuade the court to take the case. EMMI has convinced the Supreme Court that this is a proper case for the court to review. Next, each party will attempt to convince the Supreme Court that its interpretation of the policy is correct.

Since this case involves the interpretation of a contract, which is a question of law, the Supreme Court also reviews the case **"de novo."** It is not bound by the holdings of either the trial court or the appellate court and will independently review the evidence and arguments submitted by both parties.

> ***Discussion Question:*** Why would the parties to a lawsuit file a pretrial motion for summary judgment or summary adjudication?

VI. What Rules Will the Supreme Court Apply to Resolve this Dispute?

There are special rules relating to the interpretation of contracts that the court will apply to resolve the parties' dispute. The court will consider both general rules of contract interpretation that apply to all contracts and special rules of interpretation that apply to insurance contracts.

Many insurance contracts are **contracts of adhesion**. This means that one party in the transaction had superior bargaining power and was able to impose the terms it wanted in the contract on the other party, who had little choice in the matter but to "take it or leave it." Many of the rules of contract interpretation that apply to insurance contracts take into consideration the "adhesive" nature of an insurance policy.

The court's analysis will also take into consideration the type of policy provision that is at issue. Is the disputed language part of the **basic coverage** provided by the policy? Is it in an **exclusion** from coverage? Or is the language found in an **exception to an exclusion**? An exclusion is a provision in an insurance policy that sets forth specific circumstances that are not covered by the policy. There are often exceptions to the exclusions. If an exception applies, then the loss is covered.

The Jeweler's block policy in this case provides coverage for losses that result from the operation of EMMI's jewelry business. The policy contains an **"Unattended Vehicle Exclusion"** that excludes from coverage any theft from a vehicle unless (and this is where the exception to the exclusion comes into play) the insured or an employee of the insured or someone who is employed to attend the vehicle is "actually in or upon" the vehicle.

Zurich argues that the exception to the exclusion was designed to cover a limited type of loss and to insure against theft by force but not theft by stealth. EMMI relies on a rule of contract interpretation that provides that exceptions to exclusions in insurance policies are to be interpreted broadly in favor of the insured.

VII. Pertinent Cases

The Supreme Court will also examine other cases that interpret the phrases "in or upon" and "actually in or upon" in an insurance policy. Courts attempt to decide cases on the basis of principles established in other cases.

Prior cases that are close in facts or legal principles to the case under consideration are called **precedents**. Cases from other states are not binding precedents for California courts. However, they may provide persuasive authority, especially on issues of first impression (issues that have not yet been decided by the California courts). Cases from the lower courts (the trial courts) are not binding on the appellate courts and cases from the appellate courts are not binding on the Supreme Court.

Zurich relies on ***Revesz v. Excess Insurance Co.* (1973) 30 Cal.App.3d 125 (*Revesz*)**, a California Court of Appeal case that interprets the language in our case. Revesz, a jewelry salesman, parked his car, locked it, and had walked two or three feet away from the car in search of directions when the car was stolen. Sample cases of jewelry were locked in the car's trunk. The court in *Revesz* considered the phrase "actually in or upon" in two salesmen's insurance policies. The court concluded that there was no coverage under the policies when the salesman temporarily abandoned the car to get directions. Emphasizing the use of the word "actually," the court reasoned that the phrase "actually in or upon" was not ambiguous, and that the insured was clearly absent from his vehicle at the time of the loss.

EMMI also cites *Revesz*. EMMI relies on the court's statement in *Revesz* that "the controlling factors are . . . the [insured's] intent and conduct." EMMI argues that the court should consider Callahan's intent and conduct when he stepped out of the vehicle in determining whether there is coverage under the policy.

The parties may also discuss ***Nissel v. Certain Underwriters at Lloyd's of London* (1998) 62 Cal.App.4th 1103, 1110 (*Nissel*)**. The insured in *Nissel*, a traveling salesman, left his car parked in front of a Denny's restaurant. Two men stole a bag containing diamonds and other precious gems from the car. The jeweler's block policy in that case excluded theft from a vehicle, unless the salesman was "actually in or upon" the vehicle at the time of the robbery. The Court of Appeal concluded that a theft from an unoccupied vehicle fell within the

policy's exclusion and that the loss was not covered because the salesman was not actually in or upon the car when the loss occurred.

The Court of Appeal in our case discussed 12 other cases from out of state that, like *Revesz*, held that the "actually in or upon" language in a jeweler's block policy excludes coverage for theft from an automobile with no person in it.

EMMI relies on two out-of-state cases that hold that a salesperson who is adjacent to and attending to a vehicle when the loss occurs is covered under a jeweler's block policy. In one case, the salesperson was opening the trunk of the car (***Lackow v. Insurance Company of North America* (1976) 52 A.D.2d 579)**; in the second case, the insured was outside of the car, refueling **(*Star Diamond v. Underwriters at Lloyd's of London* (E.D.Va. 1997) 965 F. Supp. 763)**. Both cases were decisions of *trial courts* and not appellate courts.

EMMI also relies on two California cases that hold that the phrase "in or upon" in an uninsured motorist policy provides coverage for losses that occur in close proximity to the vehicle. (***Utah Home Fire Ins. Co. v. Fireman's Fund Ins.* Co. (1970) 14 Cal.App.3d 50 (*Utah Home*)**; ***Cocking v. State Farm Mut. Automobile Ins. Co*. (1970) 6 Cal.App.3d 965 (*Cocking*)**.) The Court of Appeal in our case concluded that *Utah Home* and *Cocking* do not apply. The courts in both of those cases had interpreted the uninsured motorist policies at issue in light of the public policy underlying uninsured motorist coverage, which is to provide compensation for persons injured by the use of an automobile through no fault of their own. The Court of Appeal concluded that these types of policies do not apply to the situation presented here.

> ***Discussion Questions:*** Should the court consider Callahan's intent and conduct in deciding whether there is coverage? To what extent should the Supreme Court rely on the decisions in the cases discussed above?

VIII. If the Theft Occurred in Illinois, Why is the Case Being Heard in California?

"Venue" is the place where a lawsuit is filed. Sometimes venue is proper in more than one place and the parties can choose the place where the lawsuit will be filed. In disputes involving the interpretation of an insurance policy, venue is proper where the loss occurred, where the insurance policy was entered into, or where the alleged breach of contract occurred. In this case, the loss occurred in Illinois, but the insurance contract was signed in California.

IX. Other Issues the Court May Discuss

A. When did the Theft Occur?

In order for there to be coverage under the policy, Callahan had to be in or upon the vehicle "at the time of the theft." EMMI argues that the theft was caused by a gang that had tampered with the vehicle before Callahan entered it, and that the tampering had lured Callahan out of the car, thus creating an opportunity for a member of the gang to steal the car and the jewels inside.

Based upon this theory, EMMI asserts that the crime began with the tampering and ended when the thief drove the car away. EMMI argues that the loss is covered since Callahan was inside the vehicle between the time of the tampering and the time the car was driven away. Zurich argues that the theft occurred when the car was driven away and not before. You may hear some discussion of the Penal Code and criminal cases regarding when a theft occurs.

Discussion Question: What do you think about EMMI's argument?

B. Exclusion of Testimony of Expert Witnesses

In its opposition to Zurich's motion for summary judgment, EMMI tried to introduce the declaration of an expert in insurance industry standards who was of the opinion that the loss was covered. According to the expert, Callahan was the victim of a jewelry theft ring and the theft began when one of the ring members tampered with the car. Therefore, the exclusion for unattended vehicles was not triggered. The expert also stated that because Callahan was attending to the car

when the theft occurred, he was “upon” the vehicle within the meaning of the policy.

Zurich objected to the declaration. The trial court sustained the objection on the grounds that it was speculative and not specific to the incident. Therefore, the expert’s evidence was not considered.

The Court of Appeal concluded that the trial judge did not make a mistake when he disallowed the declaration of the expert. The court concluded that expert opinion regarding the meaning of the policy was irrelevant. EMMI has asked the Supreme Court to look at this issue.

VI. d. STUDY GUIDE
Casa Herrera, Inc. v. Beydoun

The purpose of this study guide is to give students enough information so that they will be able to understand the issues and argument presented by the attorneys, and any questions that the justices might ask, in the case of ***Casa Herrera, Inc. v. Beydoun***. This case will be argued before the California Supreme Court at a special oral argument session in San Jose on December 2, 2003.

The case concerns a written contract of sale that set in motion two legal "actions," or lawsuits. In the first action the purchaser contended that the seller had misrepresented the goods. In the lawsuit that followed, the seller claimed that the purchaser's lawsuit was malicious.

The sections of the study guide are attached in the following order:

I. Definition of Terms

Plaintiff – Party bringing the lawsuit in the trial court.

Defendant – Party defending the lawsuit in the trial court.

Parol Evidence Rule – Parol (not to be confused with parole) means oral. This rule prohibits the use at trial of evidence of any oral promises that add to, change or contradict the terms of a written contract. The written contract is presumed to represent *the entire agreement* between the parties. The purpose of the parol evidence rule is to ensure that when parties put their agreement in writing and sign it, the terms of the written agreement may not later be contradicted by evidence of other inconsistent promises.

Malicious Prosecution Action – A lawsuit brought by a person who claims that he or she has been harmed because another person has "maliciously prosecuted" him or her—in other words, the other person has previously sued him or her in bad faith and without good cause. A plaintiff bringing a malicious prosecution action must prove not only that the other person sued him or her in bad faith and without good cause, but also that the previous action resulted in a "favorable termination" for the plaintiff. The key issue in this case is what is a "*favorable termination.*"

Merits—The "merits" of a lawsuit are the issues raised by the claims. When a case is decided "on the merits," it means that a judge or jury has considered the claims and has decided whether they are valid.

Statute of Limitations – This rule states that the plaintiff must bring a lawsuit within a specific time period. The theory underlying the statute of limitations is that even if a party has a valid claim, it's not fair to the defendant if the lawsuit is not brought in a timely manner.

Statute of Frauds – This rule states that a party cannot require another party to do something under a contract unless the contract is put in writing and signed by the party against whom it is to be enforced.

Procedural Law – The rules that describe the steps a person must take to have the court enforce his or her rights or duties. For example, the statute of limitations is procedural law.

Substantive Law – The law that defines the substance of a person's rights or duties.

Tort – A civil (as opposed to criminal) wrong committed by one person against another resulting in "damages," that is, monetary compensation for loss or injury.

II. History of this Case

The Tortilla Oven Lawsuit – Am Mex v. Casa Herrera

This case began in 1994 when Am Mex, which was owned by Nasser Beydoun, bought a tortilla oven from Casa Herrera. The parties signed a written contract. Among other things, the written contract contained specifications as to the oven's production rates for various sizes of tortillas.

Am Mex was dissatisfied with the oven's production of 16-ounce tortillas, and claimed that Casa Herrera had represented that the tortilla oven could produce 1,500 dozen 16-ounce tortillas per hour. The written contract, however, did not refer to any production rate for 16-ounce tortillas.

Am Mex's business was failing and it was unable to pay its loans, including money loaned to it by Community First National Bank. Am Mex brought a lawsuit against Casa Herrera claiming damages for fraud and breach of contract in the sale of the tortilla oven. The lawsuit was based on Am Mex's claim that Casa Herrera had told Am Mex that the oven would produce 16-ounce tortillas at the rate of 1,500 dozen tortillas per hour when Casa Herrera knew that the oven was not capable of this.

The trial court dismissed Am Mex's lawsuit, and Am Mex appealed.

The Court of Appeal affirmed the judgment dismissing Am Mex's lawsuit. The Court of Appeal found that the written contract did not contain any guarantee that the tortilla oven would produce 1,500 dozen 16-ounce tortillas per hour. Therefore, the parol evidence rule prevented Am Mex from introducing evidence of any oral promises Casa Herrera might have made that were inconsistent with the written contract that both parties had signed. In other words, the parties would be held to the terms of the written contract. Because Am Mex could not introduce evidence of its claim that Casa Herrera had made false promises or that it had breached its promises, Am Mex could not prevail in its lawsuit against Casa Herrera.

The Malicious Prosecution Lawsuit – Casa Herrera v. Beydoun, et al.

Casa Herrera then brought a lawsuit against Am Mex, its owner Beydoun, and Am Mex's bank, Community First National Bank, for malicious prosecution. Casa Herrera contended that Am Mex's claims in the tortilla oven lawsuit were brought in bad faith, and that the Bank, which had loaned Am Mex money to purchase the tortilla oven, had instigated and encouraged Am Mex to file the action against Casa Herrera when Am Mex could not pay on the loan.

The trial court dismissed Casa Hererra's lawsuit, finding that Casa Herrera had not shown it had received a "favorable termination" in the first lawsuit, which is a necessary element of a lawsuit for malicious prosecution. Casa Herrera argued that the Court of Appeal's opinion affirming judgment in its favor in the tortilla oven case *was* a "favorable termination." However, the trial court found that the termination of the previous lawsuit without a trial, based on the application of the parol evidence rule, did not qualify as a "favorable termination." Because the parol evidence rule operated to *exclude* the evidence of the oral promises that formed the basis for Am Mex's claims in the tortilla oven case, the issues (or "*the merits*") of the case were never really tried.

Casa Herrera appealed the dismissal of its malicious prosecution case to the Court of Appeal.

The Decision of the Court of Appeal

The Court of Appeal agreed with Casa Herrera and disagreed with the trial court. It found that the dismissal of the Am Mex lawsuit based on the application of the parol evidence rule *was* a "favorable termination" for purposes of a malicious prosecution action. It therefore *reversed* the trial court and found that Casa Herrera could continue with its action against Am Mex, Beydoun and Community First National Bank for malicious prosecution.

In finding that Casa Herrera did get a "favorable termination" in the tortilla oven lawsuit, the Court of Appeal disagreed with an earlier decision from another Court of Appeal in a case called ***Hall v. Harker*** (1999) 69 Cal.App.4th 836. *Hall* had held the opposite, that a dismissal of a case because evidence was excluded by the parol evidence rule was *not* a favorable termination for purposes of a subsequent malicious prosecution action.

The Court of Appeal in our case stressed that the key question is whether the termination of the previous action can be seen as a *reflection on the merits* of that action. If the case is dismissed based only on a procedural rule, this does not "reflect

on the merits." For example, if the first lawsuit is dismissed before trial because it was not filed within certain time limits, the statute of limitations would "bar" the action so it could not proceed. In such a case, since the merits of the case were not reached at all, this dismissal would not be a "favorable termination" for purposes of a later suit for malicious prosecution.

The Court of Appeal reasoned in this case that the parol evidence rule is not a technical rule of procedure, similar to the statute of limitations. Instead, it is generally labeled a "substantive" rule, meaning it bears upon the *substance* of the case. The purpose of the parol evidence rule is to ensure that when parties put their agreement in a formal written document and sign it, its terms may not later be contradicted by evidence of other promises that are inconsistent with it. The Court of Appeal found that this application of the parol evidence rule *does* "reflect on the merits" of a claim that one party has breached the contract.

The Community First National Bank petitioned for the Supreme Court to review the decision of the Court of Appeal. The Bank filed the petition for review because Am Mex is no longer in business. However, the Bank's interests in the case are aligned with Am Mex's interests. Both are defendants in Casa Herrera's lawsuit for malicious prosecution and both want an end to that action. If the Supreme Court agrees with the holding in *Hall v. Harker* that the parol evidence rule does *not* result in a "favorable termination" of the initial lawsuit, then Casa Herrera will not be able to prove the elements of its malicious prosecution claim, and the trial court's ruling to dismiss that lawsuit may be restored.

Sometimes the Supreme Court will grant review where two different Courts of Appeal have disagreed. Since the Court of Appeal in our case disagreed with the Court of Appeal that wrote *Hall v. Harker*, the Supreme Court may have granted review to decide this issue in order to promote consistency in the law statewide.

III. Questions Facing the Supreme Court

The Issue Before the Supreme Court

When a lawsuit is dismissed because of the exclusion of evidence under the parol evidence rule, does that termination qualify as a "favorable termination" allowing the former defendant to sue the former plaintiff for malicious prosecution?

Is the Parol Evidence Rule a Rule of "Procedure" or "Substance?"

In the 1979 case of ***Lackner v. LaCroix*** (1979) 25 Cal.3d 747, the Supreme Court discussed the tort of malicious prosecution in a different context. In *Lackner v. LaCroix*, the initial lawsuit had been dismissed due to the bar of the **statute of limitations** rather than the application of the parol evidence rule. It is likely that each side at oral argument will rely on or distinguish this case.

In *Lackner v. LaCroix*, the Supreme Court described the test for deciding what is a "favorable termination" for malicious prosecution purposes: the termination must "reflect on [the defendant's] innocence of the alleged misconduct" in the first lawsuit. The court also stated that if the termination is on "technical grounds," that is, for procedural reasons, it is not a favorable termination. Thus, the court held that a claim dismissed on the basis of the **statute of limitations** was not a favorable termination for the plaintiff in a later malicious prosecution action, because the statute of limitations was a "technical" or "procedural" rule terminating a lawsuit.

The Bank and Am Mex want the Supreme Court to apply this same analysis to the parol evidence rule. The Bank argues that a dismissal based on the parol evidence rule does not reflect whether Casa Herrera was innocent of fraud or breach of contract. Because Am Mex's evidence that Casa Herrera had falsely promised that the tortilla oven would produce 1,500 dozen tortillas per hour was not admissible, it was never determined that Casa Herrera was innocent of the alleged misconduct. The lawsuit was simply terminated on a *technicality*.

Casa Herrera argues, on the other hand, that Am Mex failed to prove its claims in the tortilla oven lawsuit. Since Am Mex was not able to present sufficient *admissible* evidence of fraud or breach of contract, the underlying lawsuit terminated in Casa Herrera's favor "on the merits." Thus, Casa Herrera's position is that the Supreme Court need not even concern itself with the reasons that there was insufficient evidence to support Am Mex's claims. If there was insufficient evidence for *any* reason, the termination should be deemed to be "on the merits."

Casa Herrera also points out that in *Lackner v. LaCroix*, the Supreme Court stated that a plaintiff in a malicious prosecution need not show that "the prior action was favorably terminated following a trial on the merits," so long as the termination "*reflected* on the merits." Because Am Mex failed to prove its case against Casa Herrera, even if there was not a full trial, this termination "reflected on the merits."

In *Lackner v.LaCroix*, the Supreme Court also observed that a party's failure to comply with another rule, the **statute of frauds**, was a "procedural" defense. This rule requires that certain contracts be in writing in order to be enforced. Thus, if a plaintiff sues for breach of an oral contract that is required under law to be in writing, the defendant can assert the statute of frauds and the plaintiff will lose.

Relying on the court's observation in *Lackner v. LaCroix* that the statute of frauds is a "procedural" defense, the Bank argues that the parol evidence rule is similar to the statute of frauds. The Bank outlines the similarities between the two rules and argues that the parol evidence rule should also be classified as "procedural."

Casa Herrera points out, however, that although the court in *Lackner v. LeCroix* may have referred to the statute of frauds as a procedural defense, it did *not* decide whether a termination based on the statute of frauds "reflects on the merits."

The Bank further claims that the function of the parol evidence rule is procedural, because it excludes evidence that creates credibility questions for juries. Bank contends that California courts have consistently held that since dismissals based on procedural grounds avoid a jury's determination of the defendant's wrongful conduct, they are not "favorable terminations" for malicious prosecution purposes.

Casa Herrera points out, however, that the Supreme Court has in the past described the parol evidence rule as a rule of *substantive law*, rather than simply a rule of procedure.

Policy Arguments

In ***Sheldon Appel Co. v. Albert & Oliver*** (1989) 47 Cal.3d 863, the Supreme Court held that malicious prosecution is a "disfavored" claim, because people would be unwilling to bring lawsuits they believed were valid if they could then be sued by the other party if they lost. The court stated that historically the elements of malicious prosecution have been interpreted very narrowly "so that litigants with potentially valid claims will not be deterred from bringing their claims to court by the prospect of a subsequent malicious prosecution claim."

The Bank argues that expanding malicious prosecution liability to include dismissals based on the parol evidence rule would have a "chilling" effect on the litigation of valid claims, and would thus go against the policy stated in *Sheldon*. Furthermore, because the application of the rule requires the trial court to consider all of the circumstances before making its decision, a party could never be certain whether the parol evidence rule would apply to exclude evidence in any particular case.

In response, Casa Herrera argues that malicious prosecution actions are justified by the harm caused by lawsuits that are based on false claims and are brought in bad faith. Such lawsuits force a defendant to incur costs of defense, mental distress and injury to reputation. A defendant should be allowed to turn around and sue the person who brought such a lawsuit.

The Bank points out, however, that the Supreme Court has stated that the problem of unjustified litigation should not be addressed by expanding the reach of malicious prosecution suits. Rather, trial courts could address the problem within the initial action, by imposing penalties for frivolous claims or bad faith conduct.

The Bank argues further that the Supreme Court should overturn the Court of Appeal's decision because it undermines the policy behind the parol evidence rule, which is intended to be used only as a defense. In *Lackner*, the court stated that a party should not be able to turn a defensive "shield" (in that case, the statute of limitations) into a "sword" by using it as a basis for a malicious prosecution lawsuit. The Bank argues that the same reasoning applies to the parol evidence rule. The parol evidence rule in this case allowed Casa Herrera to escape liability for false oral promises regarding its tortilla oven. It should not also be allowed to profit from its (alleged) misconduct by maintaining a lawsuit grounded on the parol evidence rule.

Casa Herrera responds that this argument, taken from *Lackner*, does not apply to the parol evidence rule, because the parol evidence rule is not a "defense" like the statute of limitations, but is instead a "substantive" rule.

IV. Could This Ever Be Relevant to My Life? (And Other Questions)

Most of us won't want to buy a tortilla oven capable of producing 1,500 dozen tortillas per hour. However, let's say that you want to buy a Jeep. You don't have a lot of money, so gas mileage is very important to you. The car salesman tells you that the Jeep that you're interested in gets 45 miles per gallon. You sign a contract and drive away in the Jeep. However, you soon discover that the Jeep gets only 6 miles per gallon. You check the contract and, sure enough, there is no guarantee about gas mileage.

Should you be able to sue the car salesman and the dealership for breach of contract and fraud? They told you the Jeep would get 45 miles per gallon when they knew it wouldn't. And you are losing a lot of money at the gas pump.

Should you be held to the contract you signed, even if you were so excited about the Jeep that you didn't really read it very carefully?

Would a jury be more sympathetic to your predicament than a judge would?

Are there valid reasons for keeping out evidence of "extra" oral promises that the parties have not included as part of their written contract.?

Let's say you are mad enough to bring a lawsuit, but the trial court decides that the parol evidence rule prevents you from proving fraud or breach of contract and you lose the case. Should the car salesman then be able to sue you for malicious prosecution? Did the first lawsuit end in a "favorable termination" for the car salesman?

How did the Bank get into this case? Well, say you had to borrow money from the Bank to buy the Jeep. You went broke because the Jeep guzzled so much gas and you couldn't pay the loan to the Bank. You were even more broke after you lost your case against the Jeep dealership. Now, to make matters worse, the dealership is suing you *and* the Bank. The dealership knows they can't get much out of you, but they might get a nice judgment against the Bank. So the Bank carries on with the case, all the way to the Supreme Court.

VI. e. STUDY GUIDE AND BACKGROUND MATERIALS
People v. Michael Ray Johnson

"Give credit where credit is due."

The issue in this case is a sentencing issue involving the calculation of **"custody credits."** The materials in this study guide are designed to provide a basic understanding of the sentencing scheme under California's **"Three-Strikes Law"** and to help students focus on the issues that may arise during the oral argument. This case will be argued before the California Supreme Court at a special oral argument session held in San Jose, on December 2, 2003.

The study guide is divided into the following sections:

I. Background Information

A. Sentencing

Anyone convicted of a crime is concerned with how much time in custody he or she will have to serve. Just as a student usually counts down the days to the last day of school each academic year, a prisoner is focused on calculating his or her "out date."

In California, a number of factors determine when a defendant convicted of a felony will actually be released from custody. These factors include:

- Whether the defendant receives a ***determinate sentence*** or an ***indeterminate sentence****;*
- Whether a defendant convicted of more than one crime is ordered to serve the sentences ***concurrently*** or ***consecutively****;*
- How the prosecutor and the judge exercise their ***discretion*** in charging, plea bargaining, or sentencing in the case; and
- How many days of ***credit*** the defendant receives toward the sentence.

B. "Determinate Sentencing" and "Indeterminate Sentencing"

An ***indeterminate*** sentence specifies a *minimum* amount of time to be served before release. Under an indeterminate sentencing scheme, a judge would impose both a minimum and a maximum term of imprisonment. Examples of indeterminate sentences are "5 to 10 years" or "25 years to life."

A person serving an indeterminate sentence has no fixed date of release. Usually the sentence range is established by Legislature, and it is set forth in the California Penal Code. The minimum term represents the *earliest* date a defendant can be considered for parole. Once that date passes, the parole board periodically reviews the defendant's case and his or her behavior while in custody to decide how much longer he or she must remain in prison.

Historically, this type of sentence has been tied to the goal of rehabilitating those who are in prison. Many feel that for prisoners to conduct themselves responsibly and take advantage of programs designed to rehabilitate, there must be a reward system in place. Because the parole board's decision is based in part on the prison officials' view of a prisoner's conduct, indeterminate sentencing is thought to increase participation in rehabilitative programs and to promote prison discipline.

A ***determinate*** sentencing scheme provides *fixed guidelines* for incarceration for specific crimes. Examples of determinate sentences are "30 days in jail" or "15 years in state prison."

Under California's determinate sentencing laws, also contained in the Penal Code, the Legislature has given the judge authority to sentence someone convicted of auto theft (like Mr. Johnson in this case) *either* to up to a year in jail *or* to a prison term of 16 months, two years, or three years. The lowest term, the 16-month term, is called a **"mitigated term"** or "lower" term. The judge imposes this term if the judge finds that there are certain sympathetic circumstances related to the offense or to the offender. The two-year term is called the "**middle term**" or "mid-term." This is the term imposed in the usual case. The three-year term is the "**aggravated term,"** or "upper term," which is imposed if the judge believes the case is particularly serious.

C. "Consecutive" Sentences and "Concurrent" Sentences

A judge can sentence a person convicted of more than one crime *consecutively*, meaning the defendant must serve the entire sentence on the first crime, count one, before beginning the sentence on the second crime, count two. A person sentenced on two counts *concurrently* serves the sentences for both counts at the same time. Some sentencing laws, such as the three-strikes law, *require* the judge to impose a consecutive sentence for certain types of crimes or for certain categories of defendants.

A consecutive term is sometimes called a *"subordinate term."* In the usual case, when a subordinate term is imposed, it consists of "one-third of the middle term" prescribed for that offense.

D. The Three-Strikes Law

Voters passed California's "three-strikes law" in 1994 after 12-year-old Polly Klaas was abducted, raped and murdered by a repeat felon.

A defendant convicted of auto theft, such as Mr. Johnson, would usually receive a determinate sentence. However, under the three-strikes law he could instead receive an indeterminate sentence of 25 years to life if he has been previously convicted of two "strikes."

"Strikes" are serious or violent felonies such as murder, rape, robbery, and residential burglary (burglary of a home). The third strike, or **"triggering crime,**" can be a lesser felony offense, such as drug possession, assault with a deadly weapon, or, in the case of Mr. Johnson, auto theft. The three-strikes law also has rules about when the sentencing judge has the discretion to impose concurrent and consecutive sentences, and when a *full* consecutive term must be imposed rather than one-third of the mid-term.

E. Discretion in the Criminal Justice System

Not all people stopped by the police are arrested. A police officer has some *discretion* to decide whether to arrest a person or not. And not all arrests lead to prosecutions. The prosecutor, or district attorney, has some *discretion* to decide whom to charge and with what criminal offense to charge a defendant. If the prosecutor charges a defendant with more than one crime, the prosecutor usually has some *discretion* during plea bargaining to agree to dismiss certain charges in exchange for a defendant's guilty plea to other charges.

One unusual feature of the three-strikes sentencing law is that it gives prosecutors and judges discretion to bypass it. The prosecutor and the judge are able to review a three-strikes case in order to decide whether imposing the mandatory minimum sentence would undermine the "furtherance of justice." When this occurs, a third-striker can be sentenced as a second-striker, resulting in a doubled sentence instead of the minimum sentence of 25 years to life.

For example, for one count of auto theft, the determinate sentence could be up to one year in the county jail, or a prison term of 16 months, two years or three years. A "second-striker" could receive a determinate prison sentence of double this amount, or 32 months, four years or six years, and a "third striker" would be sentenced to an indeterminate prison term of 25 years to life.

This exercise of discretion by prosecutors and judges is supposed to prevent undeserving offenders from being sentenced too harshly. It gives prosecutors and judges the opportunity to consider the circumstances of each case and to call some offenses "balls" instead of "strikes." Therefore, when a defendant charged under the three-strikes law receives the full sentence of 25 years to life, it is because the prosecutors and the judges have independently decided that the defendant is

deserving of this punishment.

In practice, there is great variation among counties in California as to whether the prosecutor files the charges against a defendant to include the allegations that a defendant has prior strikes, and as to whether the judge decides to "*strike the strike*," thus allowing a third-striker or a second-striker to receive a more lenient sentence.

The judge also has the *discretion* to "recall" a sentence, which occurred in this case. This means that after a person has been sentenced and sent to prison, the judge has a certain number of days to have the defendant returned to court to be sentenced to a lesser (but not greater) term. The statute that discusses a recall for resentencing is Penal Code section 1170(d).

F. Jail or Prison

A jail is a local facility where people are kept if they are awaiting a hearing, if they cannot make bail or are ineligible for bail, or if they are serving a sentence of less than one year. Jails are designed for short-term incarceration. They differ from prisons in the security imposed and the restrictions on the inmate's behavior. They also differ from prisons in the amount of educational, rehabilitative or other work opportunities they offer. This is so in part because a jail prisoner is in custody for a shorter period of time, and may have his or her days interrupted for court appearances or consultations with his or her lawyer.

Before a person in jail is sentenced, he or she is in the custody of the local county Sheriff's Department. After a person is sentenced, he or she is in the custody of the California Department of Corrections, and is transferred from the local county jail to the state prison facility. Although prison is a harsher environment than jail, a prisoner's day is usually free of interruptions. Prison thus offers an inmate more possibilities for work, school, or treatment.

G. Custody Credits: "Actual Time" and "Conduct Credit Time"

You may have heard of a prisoner being released before the completion of his or her sentence by receiving "time off for good behavior." Even people who are not concerned with rehabilitation, and who believe a prison's only purpose should be to punish the offender, agree that prisoners need some incentives for good behavior. Providing prisoners with a constructive way to spend their time lessens tensions in prison and addresses other problems associated with enforced idleness.

A system of **"*conduct credits*"** allows prisoners to work off days from their sentences by doing assigned jobs and by obeying the rules. When a person is sentenced, the judge adds up how many days the defendant has actually been in custody in jail and how many days of *local conduct credit* time he or she has earned in order to determine the defendant's total custody credits. Anyone who behaves properly in jail earns local conduct credits automatically. The rules for calculating *local conduct credit* are set forth in Penal Code section 4019. Local conduct credit awarded under section 4019 is also called *"presentence credit."* For a prisoner convicted of a minor crime, sometimes the presentence credit for jail time equals the sentence, and the prisoner is then eligible for immediate release at sentencing.

Once a defendant is sent to prison, the prison authorities, using a different method of calculation, can determine how many days of *prison conduct credits* the defendant earns while in their custody. Not every prisoner is eligible for the jobs and programs that allow a prisoner to earn these credits, and these credits can be difficult to get and to keep. A defendant serving a three-strikes indeterminate term is not entitled to any term-reducing prison worktime credits.

For a prisoner serving a *determinate sentence*, the amount of custody credit awarded affects how much more time the prisoner must serve on the sentence. For a prisoner serving an *indeterminate sentence*, custody credit affects when that prisoner becomes eligible for parole.

H. Statutory Construction

When two laws, or "statutes," seem to apply to the same situation, it is up to the courts to interpret, or "construe," them in order to decide how they apply. As a general rule of "statutory construction," the court is supposed to give meaning to every word in each statute, and attempt to "harmonize" them in order to carry out the intent and purpose of each.

II. The Case—*People v. Johnson*

A. What Has Happened So Far

The Current Offenses—1998

Michael Ray Johnson worked at the Avis rental car lot in San Jose as a service agent. In January 1998, an Avis manager spotted Johnson pulling out of the Avis lot in a maroon Chevy Malibu. Johnson was supposed to be servicing this car, and he did not have permission to take the car off the lot or give anyone else permission to do so. Johnson also let another man drive a second Malibu for a few days, for which the man paid Johnson.

Johnson was arrested in April 1998 and charged with two counts of auto theft. After a jury trial, he was convicted by a jury of two counts of auto theft. The jury also found that Johnson had been convicted of three prior "strikes."

The Original Sentence—May 1999

In May of 1999, Johnson was sentenced to prison for an indeterminate term of *50 years to life*, representing two consecutive terms of 25 years to life, one for each count of auto theft. The judge ordered Johnson to be delivered to the custody of the Department of Corrections.

The Judge Recalls the Sentence—June 1999

In June of 1999, the judge had Johnson returned from prison to her courtroom to re-sentence him. The judge exercised her discretion to strike Johnson's three prior strikes as to the second count of auto theft. She then sentenced Johnson to 25 years to life on count one, and eight months (one-third of the middle term) on count two, to be served consecutively to count one. This resulted in a prison term of 25 years and eight months to life.

The judge said she would have preferred to sentence Johnson to just 25 years to life, but she believed that under the three-strikes law she did not have the discretion to order the sentence for count two to be served concurrently with count one.

The judge gave Johnson 436 days of *actual credit*. This represented 404 days spent in jail and 32 days in prison. She also give him 202 days of *local conduct credits*. His total credit was therefore 638 days.

In December, the court recalculated Johnson's custody credits. This time the court awarded him a total of 645 days of custody credits, representing 441 days of *actual credit*, and 204 days of *local conduct credit*.

The Resentencing—November 2001

In July of 2001, the Department of Corrections wrote to the trial judge and said that because Johnson's case was a three-strikes case, the eight-month consecutive term for count two should have been a full consecutive determinate term of sixteen months, two years or three years, rather than the one-third of the middle term that the court had imposed.

In November of 2001, the judge re-sentenced Johnson. She said she thought a 25-years-to-life term was "more than enough for these offenses." But she believed that under the three-strikes law she did not have the discretion to sentence Johnson to a concurrent term for count two. Johnson's lawyer did not argue with the court about the consecutive term.

The judge sentenced Johnson to the indeterminate 25-years-to-life term for count one and the "lower" 16-month determinate term for count two, to be served consecutively to count one. According to the directions of the Department of Correction, the judge gave Johnson 1,381 days of actual credit off of this sentence, and left it up to the Department of Corrections to determine how many days of pre-sentence credit Johnson should receive.

The Decision of the Court of Appeal

Johnson appealed his case to the Court of Appeal, the Sixth Appellate District in San Jose. He argued that he should receive local *conduct credit* for the entire time from the date he was arrested (4/14/98) until the date he was re-sentenced after the judge recalled his sentence (6/28/99). He argued that even though he went to state prison between his first sentencing and the date the judge recalled the sentence, when the judge recalled the sentence it was as if he had never been sentenced at all, and he should get local conduct credit as if he had just been waiting in jail all along for his sentencing.

Johnson also argued to the Court of Appeal that the part of the three-strikes law that forbids concurrent sentencing should not apply to count two because the judge had already dismissed the strikes for that count.

In a published opinion the Court of Appeal decided that Johnson was too late to complain about the consecutive sentence on count two. Johnson should have brought that up at the time of sentencing, and he had **waived** (given up, or forfeited) that claim by not raising it earlier.

As for Johnson's custody credits, the Court of Appeal held that Johnson could get local conduct credit (pre-sentence credit) from the date of the recall of his sentence (6/18/99) to the date of the re-sentencing (6/28/99), when he was housed in a local facility, but not for the time he was in prison after the first sentence was imposed and before the recall. The Court of Appeal sent the case back to the trial court to let the court recalculate Johnson's custody credits.

Johnson petitioned the Supreme Court to review the decision of the Court of Appeal and the Supreme Court agreed to consider his argument about the custody credits.

B. Timeline

04/14/98 – Johnson is arrested and put in the county jail.

05/27/99 – The judge sentences Johnson to 50 years to life in prison.

06/18/99 – The judge issues the recall order to bring Johnson back from prison for re-sentencing.

06/28/99 – The judge re-sentences Johnson to 25 years and eight months to life.

11/08/01 – The judge sentences Johnson to 25 years and sixteen months to life.

01/17/03 – The Court of Appeal issues its opinion.

C. Legal Issue

Where the trial court recalls a sentence under Penal Code section 1170, subdivision (d), and re-sentences defendant, is defendant entitled to pre-sentence (local) credit under Penal Code section 4019 for the time served between his original sentencing and the re-sentencing?

D. Applicable Law

Penal Code section 4019

This statute is about *local conduct credits,* also referred to as *pre-sentence credits*. It applies to time spent by the defendant in a local facility, such as a jail or a work camp, after his arrest and before sentencing. It says that a prisoner who performs assigned labor and who complies with the rules is entitled to deduct two days from his period of confinement for each six-day period he spends in the local facility. The statute says that "It is the intent of the Legislature that if all days are earned under this section, a term of six days will be deemed to have been served for every four days spent in actual custody."

Penal Code section 1170, subdivision (d)

This statute is about recalling a sentence. It says that when a defendant has been sentenced to state prison, the judge may decide to recall the sentence within 120 days, or may recall the sentence "at any time" upon the recommendation of the Department of Corrections. The judge may then re-sentence the defendant "*in the same manner as if he or she had not previously been sentenced*." The new sentence may not, however, be greater than the initial sentence. The statute goes on to say that "*Credit shall be given for time served*."

Penal Code section 2900.5

Penal Code section 2900.5 is about custody credits. It says: "All days of custody of the defendant, . . . including days credited to the period of confinement pursuant to Section 4019, shall be credited upon his or her term of imprisonment."

***People v. Buckhalter* (2001) 26 Cal.4th 20**

This is a California Supreme Court case from 2001. In *Buckhalter* the defendant was sentenced to three consecutive life terms under the three-strikes law. He appealed his sentence. The Court of Appeal said that the trial court had made some mistakes and ordered the trial court to re-sentence Buckhalter. The trial court re-sentenced Buckhalter, and he again appealed. This time he contended that because the first sentencing was flawed, he should receive local conduct credits up until the date of his second sentencing.

Buckhalter's case made it up to the California Supreme Court, but the high court ruled against him. The court said a convicted felon who has once been sentenced and sent off to prison, who received all his local conduct credits for the time before the first sentencing, and who remained behind bars while his sentence was being corrected at the direction of the Court of Appeal, is *not* eligible to earn

additional local conduct credits, even if some of that time is spent in the local county jail.

***In re Martinez* (2003) 30 Cal.4th 29**

This is a recent California Supreme Court case filed in April of 2003, after the Court of Appeal opinion in Mr. Johnson's case was filed. In *Martinez,* the court said that a defendant is not entitled to local custody credits under section 4019 once he has been convicted of an offense and sentenced to prison, even if the Court of Appeal reverses his case and he is later convicted again.

E. What the Lawyers Will Argue

At the oral argument before the California Supreme Court, Johnson (through his lawyer) hopes to convince the court that he should receive local conduct credits (section 4019 credits) earned from the date of his arrest April 14, 1998 to the date of his re-sentencing on June 28, 1999. Johnson will argue that the Court of Appeal was wrong when it said Johnson could not receive local conduct credits ("4019 time") from the date of his first sentencing until the date of his sentencing on the recall. He will argue that the trial judge's recall of the sentence under Penal Code section 1170(d) had the effect of erasing (or "vacating") the first sentencing, and that the sentencing court should therefore treat the case as if Johnson had not been sentenced to prison already.

Johnson will rely on the language of section 1170, which says that the court should re-sentence the defendant "*in the same manner as if he or she had not previously been sentenced.*" If the court treated Johnson as if he had not been previously sentenced, it should have awarded him pre-sentence credits under section 4019 from the time of his arrest up to the June re-sentencing. He will argue that this language in section 1170 (d) makes his case different from the *Buckhalter* and *Martinez* cases.

The Attorney General, who represents the state, will argue that Johnson is not entitled to any local conduct credits for the time that he was in prison between his first sentencing and his second sentencing. Once Johnson was placed in the custody of the prison officials at the time of his first sentencing, he was no longer eligible for local conduct credits, just as in the *Buckhalter* and *Martinez* cases.

F. For Discussion

- Do you think jails and prisons should award conduct credits to prisoners?

- Do you think conduct credits provide any incentive for prisoners to behave in a way that a) makes the prison population easier to manage or b) makes the prisoner more likely to be rehabilitated?

- If people are sent to prison to be punished, why should the state go to the expense of providing educational or other programs for them?

- How should the prison authorities decide who gets to participate in rehabilitation programs?

- Why try to rehabilitate someone serving a life term?

- How much time do you think Johnson should serve for driving a Malibu off the Avis lot?

- Should every defendant receive the same sentence for the same crime?

- Should someone who has been convicted of a serious felony and has finished serving his or her sentence for that offense be punished more severely when he or she comes to court for another felony? Should it matter if the new charge is not a "serious" offense?

- Do you think the Supreme Court will decide to give Johnson the credits he argues are "due"? Why or why not?

- The amount of credit at issue here for Mr. Johnson represents under a month's time on a sentence of 25 years and 16 months. Is this out of proportion to all the time the lawyers and judges have spent on this case? Remember that the Supreme Court's decision will become law for cases that come after Mr. Johnson's case.

VI. f. Study Guide and Background Materials
People v. Pena

The California Supreme Court will hear oral argument on this case at a special oral argument session in San Jose on December 3, 2003. The issue in the case involves the right of an appellant, under the California Constitution, to present oral argument before the Court of Appeal.

The purpose of this study guide is to provide students enough background information to allow them to understand what the attorneys are talking about in their presentations to the Supreme Court and to understand any questions the Justices might ask the attorneys. In addition, the study guide will provide questions for consideration by the students in classroom discussions.

I. Definition of Terms

Appellant: The person who is appealing from a judgment or other appealable order in the trial court.

Respondent: The respondent is the other party in the lawsuit, who is responding to the appeal. In criminal appeals, the respondent is "the People," represented by the Attorney General's office.

Appellate Counsel: An attorney who represents either the appellant or the respondent in an appeal. Usually appellate counsel is different from trial counsel. A defendant who cannot afford an attorney can have appellate counsel appointed to represent him or her for free.

Appellate: Of or relating to an appeal or appeals generally.

Brief: A written document in which an attorney discusses and analyzes legal issues in relationship to the facts of the case. Briefs can be prepared and filed in connection with a trial or an appeal. In an appeal, there are generally three briefs. In an "*opening brief*" the appellant states the argument that is the basis for the appeal. The "*respondent's brief*" contains the respondent's (in criminal cases, the Attorney General's) response to appellant's argument. The appellant then has a chance to have the last word in a "*reply brief.*" The briefs in an appeal must follow certain rules of style and content, which are contained in the *California Rules of Court*.

California Rules of Court: These rules set forth procedural guidelines for trial courts, Courts of Appeal and the Supreme Court. They are adopted by the California Judicial Council. They must be followed unless they are inconsistent with a provision of either the Constitution or a statute.

Citations: Attorneys in their written briefs are required to support their arguments with citations (references) to legal authority. Case citations to California Supreme Court cases appear in this fashion: *People v. Brigham* (1979) 25 Cal.3d 283. This means that the Supreme Court wrote an opinion in the case of *People v. Brigham* in 1979, and that it is located in the 25th volume of the third series of bound volumes of California Supreme Court cases, at page 283. Court of Appeal cases are cited similarly. For example, *People v. Getty* (1975) 50 Cal.App.3d 101 refers to an opinion written by the Court of Appeal in 1975, which is found at page 101 of volume 50 of the third series of published Court of Appeal opinions. Citations to legal authority can also be to sections of the various California Codes, called "statutes," or to sections of the California Constitution.

Issue: A point in dispute between two or more parties.

Oral Argument: Appellate counsel's spoken presentation before the Court of Appeal or the Supreme Court, supporting or opposing the legal arguments in the case.

Opinion: A court's written statement explaining its decision in a given case, usually including the statement of facts, points of law, and reasons for the decision. In the trial court the judge can also make a ruling "from the bench," meaning that the decision is made on the record in open court. In the Court of Appeal, opinions are written. However, only the most important opinions are published in the case books. All of the opinions from the Supreme Court are published.

Petition: An initial document filed in court requesting some relief.

Record: The record of a case contains all the documents filed in court in that case. If a case is appealed, the record will be sent to the Court of Appeal for its review. This generally includes what is called the "*clerk's transcript*," which includes all the written documents, and the "*reporter's transcript*," which is a written transcription of the proceedings taken down by the court reporter in the trial court.

Remittitur: The Court of Appeal issues a remittitur when it has finished reviewing the case and has filed its appellate opinion. The remittitur sends the case back to the trial court.

Sanctions: A penalty imposed by the court on a party in a lawsuit, either in money or some action ordered by the court, which results from the party's failure to comply with a law, rule or order.

Tentative Opinion: The *provisional* written decision of a court, including the reasons for the decision and the facts on which it is based. This becomes the final opinion unless the parties can convince the court that the facts are incorrect or the reasoning is flawed.

Waiver: The voluntary abandonment of a legal right**.**

II. Overview of a Criminal Appeal in California

In California, a criminal case is brought in the name of "the People." The term "People" means the citizens of the state. The case is prosecuted by the District Attorney's Office in the county where it is to be tried. The person charged with the crime is called "the defendant." A defendant who is convicted and appeals is usually called the "the appellant." But the case name remains the same. Here, for example, the name of the case, both at trial and through the appeal process, is *People v. Pena*.

A defendant convicted of a crime has the right to challenge the conviction and/or sentence in a higher court. In the case of a "felony" conviction (a serious crime usually punished by imprisonment for more than a year) he or she appeals to the Court of Appeal. If a death sentence is imposed, however, the conviction and sentence are automatically appealed directly to the California Supreme Court.

The Court of Appeal is an intermediate appellate court (between the trial court and the Supreme Court). The California Supreme Court is the highest court in California's judicial system. There are six Courts of Appeal in California, representing different areas of the state. The counties of Santa Clara, Santa Cruz, Monterey and San Benito are represented by Court of Appeal for the Sixth Appellate District. Some Courts of Appeal (not the Sixth District) are divided up into "Divisions." For example, in this case the appeal was assigned to Division Two of the Fourth Appellate District.

On appeal, the issues raised by the appellant (in this case Mr. Pena) are decided based on the law contained in statutes, in other published cases, and in the constitutional provisions. The Court of Appeal takes the facts and circumstances of the case from the record on appeal. This generally consists of documents filed with the trial court (such as motions to exclude evidence), reporters' transcripts of the trial and other oral proceedings (these are word-for-word documents that look and read like a script), and the trial court's rulings (the decisions that the judge made).

An appellate court does not conduct trials or hear evidence. Its review of a case is limited to what is contained in the record of the case from the proceedings in the lower court. When an appellate court hears "oral argument" on a case, this is limited to the attorneys making legal arguments. No witnesses testify. This is not a "retrial."

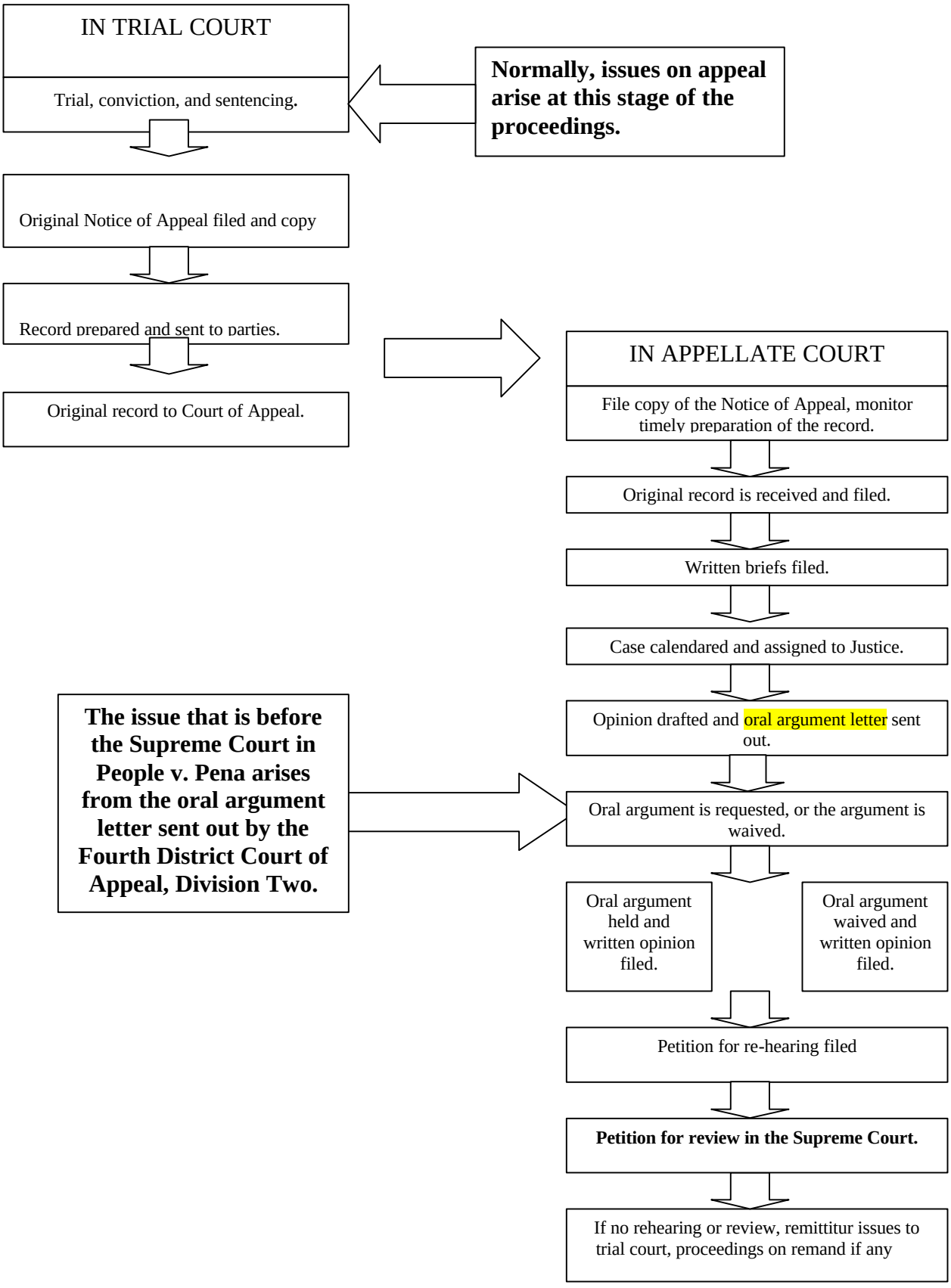
Once the record has been filed with the Court of Appeal, and the attorneys have filed their written briefs, the case is set for oral argument unless oral

argument is waived. "Oral argument" means that the attorneys for both parties appear at the Court of Appeal, make a spoken presentation of their arguments, and answer any questions the Justices may have about the case. In order to determine whether the parties wish to participate in oral argument, the Court of Appeal sends them a notice or letter, asking them to respond if they want to participate in oral argument.

After oral argument, if there is one, the Court of Appeal will inform the parties that the case is "submitted." The Court of Appeal then has 90 days to file a written opinion. If the parties have decided not to participate in oral argument, they "waive" oral argument and the case is "submitted" at the time of the waiver. The Court of Appeal then has 90 days from that date to file the written opinion.

After the written opinion is filed, either party can petition for re-hearing in the Court of Appeal. A petition for rehearing attempts to convince the Court of Appeal that it has made a mistake of fact or of law in its opinion. Either party can also petition for review in the California Supreme Court, asking the Supreme Court to review the decision of the Court of Appeal.

Flow Chart of a Criminal Appeal.



III. What Happened in This Case?

Defendant Jose Pena was convicted of possession and transportation of a kilo of cocaine. The facts of his case have no bearing on the issues here. Pena appealed the judgment to the Court of Appeal in the Fourth Appellate District, raising claims that the trial judge made various errors during trial and at sentencing.

After the trial court record was sent to the Court of Appeal and written briefs were filed, Pena's case was assigned to a panel of three justices in Division Two at the Fourth District, for review and the writing of an opinion. One justice was designated the "lead" justice, who would author the opinion.

When a tentative opinion was prepared, the clerk of the Court of Appeal at the Fourth District mailed to Pena's attorney an oral argument "Notice" that stated among other things: "Enclosed is the tentative opinion of a majority of the three-judge panel hearing the appeal. The court has determined that (1) the records and briefs adequately present the facts and legal arguments, (2) oral argument will not aid the decision making process, and (3) the tentative opinion should be filed as the final opinion in the interests of a quicker resolution of the appeal and conservation of scarce judicial resources."

"Instructions for Requesting Oral Argument" were provided with the Notice. The instructions stated that oral argument could be requested "despite the court's determination that oral argument will not aid the decision making process." According to a warning in the Notice, if appellate counsel did request argument, he or she "may not repeat arguments made in counsel's briefs." The Notice further warned of "Sanctions . . . for non-compliance with this notice."

Pena's appellate counsel did not expressly request oral argument, nor did he expressly waive it.

Division Two of the Fourth District Court of Appeal affirmed Pena's judgment of conviction in an unpublished written opinion. The written opinion was identical to the tentative opinion in all respects but two. (The differences are not important to the issue before the Supreme Court.)

Pena's counsel then filed a petition for rehearing in the Court of Appeal. He argued that the opinion of the court contained a material misstatement of the facts and that he could have corrected this at oral argument. He argued that the procedures adopted by Division Two that are described above violated his right under the California Constitution to be heard at an oral argument.

The request for rehearing was denied.

Pena's appellate counsel then petitioned for review in the California Supreme Court. The Supreme Court agreed to consider his claim that the oral argument notice procedure used by the Fourth District, Division Two, violated his right to oral argument under Article VI, section 3, of the California Constitution.

IV. What Does Article VI, Section 3, of the California Constitution Say?

Article VI of the California Constitution concerns the judicial branch of the California State government. Section 3 of Article VI reads as follows:

"The Legislature shall divide the State into districts each containing a court of appeal with one or more divisions. Each division consists of a presiding justice and 2 or more associate justices. It has the power of a court of appeal and shall conduct itself as a 3-judge court. Concurrence of 2 judges present at the argument is necessary for a judgment."

The section right before this one, section 2 of Article VI, contains a similar provision pertaining to the California Supreme Court. It provides:

"The Supreme Court consists of the Chief Justice of California and 6 associate justices. The Chief Justice may convene the court at any time. Concurrence of 4 judges present at the argument is necessary for a judgment."

After reading what Article VI, Section 3 of the California Constitution says, do you think that it provides a constitutional right to present an oral argument in the Court of Appeal?

V. What To Expect at Oral Argument Before the Supreme Court

The California Supreme Court has already held that an appellant in a criminal case does have a right to present oral argument in the Court of Appeal. The leading case recognizing this right is ***People v. Brigham*** (1979) 25 Cal.3d 283.

In *People v. Brigham,* an appellant requested oral argument in the Court of Appeal but oral argument was denied. The Court of Appeal then "summarily" affirmed his conviction. The Supreme Court found that the Court of Appeal could not do this and held that the Court of Appeal does not have the power to decide the issues in the appeal without giving appellate counsel an opportunity for oral argument. The Supreme Court said that the right to oral argument was based on the California Constitution (Article VI, section 3) but was also recognized in the California Penal Code, the California Rules of Court, and prior California cases.

Considering that the California Constitution, the Supreme Court, the Penal Code and the California Rules of Court all recognize an appellant's right to present oral argument in the Court of Appeal, the only issue before the Supreme Court in *People v. Pena* is whether the notice sent out by Division Two of the Fourth District infringed upon this right.

Pena's Arguments

Pena's appellate counsel argues that Division Two's oral argument procedure denies an appellant his constitutional rights. He argues that in his case, the opinion filed by Division Two contained a material misstatement of fact, which he should have been allowed to correct through oral argument. He contends that the Court of Appeal prevented him from doing this by sending the "Notice" stating that oral argument "will not aid" the court. In addition, counsel argues that the threat that the court could impose sanctions if he were to repeat arguments made in his appellate briefs violated his right under Article VI, Section 3 of the California Constitution.

Thus Pena's counsel argues that Division Two's notice procedure violates his right to oral argument because even though it provides that oral argument may be requested, it informs the appellant that argument would be a waste of time because the court will not change its mind. In addition, the notice informed counsel that in exercising his client's right to oral argument, he could be exposed, among other things, to monetary sanctions by the Court of Appeal and possible discipline by the State Bar.

What this means to the appellate attorney is he or she is placed in a conflict. If the attorney wants to do everything he or she can to protect his or her client's interests, he or she may feel that oral argument is necessary. However, if he or she proceeds with oral argument he or she faces the risk of possible personal sanctions.

The Respondent's Arguments

The attorney on the other side (the Attorney General's Office) points out that although an appellant has a right to oral argument, the law also recognizes that this right can be waived. Because of the increased caseload in the Courts of Appeal, courts have had to develop procedures to facilitate the processing of appeals. In 1990, Division Two began sending copies of "tentative opinions" to counsel before oral argument. It was found that this focused the oral argument and reduced the time spent on each case. It also improved efficiency of case management by encouraging counsel to waive oral argument. Reducing appellate delay is the chief aim of Division Two's notice procedure.

Respondent defends the notice procedure used by Division Two. Respondent argues that Division Two's "Notice" is essentially no different from notices used by other appellate courts. Some courts send letters indicating that "the court believes oral argument is not necessary." In addition, simply because Division Two's notice refers to a "tentative" opinion, this does not mean that the court will not make changes if persuaded to do so. Some opinions are changed after oral argument.

Furthermore, it is not unusual that failure to follow procedure will result in sanctions. In this case Mr. Pena's attorney need not have worried about sanctions because sanctions are a possibility only if an attorney repeats arguments that are in the briefs. If he had raised the issue about the court's misstatement of facts, he would not have been subject to sanctions.

Finally, Respondent argues that the "Notice" sent out by Division Two does not outright deny an appellant oral argument, as the Court of Appeal did in *Brigham.* Rather, it explains that appellant may request oral argument as long as certain rules are observed. If the Supreme Court decides that Division Two's letter infringes on an appellant's right to oral argument, Respondent contends that the simple remedy would be a revised letter that simply specifies the conditions under which oral argument would be most helpful to the court.

VI. Questions for Discussion

1. How important is it to have an attorney argue the case in front of the Court of Appeal? Aren't the parties' briefs adequate to present the issues and persuade the court?

2. Should an appellate attorney who is intent on representing a client be worried about sanctions?

3. Was Mr. Pena's attorney discouraged from requesting oral argument? Would you have decided not to request oral argument if you had received Division Two's notice?

4. Mr. Pena raised the issue of the court's "material misstatement of fact" in his Petition for Rehearing. Didn't that provide a sufficient opportunity to raise that issue?

5. If the Supreme Court decides that Mr. Pena's rights were violated, what is the remedy? Does he get a new trial or does he get to have oral argument?

6. If Mr. Pena gets to have oral argument, what should happen to all those other defendants who were "denied" oral argument because of the waiver notice used by the Fourth District, Division Two?

VI. g. STUDY GUIDE AND BACKGROUND MATERIALS
Martin v. Szeto

Martin v. Szeto will be argued before the California Supreme Court on December 3, 2003, at a special oral argument session in San Jose.

This study guide has three purposes:

1. To help the student understand the factual background and legal question presented by the case of *Martin v. Szeto*.

2. To explain how the question presented in *Martin v. Szeto* relates to the larger question of how the three branches of government interact to insure the rights and obligations of its citizens.

3. To provide an opportunity for the student to analyze and weigh the relative value of the following:

- The right to protect one's reputation and one's right to earn a living,
- The right of access to the courts, and
- The right of free speech.

The following sections of the study guide are attached:

I. What is this case about?

II. Why does it matter?

III. Important terms and concepts.

IV. How did this case reach the Supreme Court?

V. The question before the Supreme Court.

VI. Why the Courts of Appeal disagreed.

VII. The parties' arguments before the Supreme Court.

VIII. Questions.

I. What Is This Case About?

Consider this hypothetical situation:

You and your friends are standing around talking about whether to sign up for a class from Mr. Piffle, the social studies teacher, when somebody says, "Well you know, Piffle is a cocaine addict." One person from the group goes and tells Piffle that *you* said he was a cocaine addict. Piffle is very upset because he does not use drugs of any kind. The remark hurts his reputation and could cause him to lose his job. So he sues you.

After you get over your initial shock at being sued, you and your parents realize you need to hire a lawyer. Your lawyer does a very good job for you and convinces the judge that Piffle cannot prove his case. You win.

Along with the news that you have won, your lawyer also delivers the bill. You owe $8,000 for the time spent working on your case (the attorney's fees) and $500 for certain costs your attorney had to pay to file your papers at the courthouse. Because Piffle lost, he has to pay the $500 in costs. But under the so-called "American Rule," each side has to pay its own attorney's fees. So you're stuck with a bill for $8,000 . . . unless there is some other rule that would shift that obligation to Piffle.

This is (basically) what *Martin v. Szeto* is about. The two sides are fighting over whether there is a rule that would require the loser (Martin) to pay the other side's legal bill.

II. Why Does it Matter?

The answer to the question of who pays the winner's attorney's fees can make a big difference.

A rule that requires the loser to pay can discourage some lawsuits. Let's say that the remark was actually the *truthful* observation that Piffle was never prepared for class. If Piffle considered suing you just to get you to stop speaking out about him, he might decide not to sue if he knew he would have to pay your lawyer if he lost.

On the other hand, the same rule can encourage some lawsuits. Sometimes people have legitimate grievances but no money to pay a lawyer and no chance to recover much money even if they do win. If there were a law requiring the loser to pay fees, lawyers might be more willing take such cases because they would be assured of getting paid if they won.

Also, attorney's fees can get very high very quickly. Consider yourself lucky if your attorney's bill was only $8,000.

Note: In cases where there is a chance the loser will owe the winner a significant amount of money, many lawyers will make their fees contingent upon recovery. That means the attorney's fees would be a percentage of the amount of money recovered. If no money is recovered, the fee is $0. A contingency fee is one way to shift the obligation for attorney's fees to the losing defendant. This case is *not* about contingency fees.

III Important Terms and Concepts

Law is the body of rules that must be followed by all citizens.

> **Case law** (or common law) is the set of rules developed from decisions of the courts.
>
> **Statutes** are laws created by acts of the Legislature.
>
> **Constitutional law** is the fundamental law of the state or nation. Case law and statutes must be consistent with the constitution.

The role of the Courts of Appeal and the Supreme Court is to interpret the law. Sometimes these courts must decide the meaning of a statute. Generally, on questions of California law, the California Supreme Court has the last word. The Legislature has the power to change the law so long as the change does not conflict with the state and federal constitutions.

Parties are the persons on both sides of a lawsuit. **Plaintiff** is the party who filed the lawsuit. **Defendant** is the party being sued.

Costs are the expenses that are necessary to conduct the lawsuit. These include such expenses as filing fees, costs of making written transcripts of interviews with witnesses ("depositions"), travel expenses to attend deposition, and costs of service. The Legislature determines what costs may be recovered and these are listed in the California Code of Civil Procedure. (Section 1033.5) The loser of a lawsuit must pay the winner's costs. Costs usually do not include attorney's fees.

Fees in this case are attorney's fees. That is the amount the lawyer charges for his or her time working on the case.

The "American Rule" is that each party must pay his or her own attorney's fees regardless of who wins or loses. One of the exceptions to the American Rule is when there is a special statute that allows the winner to recover attorney's fees from the loser. Such a statute is called a **fee-shifting** statute.

Bad faith means consciously doing something wrong and doing it for a dishonest purpose.

Good cause means having a legally sufficient reason to do something. Doing something without good cause could be a sign of bad faith.

Defamation is a false communication about a person that injures the person's reputation or the person's ability to practice his or her occupation. Defamation is either libel or slander.

- **Libel** is defamation by *writing*.
- **Slander** is defamation that is *spoken.*

California Code of Civil Procedure, Section 1021.7, provides that a judge can award attorney's fees in certain cases, including libel or slander, if the judge finds that the person bringing the lawsuit did so without good cause and in bad faith.

IV. How Did This Case Reach The Supreme Court?

Richard Szeto and Anthony Lincoln were talking about whether to hire Craig Martin to do some legal work for them. (Martin happens to be a lawyer.) Their discussion took place in front of two of Martin's friends. The friends later told Martin that Szeto and Lincoln had said Martin was "doing cocaine." Martin sued Szeto and Lincoln for slander.

What Happened in Superior Court?

When the case went to court, the judge first ordered the parties to try to resolve their dispute by presenting the case to a neutral arbitrator (who is not a judge, but is usually an attorney). Martin did not show up for the arbitration hearing, and he did not make any attempt to reschedule.

When the case went back to court, Szeto and Lincoln submitted a written argument (a "motion"), in which they tried to convince the judge that there was no possible way Martin could win his lawsuit against them, so they did not need to have a trial. (This is called a **summary judgment motion**.) If the judge agreed with them, the judge would designate Szeto and Lincoln the winners, and they would get a **judgment** in their favor**.**

Once again, Martin did not show up for the hearing on the summary judgment motion. Also, he did not submit any written argument in response to Szeto and Lincoln's summary judgment motion. The judge agreed with Szeto and Lincoln, granted their motion, and entered judgment in their favor.

Szeto and Lincoln then asked the judge to order Martin to pay their attorney's fees. They based their claim for attorney's fees on a "statute" (law) in the California Code of Civil Procedure, section 1021.7. Section 1021.7 allows a defendant who prevails in a libel or slander case to collect attorney's fees from the plaintiff (Martin in this case) if the judge finds that the plaintiff filed the lawsuit for a dishonest reason (in bad faith). Szeto and Lincoln argued that because Martin did not show up at the arbitration hearing and did not respond at all to the summary judgment motion, this showed bad faith.

This time the judge disagreed with Szeto and Lincoln. The judge denied their motion for attorney's fees because the judge did not believe the evidence showed that Martin had acted in bad faith. The judge issued an order denying attorney's fees, and Szeto and Lincoln appealed this order to the Court of Appeal.

What Did the Court of Appeal Decide?

The Court of Appeal disagreed with the trial judge on the bad faith question. The appellate court thought that Martin's failure to show up at the hearings or respond to written argument demonstrated that he was acting in bad faith. In fact the court said that Martin's conduct "reflected a total disdain for the judicial process."

However, the Court of Appeal still had to address an argument made by Martin that section 1021.7 did not apply in this case because it was limited, by its own words, to lawsuits against a "peace officer" or a "public entity employing a peace officer." Martin relied on the only published opinion interpreting this statute, a 1988 case called *Planned Protective Services, Inc. v. Gorton* (1988) 200 Cal.App.3d 1, decided by a different Court of Appeal.

The Court of Appeal that wrote *Planned Protective Services, Inc. v. Gorton* held that section 1021.7 did not apply to allow attorney's fees to *any* defendant who is sued in bad faith for libel or slander. Instead, it applied *only* to lawsuits against peace officers or public entities employing peace officers.

The Court of Appeal in our case thought the other court was wrong, and it agreed with Szeto and Lincoln that section 1021.7 applied to *any* defendant. The Court of Appeal therefore *reversed* the order denying Szeto and Lincoln attorney's fees.

Martin then filed a petition asking the California Supreme Court to resolve this issue, particularly because two different Courts of Appeal had interpreted the same statute differently. The Supreme Court agreed to hear the case.

V. The Question Before the Supreme Court

The parties disagree about how to interpret section 1021.7. This is the language the Supreme Court will be asked to interpret:

> "In any action for damages arising out of the performance of a peace officer's duties, brought against a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or against a public entity employing a peace officer or in an action for libel or slander brought pursuant to Section 45 or 46 of the Civil Code, the court may, in its discretion, award reasonable attorney's fees to the defendant or defendants as part of the costs, upon a finding by the court that the action was not filed or maintained in good faith and with reasonable cause."

Section 1021.7 is easier to read if we break it down and omit some of the unnecessary language:

> In any action for damages arising out of the performance of a peace officer's duties,
>
> brought against a peace officer . . . or against a public entity employing a peace officer
>
> *or in an action for libel or slander . . .*,
>
> the court may . . . award reasonable attorney's fees to the defendant
>
> . . . upon a finding by the court that the action was not filed or maintained in good faith and with reasonable cause.

The question the Supreme Court must decide is whether the phrase "or in an action for libel or slander" means that fees are available to winning defendants in *any* action for libel or slander or only in actions that involve *peace officers* or their employers.

Note: An "action for damages" is a lawsuit in which the plaintiff wants to get money from the defendant.

V. Why The Appellate Courts Disagreed

Planned Protective Services, Inc. v. Gorton (*Gorton*, for short) held that even though section 1021.7 says: "or in an action for libel or slander," the history of the statute showed that the Legislature intended it to apply only to suits involving peace officers.

When a court is asked to interpret a statute, the rule is that the court should try to make sure the law serves the purpose the lawmakers (the Legislature) intended. *Gorton* pointed out that section 1021.7 was enacted as part of Senate Bill 229, which was characterized as an act "relating to peace officers." *Gorton* looked at all of the available documents relating to Senate Bill 229 and concluded that the Legislature passed section 1021.7 for the purpose of discouraging meritless lawsuits against peace officers--not against all defendants generally.

The Court of Appeal in our case thought that *Gorton* was wrong. (Appellate courts are entitled to disagree with each other. All the appellate courts in the state, however, are bound by the decisions of the Supreme Court.) The appellate court here relied upon the rule that in determining the Legislature's intent, the court must first look to the *words* of the statute, giving the language its usual, ordinary meaning. The appellate court said that *Gorton* ignored this principle, skipping over the plain language of the statute and going directly to the legislative history.

According to the appellate court in our case, if one considers only the words of the phrase "or in an action for libel or slander," one must conclude that the statute applies in *any* action for libel or slander, not just those involving peace officers. The court found that the statute applied to three types of actions: actions for damages against a peace officer; actions for damages against the public entity employer of a peace officer; or actions for libel or slander. Martin's action against Szeto and Lincoln, the court found, fell "squarely" within the third category.

The Supreme Court will resolve this conflict between the appellate courts.

VI. The Parties' Arguments Before the Supreme Court

Briefly, **Martin** argues that *Gorton* was correct.

Szeto and Lincoln, of course, want the Supreme Court to decide that *Gorton* was wrong.

Martin points out that after *Gorton* was decided in 1988 the Legislature enacted laws called the "*anti-SLAPP" statutes*. (SLAPP stands for "strategic lawsuit against public participation") These statutes created a procedure for *any* defamation defendant to ask the judge to dismiss a lawsuit if the judge finds it was filed only to keep the defendant from exercising the constitutional right of free speech. If section 1021.7 applied to *any* defendant, it could conflict in some ways with the anti-SLAPP statutes. Therefore, according to Martin, since the Legislature passed the anti-SLAPP statutes without mentioning or coordinating them with section 1021.7, the Legislature must have agreed with *Gorton's* interpretation that section 1021.7 applies only to peace officers.

Szeto and Lincoln argue that regardless of the anti-SLAPP laws, the Legislature has not amended section 1021.7 since *Gorton* was decided, so we really don't know what the Legislature thinks of the *Gorton* decision.

Martin also argues that it would be *unconstitutional* to apply section 1021.7 to *any* defendant because it would violate "*the single subject rule*" of the California Constitution. The California Constitution states: "A statute shall embrace but one subject which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void." Martin contends that since section 1021.7 was designated as "an act relating to peace officers," even if part of the statute was intended to apply to *any* defendant, that part must be eliminated because it is unconstitutional.

Szeto and Lincoln contend that section 1021.7 contains a single subject: recovery of attorney's fees by certain defendants who are sued in bad faith. Thus, there is no constitutional problem.

VIII. Questions

1. How do you read section 1021.7? Do you think it applies to all defendants or only to peace officers?

2. Section 1021.7 aside, do you think Martin should have to pay Szeto's and Lincoln's attorney's fees? Would it matter to you that Martin had been absent from the hearings because of the needs of his own clients? Would it matter to you that he had already decided not to pursue his suit because one of the witnesses had died?

3. How are the different branches of government involved here?

4. Why might the Legislature want to limit a fee-shifting statute to cases involving peace officers?

5. How does one decide whether a lawsuit is filed in good faith? Who should make that decision?

6. Why would the Constitution impose a fundamental rule that every statute must have a single subject and have that subject expressed in its title?

7. Does the constitutional right to free speech apply to libel and slander?

8. Do you think the threat of being sued for defamation discourages people from telling malicious lies about other persons? Can you think of a better way to discourage such conduct?

9. Do you think the threat of being sued for defamation discourages people from making critical but *legitimate* comments about other persons?

10. Why would the Legislature enact a fee-shifting statute that was limited to cases of libel and slander? Why not include other types of cases? Medical malpractice cases? Car accidents? (Recall that a "fee shifting statute" is one that makes the loser pay the winner's attorney's fees.)

11. Do you think that the possibility of having to pay the winner's fees would discourage people from filing meritorious lawsuits?

12. What public interests might be served if the Legislature made attorney's fees available to the winner? (One example might be the interest of disabled persons in obtaining access to public accommodations. Can you think of others?)

VI. h. STUDY GUIDE AND BACKGROUND MATERIALS

People v. Holmes

The purpose of this study guide is to provide the information needed to understand the legal appellate process and the questions presented to the California Supreme Court in *People v. Holmes*. This case will be argued in front of the Supreme Court at a special oral argument session in San Jose on December 3, 2003.

People v. Holmes involves the duties of a trial judge in accepting a defendant's guilty plea. The study guide is divided into several sections. It includes the statutes that apply in the case and an explanation of the various terms and procedures discussed. There is a summary of the proceedings in the trial court and on appeal in the Court of Appeal. There is also a synopsis of the leading California cases that set out the governing standards. Lastly, there is a section designed to challenge students and to generate discussion by applying the principles learned in *People v. Holmes*.

The sections of the study guide are attached in the following order:

I. Definitions and Statutes

II. What Happened in the Trial Court?

III. What Did the Court of Appeal Decide?

IV. Issues Presented to the California Supreme Court

V. The Leading Cases

VI. How Would You Decide *People v. Holmes*?

I. Definitions and Statutes

Assault: "An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another." (Penal Code, section 240.)

Assault With Intent to Commit Rape: "Every person who assaults another with intent to commit . . . rape . . . is punishable by imprisonment in the state prison for two, four, or six years." (Penal Code, section 220.)

Battery: "A battery is any willful and unlawful use of force or violence upon the person of another." (Penal Code, section 242.)

Sexual Battery: A sexual battery is touching someone against his or her will for sexual purposes. Sexual battery can be either a misdemeanor or a felony. (Penal Code, section 243.4.)

Felony: A serious crime, punishable with death or by imprisonment in a state prison. (Penal Code, section 17.)

Misdemeanor: A crime that is considered less serious, punishable by a fine or imprisonment in the county jail. (Penal Code, section 17.)

Preliminary Hearing: The filing of a written complaint by the district attorney's office charging a defendant with a crime or crimes is the start of a criminal proceeding. The first hearing where evidence is presented is called a "preliminary hearing." If, after considering the evidence presented at the preliminary hearing, the judge believes that the defendant did not commit a crime, the judge orders the complaint dismissed. If, however, the judge finds the evidence shows there is "sufficient cause" to believe that the defendant is guilty of a crime, the defendant must then stand trial. A defendant may give up ("*waive*") the right to have a preliminary hearing, as Mr. Holmes did in this case.

Plea: A plea is how a defendant responds to the charges that he or she has committed a crime. A defendant can enter a plea of "not guilty," "guilty," or "nolo contendere" (no contest). A plea of nolo contendere has essentially the same legal effect as pleading guilty. A defendant who has pleaded not guilty can later change his or her plea to guilty or nolo contendere.

Plea Agreement: A plea agreement (sometimes called "plea bargain") can be negotiated between the defendant (and his attorney) and the district attorney. In a plea agreement, the defendant agrees to plead guilty or nolo contendere without having a trial. In exchange, the district attorney may agree to a lesser sentence or

to dismissal of one or more of the charges. A plea that is conditioned upon receiving a particular sentence or dismissal is called a "*conditional plea*."

Factual Basis: When a defendant enters a plea of guilty or nolo contendere as part of a plea bargain, and the court accepts the plea, the law provides that the trial court *must*:

> **"cause an inquiry to be made of the defendant to satisfy itself that the plea is freely and voluntarily made, and that there is a *factual basis* for the plea."**

This language is found in **Penal Code section 1192.5**, which is at the heart of this case. Its purpose is to ensure that the defendant is entering a plea to the proper offense under the facts of the case. As to what constitutes an inquiry into the "*factual basis*" for a plea, that is the question being considered by the Supreme Court in *People v. Holmes.*

Judgment: When a defendant has been convicted of and sentenced for a crime, whether he has been tried or has entered a plea, a "judgment" is entered against him.

Certificate of Probable Cause: When a defendant decides to enter a plea of guilty or nolo contendere, he or she gives up ("*waives*") the right to a trial. The defendant's right to appeal from a judgment of conviction based on such a plea is limited. In most instances, the defendant must submit a written request to the trial judge, stating the reason why he believes the proceedings were illegal, and requesting permission to proceed. If the judge decides defendant should be able to appeal, the judge issues what is called a "certificate of probable cause."

Notice of Appeal: Where a defendant has been tried and found guilty and a judgment has been entered, defendant has 60 days to notify the trial court that he intends to appeal the judgment. He does this by filing a "Notice of Appeal." If the judgment is based on a plea of guilty or nolo contendere, the defendant has 60 days to file a notice of appeal and/or a written statement requesting a *certificate of probable cause.* Except in limited cases, the appeal cannot go forward until the trial judge files the certificate.

Probation Report: After a defendant is convicted of a felony, whether it is by a plea or a verdict, a probation officer investigates the case, and prepares a written report for the court, containing recommendations as to whether the court should sentence defendant to a prison term or grant probation. The probation officer must include in the report the circumstances surrounding the crime, usually by summarizing the police reports, as well as the prior history and record of the defendant. The report may also include a summary of the victim's comments concerning the offense.

Prima Facie: "Prima facie" is a Latin term meaning "at first sight." In the law it is used to describe the minimal amount of factual evidence that will suffice to support an allegation. For example, if the prosecutor presents a "prima facie" case that defendant has committed a crime, this means the prosecutor has enough evidence to show the bare elements, although the defendant may later succeed in refuting the evidence. In order to establish a "*factual basis*" for a plea under Penal Code section 1192.5, all that is needed is a "prima facie" showing of the facts supporting the charges.

The Record: The record of a case consists of the transcripts of the hearings that were held in the case in the trial court and the written papers that were filed. "On the record" or "in the record" means something that was said in court and transcribed or is contained in the filed papers. Similarly, the "make a record" means to ensure that something is part of either the transcribed hearing or the written papers. Having a complete record allows the Court of Appeal to review what happened in the trial court.

Stipulation: A stipulation is a formal agreement, usually made by the attorneys on the record. A stipulation is treated as if the matter stipulated to is true.

Harmless Error: If the Court of Appeal finds that the trial judge has made a mistake, the case is not always reversed. After analyzing the entire record, the Court of Appeal can conclude that the error was "harmless," meaning that it is not reasonably probable that it made a difference in the outcome of the case.

Dissent: When a case is appealed to the Court of Appeal, it is decided by a panel of three justices. If one justice disagrees with the other two, he or she writes a *dissent* and the other two sign the majority opinion. In the Supreme Court, there are seven justices participating in each case. A majority opinion must be signed by at least four justices. Any justice who does not agree with the majority can write a separate dissent.

II. What Happened in Holmes's Case in the Trial Court?

On April 18, 2000, the Riverside County District Attorney's office filed a complaint against Henry J. Holmes containing two charges ("counts"):

In count 1 he was charged with a felony—assault with intent to commit rape (Penal Code section 220).

In count 2 he was charged with misdemeanor sexual battery (a violation of Penal Code section 243.4(d)).

Holmes first pleaded not guilty, but then he decided to change his plea after his attorney negotiated with the district attorney. He waived his right to a preliminary hearing and entered a plea of guilty to count 1 in exchange for a term of two years in state prison. Since the punishment under Penal Code 220 can be as low as two years or as high as six years, Holmes exchanged a guilty plea for the lowest sentence. As part of the **plea agreement**, the district attorney also agreed to dismiss count 2.

The trial judge asked Holmes whether his plea was voluntary and whether there was a factual basis for it. He told the judge that he had committed the acts alleged in count 1 of the complaint. He had also signed a "change-of-plea form" that stated there was a factual basis for his guilty plea. The judge then accepted the plea.

Holmes waived his right to a probation report and he asked to be sentenced immediately. On June 1, 2000, the judge sentenced him to the agreed-upon term of two years.

On July 17, 2000, Holmes filed a timely notice of appeal and a request for a **certificate of probable cause**. He contended that the trial judge had not complied with Penal Code section 1192.5, because the judge did not make the proper inquiry to establish a factual basis for the plea. The trial judge issued the certificate of probable cause, which allowed Holmes to contest the validity of his plea.

III. What Did the Court of Appeal Decide?

Holmes argued on appeal that he must be allowed to withdraw his guilty plea because the trial court failed to establish a sufficient factual basis for the plea as required by Penal Code section 1192.5.

On November 8, 2001, the Court of Appeal filed its unpublished opinion in *People v. Holmes.* The court stated that a trial court is required under section 1192.5 to satisfy itself that there is reason to believe that the defendant committed the crime. The Court of Appeal examined the transcript of the proceeding where Holmes had entered his plea. This showed he had informed the trial court that he had committed the acts alleged in count 1 of the complaint. The Court of Appeal also looked at the written record, which contained the change-of-plea form, signed by Holmes, stating that there was a factual basis for his plea.

Based on this information in the record, the Court of Appeal concluded that the requirements of Penal Code section 1192.5 were satisfied. The Court of Appeal therefore affirmed the judgment.

Holmes then filed a petition asking the California Supreme Court to review his case, and the Supreme Court accepted review.

IV. Issues Presented to the Supreme Court

In accepting a defendant's guilty plea, did the trial court fulfill its duty, as required by Penal Code section 1192.5, to make an independent inquiry as to the factual basis for the plea? If the Supreme Court decides that the trial court did *not* comply with section 1192.5, it must then address a further question—whether the trial court's error was "harmless error" or the judgment must be reversed.

In order to put the factual basis issue in perspective, it is necessary to understand the difference between *factual* issues and *legal* issues. Every crime consists of various elements. For example, the elements of an assault are that the defendant made an *unlawful attempt* to commit a *violent injury* on someone, and that he or she had the *present ability* to do so. The crime of assault with intent to commit rape requires all of these elements, but the defendant also must have the *specific intent to commit rape* at the time he committed the assault. If Holmes had gone to trial, the prosecutor would have been required to prove, beyond a reasonable doubt, all of the *facts* that make up all of the elements of the crime that was alleged against him. If all the factual elements are proved, the finding that the defendant committed an assault with intent to commit rape is a *legal* conclusion.

When a defendant agrees to enter a plea and gives up the right to a trial, the factual elements do not need to be proved beyond a reasonable doubt. Otherwise entry of a plea would be no different from a trial. However, the trial judge must be satisfied that there is a *factual basis* to support the legal conclusion that the defendant committed the crime alleged in the complaint.

In Holmes's case, the question is whether the trial judge established a factual basis by:

(1) Asking Holmes if his plea was voluntary;

(2) Asking whether there was a factual basis for the plea;

(3) Accepting Holmes's answer that he had committed the acts alleged in the complaint count 1; and

(4) Accepting the written change-of-plea form signed by Holmes.

Holmes contends that in order to satisfy the requirements of Penal Code section 1192.5, a trial court must make sure that the acts committed and the intent harbored by a defendant show that all of the elements of the admitted crime are present. He contends that his statement that he committed the acts alleged in the complaint did not establish the *factual* elements of the crime. He further argues

that the facts of his case reveal that there was no factual basis for the plea he entered. He contends that the error was not harmless because there was nothing in the record showing the facts. Thus he asks the Supreme Court to find that reversal of the judgment is required so that he can be allowed to withdraw the plea if he desires to do so.

The People, represented by the Attorney General, argue that what the trial court did in this case was sufficient to establish a factual basis for Holmes's guilty plea. Even if there was error, the People argue that the error was harmless.

V. The Leading Cases

The following are some cases that may be discussed at oral argument in *People v. Holmes.*

People v. Watts (1977) 67 Cal.App.3d 173

In *People v. Watts*, Mr. Watts was charged with murder and attempted robbery, and he agreed to plead guilty to second degree murder, in exchange for which the prosecutor agreed to dismiss the second charge. Watts was sentenced according to the plea agreement.

On appeal from the judgment, Watts argued that because the trial court failed to make an inquiry as to the factual basis for his plea, he should be permitted to withdraw the plea. The Court of Appeal in *Watts* first explained the purpose of Penal Code section 1192.5—to protect against the situation where the defendant may not recognize that his acts do not constitute the offense with which he is charged. "Inquiry into the factual basis for the plea ensures that the defendant actually committed a crime at least as serious as the one to which he is willing to plead."

Next, the Court of Appeal examined what the trial must do to comply with section 1192.5. Unfortunately, there are no rules in the law that define the *exact* nature and scope of the inquiry the trial judge must make to establish a factual basis for a plea. As the *Watts* court pointed out, the Penal Code does *not* require a judge to interrogate a defendant personally, element by element, about the factual basis for his guilty plea. However, *Watts* offered several suggestions that would serve the purpose underlying the factual basis requirement: the trial judge could have the defendant briefly describe the conduct that brought on the charge; the judge could refer to portions of the testimony from the preliminary hearing transcript; the judge could question the attorneys about what happened; or the judge could refer to the probation report for the facts underlying the crime.

The court in *Watts* said that "These are not the exclusive means for a trial court to reach a determination. The trial court is free to utilize whatever procedure is best for the particular case before it to ensure that the defendant is entering a plea to the proper offense under the facts of the case. But whatever method is employed, *the court should indicate for the record the source of the factual information supporting the plea*."

The Court of Appeal in *Watts* found that the trial judge in that case had failed to make a proper inquiry and record under section 1192.5. However, the court found further that because the facts behind Mr. Watts's alleged crime were

contained in the transcript of testimony from a preliminary proceeding before the grand jury, and also in the probation report, there was a sufficient factual basis for Watts's guilty plea. Therefore, although the trial judge's failure to make specific reference to the factual basis was error, the error was harmless because the transcript and the probation report established that Watts had participated in the crimes with which he was charged.

People v. Tigner (1982) 133 Cal.App.3d 430

In *People v. Tigner*¸ the defendant had entered nolo contendere pleas to five counts of grand theft. He later wanted to withdraw his pleas. However, the trial judge entered judgment, and Mr. Tigner appealed.

The Court of Appeal in *Tigner* reversed the judgment. The court found that the trial judge had accepted the pleas without making an inquiry on the record as to the factual basis for the pleas. Although the trial judge had stated in court "There's a factual basis," the *Watts* court found that merely reciting this without actually developing the factual basis *on the record* was not sufficient to meet the requirements of Penal Code section 1192.5.

Unlike *Watts*, there was not sufficient factual information in the probation report in *Tigner* to constitute a factual basis. And the judge did not have the transcript of the preliminary hearing. Therefore, the Court of Appeal found that the error was *not* harmless and the judgment had to be reversed.

People v. Calderon (1991) 232 Cal.App.3d 930, 935

In *Calderon*, the defendant was sentenced according to a plea bargain after entering guilty pleas to two counts of attempted murder and two counts of assault with a deadly weapon. He had waived a probation report.

In taking Mr. Calderon's plea, the trial judge asked him whether he had attempted to kill a rival gang member. On appeal Calderon claimed that this inquiry by the trial judge had failed to establish a factual basis for his plea of guilty to attempted murder because this crime involves an element of malice, and the judge did not specifically ask about that element.

The Court of Appeal in *Calderon* rejected defendant's argument. The court relied on *Watts* and found that "Nothing in *Watts* requires more than the establishment of a prima facie factual basis for the charges. The court here ascertained that Calderon intended to kill [the victim]. Malice is presumed where the intent to kill

is present. Calderon's statement that he intentionally tried to kill someone constituted an adequate factual basis for attempted murder."

People v. McGuire (1991) 1 Cal.App.4th 281

In *People v. McGuire*, defendant pleaded guilty to being an ex-felon in possession of a firearm. Here the trial judge asked the prosecutor and the defendant's attorney if they would both stipulate (agree) that there was a factual basis for the plea. They so stipulated.

On appeal, the Court of Appeal in *McGuire* found that this was a sufficient record to satisfy the requirements of Penal Code section 1192.5. Referring to *People v. Watts*, the Court of Appeal in *McGuire* explained that no particular form of inquiry was required in order to comply with section 1192.5. Statements and admissions by defendant, *or* by his attorney and the prosecutor, were sufficient.

One justice on the three-justice panel in *McGuire* disagreed with the other two and wrote a **dissent**. In his view, the brief conversation where the judge obtained from the attorneys a stipulation to the factual basis did not satisfy the judge's statutory duty under section 1192.5. This stipulation, he wrote, "is no more helpful in establishing a factual basis than were the statements which were rejected in *Watts* and *Tigner* as being statutorily inadequate. Such a stipulation reveals no more of a factual basis supporting the plea than the plea itself." The dissenting justice went on to find that the judge's failure to comply with section 1192.5 was *not* harmless error, because, as in *Tigner*, the probation report did not contain sufficient facts and there was nothing more in the record to establish a factual basis for the plea. The dissenting justice thus believed that the judgment should be reversed.

People v. Wilkerson (1992) 6 Cal.App.4th 1571

In *People v. Wilkerson*, defendant pleaded nolo contendere to a number of charges of sexual molestation of a child. When taking the plea, the trial judge, as in *McGuire*, asked if the attorneys would stipulate to a factual basis for the plea. Wilkerson's attorney answered, "So stipulated, your Honor, based on the police reports included in the complaint," and the district attorney joined in the stipulation. The judge then found there was a factual basis for the plea.

The Court of Appeal in *Wilkerson* found this was different from *McGuire*, because the stipulation in *Wilkerson* included a reference to facts contained in the police reports. The Court of Appeal stated that "although we would prefer that the

court expressly refer to the specific facts which it finds sufficiently support the plea, we will not find error simply from the failure to do so, as long as adequate information was before the court and is reflected in the record." The police reports were included in the record on appeal and the Court of Appeal could therefore review them in order to determine whether there was a factual basis for the plea.

People v. Mickens (1995) 38 Cal.App.4th 1557

In *People v. Mickens*, the Court of Appeal for the Sixth Appellate District addressed the issue whether a stipulation by counsel was sufficient to satisfy a trial judge's duty under Penal Code section 1192.5 to establish a factual basis for a plea.

The Court of Appeal summarized the previous decisions discussing the requirements of section 1192.5. The court concluded that although a generalized stipulation to a factual basis—without reference to police reports, a probation report, or transcripts of testimony—does *not* satisfy the statute, any error is harmless where the record on appeal contains sufficient factual information. In *Mickens*, the Court of Appeal reviewed the probation report and found that it established a factual basis for the plea. Therefore, any failure to comply with section 1192.5 was **harmless error**.

VI. How Would You Decide *People v. Holmes*?

Before you decide, consider these issues:

1. Why is it so important that a trial judge establish a factual basis when accepting a defendant's plea? For one thing, the United States Constitution provides certain protections for defendants who give up their rights to a trial. It must be shown that a defendant who decides to forgo a trial and enter a plea has made a "voluntary and intelligent choice." An inquiry into the factual basis for the plea may help to ensure that the constitutional standards of voluntariness and intelligence are met.

2. A trial court can find a factual basis for a plea even though defendant claims he is innocent. Why would a defendant enter a guilty plea if he contends he is not guilty? A defendant entering a plea that is conditioned on a certain sentence or on the dismissal of other charges may have decided that the risk of being convicted at trial, after which the full sentence could be imposed, is too great. He may recognize that his defense as it could be presented to a jury is not strong. In such circumstances a defendant may plead guilty even though proclaiming his innocence. How can the trial court establish a factual basis in such a case?

3. Should a trial court have to probe more deeply for the underlying facts when a defendant persists in claiming his or her innocence despite attempting to enter a guilty plea? Should the trial court be required to reject the plea bargain when a defendant is unwilling or unable to state an adequate factual basis for the trial court?

4. The California Supreme Court in *People v. Hoffard* (1995) 10 Cal.4th 1170 clarified that the requirements of Penal Code section 1192.5 apply only to *conditional pleas* that are part of a plea bargain. Why do you think this is so? Are defendants who are bargaining for a reduced sentence in order to avoid a trial more vulnerable to pleading to crimes they did not commit?

5. When a defendant tells the court that he or she committed the acts alleged in the complaint, as Mr. Holmes did in our case, is this a statement of fact or a legal conclusion? What is needed for a *prima facie* factual showing that Holmes had the required specific intent to commit rape when he assaulted the victim?

6. When a defendant represented by counsel presents a signed written change-of-plea form that includes a statement that there is a factual basis for the

plea, may the trial court presume that the defendant is aware of the legal definition, or elements, of the alleged offense? When, if ever, should a defendant's written admission be sufficient for the court to find a factual basis?

7. Do you agree with the majority or the dissent in *McGuire*?

8. Do you think Holmes's statement that he committed the acts alleged in count one, and his signed change-of-plea form, sufficiently established a factual basis for his plea? What else should the trial judge have done? Which of the cases summarized above is most like ours?

9. If you believe that the judge did not comply with section 1192.5 in this case, was it harmless error? Was there anything in the record that could have established the facts of the crime?

10. Since more than two years has passed since Holmes received his two-year sentence, why is this appeal not *moot* (meaning there is no point in deciding it because it has no practical effect for Holmes)?

VI. i STUDY GUIDE AND BACKGROUND MATERIALS

Metropolitan Water District v. Superior Court

This case will be argued before the California Supreme Court in a special oral argument session held on December 3, 2003, in San Jose.

This Study Guide is intended to enhance the experience of listening to the oral argument by providing background information on the law and the facts of the case, and by analyzing the arguments that may be presented to the Supreme Court.

Metropolitan Water District provides retirement and other benefits to its employees under the California Public Retirement System (CalPERS). The issue in this case is whether the Water District (and by extension other similarly situated local agencies) must provide CalPERS benefits to their contract workers as well.

This Study Guide is organized as follows:

I. Summary of the Issue Presented in This Case

This case addresses the issue of whether a local agency (the Metropolitan Water District) that has an agreement with the California Public Retirement System (CalPERS) to provide retirement and other benefits to its employees is obligated to enroll its contract workers in CalPERS. The contract workers are paid and formally employed by private contract service providers, but under common law principles they would ordinarily be considered employees of the Metropolitan Water District.

This issue has statewide impact on the obligation of local agencies that provide CalPERS benefits to their employees to also provide CalPERS benefits to their contract workers. The Court of Appeal concluded that the Metropolitan Water District (MWD) has such an obligation under *the common law test of employment*, because the control MWD exerts over their work makes the contract workers common law employees of MWD, who are thus entitled to CalPERS benefits.

The Metropolitan Water District and its private contract service providers disagree with the conclusion of the Court of Appeal, contending that the common law test of employment is inapplicable. In their view, the applicable test is a *statutory test of employment* under California Public Employees' Retirement Law, under which the MWD contract workers are not employees of MWD entitled to CalPERS benefits because they are not paid out of funds directly controlled by MWD. To resolve this issue, the California Supreme Court must interpret the pertinent Government Code provisions.

II. Relevant Statutes

The general area of law involved in this case is public employee benefits law. The Public Employees' Retirement Law (PERL), Government Code section 20000 et seq., provides an extensive statutory scheme governing the obligation of public agencies to provide CalPERS benefits.

The Government Code sections pertinent to this case are numerous. Among the most significant are the following provisions:

Government Code section 20028, subdivisions (a), (b)

"Employee" means all of the following:

(a) Any person in the employ of the state, a county superintendent of schools, or the university whose compensation, or at least that portion of his or her compensation that is provided by the state, a county superintendent of schools, or the university, is paid out of funds directly controlled by the state, a county superintendent of schools, or the university, excluding all other political subdivisions, municipal, public and quasi-public corporations. "Funds directly controlled by the state" includes funds deposited in and disbursed from the State Treasury in payment of compensation, regardless of their source.

(b) Any person in the employ of any contracting agency.

Government Code section 20281

All members of the retirement system immediately prior to the time this part becomes operative continue to be members of this system.

An employee of a contracting agency on the effective date of its contract with the [CalPERS] board becomes a member immediately.

Every other employee becomes a member upon his or her entry into employment.

Government Code section 20300, subdivision (b)

The following persons are excluded from membership in this system:

(b) Independent contractors who are not employees.

Government Code section 20502

The contract shall include in this system all firefighters, police officers, county peace officers, and other employees of the contracting agency, except as exclusions in addition to the exclusions applicable to state employees may be agreed to by the agency and the board. The contract shall not provide for the exclusion of some, but not all, firefighters, police officers, or county peace officers. The exclusions of employees, other than firefighters, police officers, or county peace officers, shall be based on groups of employees such as departments or duties, and not on individual employees. The exclusions of groups may be made by amendments to contracts, with respect to future entrants into the group. The board may disapprove the exclusion of any group, if in its opinion the exclusion adversely affects the interest of this system. Membership in this system is compulsory for all employees included under a contract. This section shall not be construed to supersede Sections 20303 and 20305.

Government Code section 20630

As used in this part, "compensation" means the remuneration paid out of funds controlled by the employer in payment for the member's services performed during normal working hours or for time during which the member is excused from work because of : holidays; sick leave; industrial disability leave, during which, benefits are payable pursuant to Sections 4800 and 4850 of the Labor Code or Article 4 (commencing with Section 19869) of Chapter 2.5 of Part 2.6; vacation; compensatory time off; or leave of absence. When compensation is reported to the board, the employer shall identify the pay period in which the compensation was earned regardless of when reported or paid. Compensation shall be reported in accordance with Section 20636 and shall not exceed compensation earnable, as defined in Section 20636.

III. Background of the Case

A. The Lawsuit

The plaintiffs are nine contract workers (Dewayne Cargill, and others) who have sued individually and on behalf of a class of similarly situated persons. They claimed that MWD was wrongfully depriving them of CalPERS benefits to which they were legally entitled.

Their case combines a consolidated class action complaint and a petition for writ of mandate and was filed in the Los Angeles County Superior Court. The defendants are MWD and several companies that provided contract workers to MWD. (For convenience, these companies are referred to as the provider companies.) CalPERS intervened in the litigation on the side of the workers. Among other things, the workers allege that MWD has violated its statutory duty under the Public Employees' Retirement Law to enroll the workers in CalPERS.

B. The Trial Court's Ruling

The superior court certified for resolution the following issue: Whether MWD is mandated by the Public Employees' Retirement Law to enroll all common law employees in CalPERS. MWD filed a motion for summary adjudication under Code of Civil Procedure section 437c, asking the court to rule as a matter of law, without a jury, that MWD had no such mandate. The provider companies joined in the motion. The superior court denied the motion for summary adjudication, determining instead that MWD is mandated under the Public Employees' Retirement Law to enroll all common law employees in CalPERS.

C. *The Petitions for Writ of Mandate*

Both MWD and the provider companies challenged the superior court's order by filing petitions for writs of mandate in the Court of Appeal. Code of Civil Procedure section 437c(m)(1) authorizes pretrial appellate review of an order denying a motion for summary adjudication by way of a petition for a writ of mandate. The petitions asked the Court of Appeal to issue a writ of mandate compelling the superior court to vacate its order and to enter a new order granting the motion for summary adjudication and ruling that MWD is not mandated under the Public Employees' Retirement Law to enroll all common law employees in CalPERS.

D. *The Court of Appeal's Decision*

The Court of Appeal, Second Appellate District, denied both writ petitions in a published decision, *Metropolitan Water District v. Superior Court (Cargill, et al.)* (2001) 92 Cal.App.4th 1112 [Rev. granted].) In its decision, the Court of Appeal explained its reasons for denying the petitions and agreeing with the superior court that MWD is required to enroll all common law employees in CalPERS.

First, the Court of Appeal rejected the argument of MWD and the provider companies that Government Code section 20028, subdivisions (a) and (b), should be read together to implicitly provide a statutory "paid by public funds" test for employment: whether a worker is compensated by payment of funds directly controlled by the local agency determines whether the worker is an employee within the meaning of the Public Employees' Retirement Law. The Court of Appeal stated, "This section and its predecessors have been amended 19 times and the Legislature never has chosen to add the paid by public funds requirement to subdivision (b)", which governs employees of contracting non-state government entities like MWD.

Second, the Court of Appeal rejected MWD's contention that the Public Employees' Retirement Law does not incorporate the common law definition of employment. Relying on *Tieberg v. Unemployment Insurance Appeals Board* (1970) 2 Cal.3d 943, 946-947, the Court of Appeal stated the common law test of employment: "whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired." Applying this test, the Court of Appeal determined that the contract workers *were* MWD's common law employees because MWD selected the workers, determined their salary and duties, supervised them, and determined whether to promote, discipline or fire them. The Court of Appeal also determined that the provider companies merely provided payroll services to MWD.

Third, the Court of Appeal ruled that the Public Employees' Retirement Law provides that public agencies who, like MWD, contract with CalPERS to provide employee benefits, are required to provide CalPERS benefits to all employees who are "employees" within the meaning of the Public Employees' Retirement Law and are not otherwise excluded. Based on its rulings that the Public Employees' Retirement Law incorporates the common law definition of employment and that MWD's contract workers were common law employees of MWD, the Court of Appeal concluded that MWD was required to enroll the contract workers in CalPERS.

Following these rulings, the Court of Appeal rejected the argument of MWD and the provider companies that the contract workers were "co-employees" of the provider companies and thus excepted from the common law definition of employment. The Court of Appeal reasoned that the Public Employees' Retirement Law did not incorporate a co-employment exception and, in any event, the provider companies did not employ the contract workers in any meaningful sense.

The Court of Appeal also rejected the claim that the contract workers had waived their right to CalPERS enrollment by signing contracts with the provider companies that did not provide such benefits. The Court reasoned that entitlement to CalPERS benefits is created by statute and cannot be waived, and "the contracts were designed to aid MWD's attempt to deny CalPERS enrollment to its eligible employees."

Finally, the Court of Appeal declined to address the argument of MWD and the provider companies that interpreting Government Code § 20028, subdivision (a), to apply the "paid by public funds" test for employment under the Public Employees' Retirement Law to state workers, but not to contracting agency workers, violated the Equal Protection Clause. The Court of Appeal ruled that the issue was waived because it was raised for the first time on appeal.

MWD and CDI Corporation (a provider company) filed petitions for review in the Supreme Court and the Court granted review.

IV. Relevant Case Law Regarding Principles of Statutory Construction

California Teachers Ass'n v. San Diego Community College District (1981) 28 Cal.3d 692, 699

The interpretation of a statute is a question of law that the appellate court reviews de novo, i.e., by using its independent judgment rather than deferring to the lower court's ruling.

Dyna-Med, Inc. v. Fair Employment & Housing Comm'n (1987) 43 Cal.3d 1379, 1386

In interpreting statutes, the court's primary goal is to give effect to the Legislature's intent in enacting the statute.

Halbert's Lumber, Inc. v. Lucky Stores, Inc. (1992) 6 Cal.App.4th 1233, 1238-1240

Statutory interpretation involves a three-step process: (1) examining the actual language of the statute; (2) giving the words of the statute their ordinary, everyday meaning unless the statute includes a definition of a word, and referring to the legislative history only where the meaning of the words is ambiguous or uncertain; and (3) when the first two steps fail to reveal a clear meaning, applying reason, practicality, and common sense to the language.

Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co. (1999) 20 Cal.4th 163, 210

All parts of a statutory scheme should be read together and construed as a whole, while avoiding an interpretation that renders any language surplusage.

Harris v. Capital Growth Investors XIV (1991) 52 Cal.3d 1142, 1165-1166

If the statutory language is ambiguous, it must be construed to ensure reasonable, not absurd, results that are consistent with the overall legislative intent in enacting the statute.

People v. Palma (1995) 40 Cal.App.4th 1559, 1565-1566

Where "employee" is used in a statute without definition, it is presumed the Legislature intended to adopt the common law definition and to exclude independent contractors.

Yamaha Corp. of America v. State Board of Equalization (1998) 19 Cal.4th 1, 7

While not dispositive, courts give weight to a public entity's expertise in interpreting the statutory scheme within its administrative jurisdiction.

V. The Task of the California Supreme Court

A. Public Policy Concerns: The Supreme Court may take public policy concerns into account in deciding the issue

In their briefs, the parties have emphasized the policy concerns that are implicated in the California Supreme Court's decision.

The petitioners, MWD and the provider companies, assert that the Court of Appeal's decision will have serious economic and administrative consequences, including an upset of public agencies' longstanding ability to procure the cost-effective, temporary services of private-sector workers without having to enroll them in CalPERS. Petitioners contend that only the Legislature should decide whether to disrupt the status quo by undermining public agencies' access to private sector temporary workers and undermining selection of public employees by merit, which is the foundation of civil service in California.

Real parties in interest, including the plaintiff workers and CalPERS, emphasize different public policy concerns. They assert that excluding common law employees of local agencies from CalPERS benefits undermines the Legislature's intent in enacting the Public Employees' Retirement Law for the purpose of attracting and retaining government workers by providing benefits in addition to salaries that are often less than in the private sector. Real parties in interest also emphasize their contention that MWD's contract workers have been wrongfully deprived of CalPERS benefits although these workers are fully integrated into the MWD workforce and perform the same jobs as persons MWD treats as its employees.

B. Other Issues: The Supreme Court may decide the case by ruling on issues raised by the parties but not considered dispositive by the Court of Appeal

1. The Supreme Court may consider whether the Court of Appeal's interpretation of Government Code section 20028, subdivisions (a) and (b), results in the disparate treatment of two classes of workers: temporary workers assigned to state government and temporary workers assigned to local public agencies.

Since only the latter may be enrolled in CalPERS, such disparate treatment may violate the Equal Protection Clause.

2. A second question is whether it is necessary to determine the factual issue of MWD's motive or intent in using temporary contract workers from the provider companies. If so, did the Court of Appeal prematurely decide that MWD used these workers in order to avoid providing CalPERS benefits?

3. The Court may address whether the contract workers are "co-employees" of MWD and the provider companies, and therefore whether they should be considered employees of the provider companies for CalPERS purposes.

4. To the extent the law pertaining to other public agencies (such as the California Workers' Compensation Law, the Internal Revenue Code, the California Unemployment Insurance Code, and the Family Medical Leave Act) indicates that temporary contract workers are employees of the provider company, are these laws indicative of the Legislature's intent with respect to CalPERS benefits?

5. Does the Public Employees' Retirement Law allow individual workers to knowingly waive their right to CalPERS benefits because pension rights are contractual obligations?

VI. j. STUDY GUIDE

Richmond v. Shasta Community Services District

This case will be argued before the California Supreme Court at a special oral argument session in San Jose on December 3, 2003. It concerns the validity of certain fees for water and fire services enacted by a local community services district and affecting property owners in Shasta County. The property owners contend that Proposition 218, the so-called "Right to Vote on Taxes Act," rendered these fees invalid without a vote of the electorate.

The Study Guide is intended to enhance the oral argument experience by providing background information about the case, a brief explanation of the issues, and a summary of the relevant authorities.

Study Guide Contents

I. Factual Background

Shasta Community Services District (referred to as Shasta) provides water, fire suppression and emergency medical services to a geographically large but sparsely populated portion of Shasta County. Shasta has just 640 water customers and a volunteer fire department. Compared to state-wide averages, the water rates Shasta charges are high.

In 1994, Shasta enacted an ordinance (Ordinance No. 1-94) under which it set a "water connection fee" of $2,000, which included a $400 "fire suppression fee." The water connection fee was the charge that a new water user, such as the developer of a new home, would pay to connect to Shasta's water system. However, Shasta apparently had a moratorium on new connections at that time due to its lack of water capacity.

The plaintiffs are the owners of undeveloped real property containing 50 lots that they wish to develop as residential housing. This property either is within Shasta's boundaries or would be required to be annexed into Shasta's boundaries as a condition of development. The owners would be required to obtain water service from Shasta in order to develop their properties.

According to a study commissioned by Shasta, it would cost around $1.7 million or $1.8 million to construct improvements to its water system that would permit it to upgrade its service to existing customers and also offer service to 240 new customers. Shasta lacked the funds to pay for these improvements. Shasta attributed more than $750,000 of these improvement costs to the creation of new capacity and the remainder of the costs to upgrades in service to existing users.

In 1997, seeking to fund increased capacity so that it could provide service to new water customers, Shasta adopted a resolution (Resolution No. 10-97) increasing the water connection fee to $3,576. This fee continued to include a $400 fire suppression fee. This water connection fee had been calculated by taking the amount of the improvement costs attributable to the creation of new capacity ($762,300) and dividing that sum by the number of new connections (240) that would be created by the increased capacity.

II. What Happened in the Trial Court?

The property owners sued Shasta, challenging Shasta's adoption of Resolution 10-97 imposing the water connection and fire suppression fees.

The owners asserted that:

- the water connection fee was invalid because it was an "assessment" that was not approved in compliance with the procedures set forth in Proposition 218, which was passed by the electorate in 1996;

- the fire suppression fee was invalid because it was a fee imposed for "general governmental services," rather than a special benefit to a specific property, and such fees are prohibited by Proposition 218; and

- Shasta's adoption of these fees by resolution, rather than ordinance, was invalid because this was an amendment of Ordinance 1-94, and an ordinance can be amended only by another procedure of equal formality (the "equal dignities rule.")

The trial court rejected all of these arguments. It concluded that (1) the water connection fee was not an "assessment" within the meaning of Proposition 218, but was an exempt "development fee," (2) Proposition 218 did not apply to the fire suppression fee because it had been enacted before the passage of Proposition 218 and was not changed in 1997, and (3) Shasta was not limited to acting by ordinance to impose these fees but could act by resolution.

The trial court entered judgment for Shasta, upholding Resolution 10-97. The property owners appealed.

III. The Court of Appeal Opinion

On February 2, 2002, the Third District Court of Appeal filed its published opinion in this case. (*Richmond v. Shasta Community Services District* (2002) 95 Cal.App.4th 1227 [Rev. granted].)

The Court of Appeal agreed with the trial court about the water connection fee and agreed with the trial court that Shasta could act by resolution. However, the Court of Appeal found the fire suppression fee invalid under Proposition 218 because it was

a prohibited charge for general government services. The court therefore reversed in part and remanded, directing the trial court to enter a new judgment.

As to the water connection fee, plaintiffs' argued that the water connection fee was a "special assessment" because it was intended for the purpose of defraying costs of capital improvements. The Third District rejected this aragument, finding that "special assessment" must be defined by specific reference to Proposition 218. The court concluded that Proposition 218 was not intended to encompass a situation where an assessment is based on an estimated number of parcels yet to be identified, and the assessment will not be imposed unless a particular property owner elects to develop the property.

The Third District found, as to the fire suppression fee, that Proposition 218 was intended to apply to existing fees and charges, and not just to newly enacted or increased fees.

As to the third issue, the court found that the relevant question was not whether an ordinance could be amended by a resolution, which is generally considered to be less formal, but whether Shasta had authority to impose or increase fees under the relevant statutes. The court concluded that Government Code section 66016, which deals specifically with development fees, was the controlling statute. That statute provides that an action to levy a new fee or charge can be taken "by ordinance or resolution." Since the water connection fee was characterized as a development fee, Shasta was authorized to enact it by resolution.

The owners petitioned for review in the California Supreme Court, and their petition was granted.

IV. Legal Background

A. Proposition 218—Articles XIII C and XIII D of the California Constitution

In 1978, California voters passed Proposition 13. This statewide initiative limited property taxes to 1% of the property's assessed value, restricted increases in assessed value to 2% per year unless the property changed hands, and prohibited local governments from enacting any "special taxes" without a two-thirds vote of the electorate. The intent behind Proposition 13 was to limit a property owner's tax liability.

In November 1996, the voters passed Proposition 218, which, like Proposition 13, was primarily intended to limit the tax liability of property owners. Proposition 218 added Articles XIII C and XIII D to the California Constitution. Article XIII C prohibited local government agencies from enacting any "general taxes" without a

majority vote of the electorate or any "special taxes" without a two-thirds vote of the electorate.

This case involves Article XIII D, which restricts the ability of local government agencies to impose "assessments," "charges," and "fees." Expressly excluded from the reach of Article XIII D are "fees or charges as a condition of property development." (Cal. Const., art. XIII D., § 1, subd. (b).)

Article XIII D has six sections. The first section states that "the provisions of this article shall apply to all assessments, fees and charges . . . ." (Art. XIII D, § 1.) This section also provides that "Nothing in this article or Article XIII C shall be construed to: [¶] (a) Provide any new authority to any agency to impose a tax, assessment, fee, or charge. [¶] (b) Affect existing laws relating to the imposition of fees or charges as a condition of property development." (Art. XIII D, § 1.)

The second section of Article XIII D contains definitions that apply in this article. It defines "[a]gency" to include special districts, which includes community services districts such as Shasta. "Assessment" is defined to mean "any levy or charge upon real property by an agency for a special benefit conferred upon the real property." A "fee" or "charge," on the other hand, is defined as a levy, "other than" an assessment, that is imposed by an agency "upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service." A "special benefit" is defined as "a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large" and does not include "[g]eneral enhancement of property value." "Maintenance and operation expenses" is defined as "the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly operate and maintain a permanent public improvement." A "property-related service" is defined as "a public service having a direct relationship to property ownership." (Art. XIII D, § 2.)

The third section of Article XIII D provides that no assessment, fee or charge shall be imposed except as provided in this article. (Art. XIII D, § 3.)

The fourth section provides the procedures for imposition of an "assessment." The agency must identify the parcels that will receive the "special benefit" from the public improvement that the assessment will fund. The cost of the improvement must then be proportionally divided among the parcels in relation to the benefit that each will receive. The property owners must be notified of the proposed assessment, and the assessment may not be imposed if a majority of the property owners oppose the assessment.

The fifth section concerns the effective date of Article XIII D. It states that the article is effective the day after the election. However, agencies were given until July 1, 1997 to bring any "existing, new, or increased assessments" into compliance with the article. Certain assessments were exempted from this requirement. "Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control" were exempt from the requirements of section 4 as long as they were not increased. Any increases would be subject to the procedures described in section 4.

Section 6, the final section of this article, contains the procedures for imposing new or increased fees or charges. It also states that "all fees or charges" must comply with these procedures beginning July 1, 1997. These procedures are similar to those for assessments. The agency must identify the parcels that will be charged, calculate the fee or charge for each parcel, and notify the property owners of the proposed charge. If a majority of the owners oppose the fee or charge, the agency shall not impose the fee or charge. The fee or charge shall be limited to the amount necessary to provide the "property related service" and the revenues shall be used exclusively for that purpose. Each owner shall pay only the proportional amount attributable to the service to their parcel.

Section 6 contains some very specific restrictions on fees and charges. "No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4." "No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners."

Further, no "property related" fee or charge may be imposed or increased, other than a charge for water, sewer or garbage, unless the proposal is submitted to a majority vote of the property owners or, at the agency's option, to a two-thirds vote of the electorate within the affected district.

B. The *San Marcos* Case

The property owners rely on *San Marcos Water Dist. v. San Marcos Unified School Dist.* (1986) 42 Cal.3d 154 in which the California Supreme Court held that a public entity (a school district) was exempt from paying a water capacity fee to a water district because that fee was a "special assessment."

San Marcos concerned a different constitutional provision (article XIII, § 3) expressly exempting public entities from property taxes. Courts had previously held that this provision also impliedly exempted such entities from "special assessments." The water district in *San Marco* had argued that the fee was not a "special assessment," but was a "user fee" that was based on the number of users. As such it was not constitutionally prohibited.

The California Supreme Court rejected this argument and sided with the school district. The court found that the water capacity fee was a "fee aimed at assisting a utility district to defray costs of capital improvements." Thus it was a "special assessment" within the meaning of this implied public entity exemption. *San Marcos* did not involve Proposition 218 or its specific definition of an "assessment."

C. Shasta's Power to Act by Resolution

The powers of a community services district, such as Shasta, are governed by statute.

Government Code section 61621.5 provides that "a [community services] district may *by ordinance* adopt regulations binding upon all persons to govern the construction and use of its facilities and property, including regulations imposing reasonable charges for the use thereof."

Health and Safety Code section 5471 provides that an entity shall have the power "*by ordinance* . . . to collect fees . . . or other charges including water, sewer standby or immediate availability charges, for services and facilities furnished by it."

Government Code section 66016, subdivision (b) provides that "[a]ny action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by *ordinance or resolution*."

In *Cavalier Acres, Inc. v. San Simeon Acres Community Services Dist.* (1984) 151 Cal.App.3d 798, the Second District Court of Appeal held that a community services district could not adopt increased water connection and sewer connection fees by resolution instead of by ordinance because Government Code section 61621.5 and Health and Safety Code section 5471 are more specific statutes that govern over more general statues that might otherwise permit adoption by resolution.

The Third District Court of Appeal in our case stated that it believed "the *Cavalier Acres, Inc.,* court got it backwards." The court reasoned that the "critical limitation" in Government Code section 66016 is that it applies exclusively to development fees. The other code sections are not similarly limited. Therefore, Government Code section 66016 is the more specific and controls.

V. Arguments Before the Supreme Court

A. Water Connection Fee

The property owners contend that the water connection fee is an "assessment" within the meaning of Proposition 218 because prior cases, involving other statutory language, have concluded that a water connection fee is an "assessment." (See, e.g., *San Marcos Water Dist. v. San Marcos Unified School Dist.* (1986) 42 Cal.3d 154.) Shasta, on the other hand, claims that these prior cases are irrelevant here because Proposition 218 contains its own unique definition of "assessment," and the water connection fee does not qualify as an assessment under this unique definition.

Shasta also maintains that Proposition 218 could not have been intended to apply to its water connection fee because it would be impossible for Shasta to comply with the Proposition 218 provisions for approval of an assessment. Since the properties benefitted by the water connection fee cannot be identified until someone actually seeks a connection (at which time the fee is payable), the owners could not be identified in advance of the *enactment* of a water connection fee. In Shasta's view, it would be absurd to conclude that Proposition 218 was intended to apply to such a fee.

The owners claim that it would not be impossible for Shasta to calculate the benefit to each potentially affected parcel. The owners also urge that Shasta erroneously attributed a disproportionate amount of the cost of the improvement to new connections rather than to the existing users.

Finally, Shasta claims that the water connection fee falls within Proposition 218's exemption for "development fees." The owners counter that only *existing* development fees are exempt under the express language of article XII D, and Shasta's fee was increased after the enactment of Proposition 218, so it was not "existing." Shasta asserts that it is not the *fee* that must be *existing* but the *state law that authorizes the fee* that must be *existing*. Since the state law authorizing this fee existed before Proposition 218, Shasta claims that the fee is exempt.

In deciding between these competing contentions, the Supreme Court will focus on the precise language of Proposition 218. The court may also find it necessary and helpful to consider any evidence of the voters' intent when they passed Proposition 218. Like evidence of legislative intent, evidence of the voters' intent can help the court determine what was intended by language that otherwise might be subject to more than one reasonable interpretation. Usually, the court looks at the ballot pamphlet from the election on the theory that the voters perused this pamphlet before voting on an initiative. The court might also find guidance in other statutes that use

similar language and in prior cases that have considered the meaning of Proposition 218's language or the meaning of similar language in similar contexts.

Since the issues before the Supreme Court do not involve factual disputes, the court will not defer to the trial court or to the Court of Appeal on any of the issues before it. Instead, the court will exercise independent or "de novo" review.

B. Fire Suppression Fee

The owners did not seek review of the Court of Appeal's resolution of this issue, since it was in their favor. However, both parties have briefed this issue, and it appears that the court intends to consider and resolve it. If the court does consider this issue, it will have to decide whether the trial court correctly concluded that this fee was permissible or the Court of Appeal was right when it found that this fee was an invalid charge for general government services.

Shasta claims that the portion of the water connection fee that was designated for fire suppression was not actually a separate fee and therefore should be upheld as a valid "development fee" in the same way that the water connection fee is a valid "development fee." Alternatively, Shasta asserts that, if the fire suppression fee is separate, it remains valid because it has not been changed since the passage of Proposition 218.

The owners argue that the fire suppression fee, like the water connection fee, is not a valid development fee, and they assert that its presence as part of the 1997 increased fee means that it was not in existence before Proposition 218. More fundamentally, the owners assert that this fee is invalid because, as the Court of Appeal found, it is specifically prohibited by Proposition 218's ban on fees for general governmental services, including fire services.

C. Resolution vs. Ordinance

The owners argue that Government Code section 61621.5 prohibited Shasta from adopting the increased water connection fee by resolution rather than by ordinance. Shasta asserts that Government Code section 66016, subdivision (b) permitted it to adopt the increased water connection fee by resolution or ordinance. Shasta also argues that there is no meaningful distinction between a community services district's adoption of an ordinance and its adoption of a resolution.

The basic question for the court will likely be which of these two statutes governs this issue. Typically, the more specific statute governs over the more general statute, but this is just a general rule of statutory construction, and the parties disagree about which of the two statutes is more specific here. The court will probably have to

look at the greater context in which these statutes exist and possibly examine any evidence of legislative intent that it can find on the question of which statute should govern here.

VII. Questions

A. Water Connection Fee

Why would the voters want to restrict the ability of a district to impose a water connection fee that was commensurate with the cost of providing service to a new water customer?

How will the water provider increase its capacity before new customers seek water connections if the fee will be paid only when the connection is provided?

Why would the voters want to exempt development fees? Do you think that the voters contemplated that the cost of a water connection would be considered a development fee?

B. Fire Suppression Fee

Does the specific reference to fire services in the prohibition on fees for general governmental services necessarily resolve the issue or might there be a fee for fire suppression that provides something other than a general benefit? For instance, could the fire suppression fee be justified as a development fee that funds the cost of improvements to the water system so that water will be available to fight fires?

C. Action By Resolution

If the same procedural prerequisites apply to both ordinances and resolutions, why would the Legislature want to restrict the ability of a community services district to act by resolution?

Is a statute more specific because it applies to a specific type of entity or because it applies to a more specific type of action?

VII. Glossary Of Terms

Most of the unfamiliar legal terms are defined in the documents in which they appear. But here are a few terms that relate to the courts in general, along with their practical definitions.

APPEAL ~ A proceeding in the Court of Appeal to review a judgment or order made in the trial court. In an appeal, the appellate court determines whether the trial court made any mistakes of law and, if so, whether the party who filed the appeal is entitled to have the judgment or order reversed or otherwise changed.

APPELLANT ~ The person or entity filing the notice of appeal. Most often, the appellant is the party that did not win at the trial or hearing.

APPELLANT'S OPENING BRIEF ("AOB") ~ The first brief filed by the appellant. It explains what happened, describes the claimed error, and presents legal arguments as to why the decision of the trial court should be reversed.

APPELLANT'S REPLY BRIEF ("ARB") ~ The final brief filed in an appeal. It is submitted in response to the brief filed by the opposing party (the respondent). The reply brief is limited to issues already raised in the other briefs.

APPELLATE COURTS ~ In California there are two levels of appellate courts.

(1) The Court of Appeal is the intermediate appellate court, between the trial court and the Supreme Court. Most civil and criminal appeals come directly to the courts of appeal, which must review every case that's properly filed. There are six district courts of appeal in the state of California. The counties of Santa Clara, Santa Cruz, Monterey, and San Benito are in the Sixth District Court of Appeal.

(2) The Supreme Court is the highest court in California. As a general rule, the Supreme Court can decide whether to hear a case or not. (There are some exceptions, such as automatic death penalty appeals.) The Supreme Court grants fewer than 5% of petitions for review (requests for hearing) that it gets.

BRIEF ~ A written statement of the party's position. It sets forth the facts of the case, the procedural history if it's relevant, the points the party wants the court to consider, the party's arguments, and the legal authorities relevant to the issues in the case. Legal authorities include statutes, case law precedents, and treatises written by legal experts. Briefs are required to comply with court rules that address form and content. Despite the name, briefs are rarely brief.

CAUSE OF ACTION ~ A claim in a civil lawsuit; the combination of operative facts and legal liability that gives rise to the right to sue. A lawsuit often contains more than one cause of action. Thus, for example, a person might sue for fraud and for breach of contract; each would be a separate cause of action.

CLERK'S TRANSCRIPT (abbreviated CT) ~ A collection of the documents that were filed with the clerk in the trial court clerk. It's used on appeal to show what happened at the trial court. A typical clerk's transcript from a civil case might include the parties' pleadings and motions, the minutes of court hearings, written jury instructions, and court orders and judgments.

CODE ~ A systematic collection of written laws (statutes) passed by the Legislature. Examples of California codes are the Civil Code, the Education Code, the Penal Code, and the Vehicle Code.

COMPLAINT ~ The initial pleading that starts a legal proceeding. The term is usually associated with civil lawsuits. But there also criminal complaints, which are formal charges accusing a person of a criminal offense.

CROSS-APPEAL ~ A second appeal from a judgment, but by the opposing party (called the "respondent" on appeal). A cross-appeal is brought after the filing of an appeal. It is used to challenge any other parts of the judgment that the respondent considers unfavorable.

DECLARATION ~ A written statement of facts sworn to under oath or under penalty of perjury.

DEFENDANT ~ The party being sued in a civil case or prosecuted in a criminal case.

JUDGMENT ~ The trial court's final determination of the parties' rights and obligations. A final judgment usually ends the case in the trial court.

MOTION~ A written or oral request for a specific ruling or court order.

OPINION ~ The written decision of the court (usually an appellate court). The opinion usually sets forth the facts and relevant procedural history of the case and explains the reasons for the court's decision.

PETITION ~ A formal written request presented to a court. There are many different types of petitions.

PETITIONER ~ The party bringing a petition.

PLAINTIFF ~ The party filing a civil lawsuit in the trial court.

PRECEDENT ~ A published opinion that furnishes a basis for determining later cases involving similar issues or facts. Binding precedent is case law from a higher court that lower courts must follow. If the California Supreme Court decides an issue, the courts of appeal must decide later cases the same way, even if they disagree with the high court's decision. Likewise, the trial courts must follow the precedent established by the appellate courts.

REMAND ~ The act of sending something back. In appellate practice, the court of appeal may send a matter back to the trial court with instructions to do or fix something – for example, to consider evidence that was improperly excluded or to recalculate a prison sentence.

REPORTER'S TRANSCRIPT (abbreviated RT) ~ The written record of the testimony, oral argument, and other words spoken in the courtroom while the trial court is in session. The proceedings are recorded by a court reporter, then transcribed into a typed copy. A reporter's transcript looks and reads something like a script.

RESPONDENT ~ (1) The party responding to an appeal, usually the one that won in the trial court; the appellant's opponent. (2) The party responding to a petition, either in the trial court or in the appellate court; the petitioner's opponent.

RESPONDENT'S BRIEF ("RB") ~ A brief filed by the respondent. It responds to the issues raised in the appellant's opening brief, with arguments to support the trial court's ruling.

STANDARDS OF REVIEW ~ Guidelines used by the appellate courts to determine whether the trial court erred in making a particular ruling. Generally speaking, there are three different standards of review on appeal:

(1) The **"substantial evidence"** test is generally used when the trial judge or the jury has decided disputed factual issues. It gives a lot of deference (respect) to the factual findings made in the lower court.

(2) The **"abuse of discretion"** standard applies when trial judges make rulings based on their own discretion or judgment. That standard gives even more deference to the lower court's decision.

(3) The **"de novo"** or **"independent"** review standard generally applies only if a question of law is presented – for example, when there are no disputed facts or when the case involves the interpretation of a statute. This standard of review gives no deference to the trial court's decision. The standard of review can have a significant impact on the success of the appeal.

SUPERIOR COURT ~ The trial court for civil and criminal cases.

WRIT ~ A written judicial order, commanding the party to whom it's addressed to do or to refrain from doing a specified act. There are many different kinds of writs.

VIII. Related Resources

a. California Judicial Branch Websites

California Judicial Branch
http://www.courtinfo.ca.gov

California Supreme Court Internal Operating Practice and Procedures
www.courtinfo.ca.gov/courts/supreme/iopp.htm

California Courts Self-Help Center
http://www.courtinfo.ca.gov/selfhelp/

Other Related Websites
http://www.courtinfo.ca.gov/otherwebsites.htm

Superior Court of California, County of Monterey
http://www.co.monterey.ca.us/court/

Superior Court of California, County of San Benito
http://www.sanbenito.courts.ca.gov/

Superior Court of California, County of Santa Clara
http://www.sccsuperiorcourt.org/

Superior Court of California, County of Santa Cruz
http://sccounty01.co.santa-cruz.ca.us/supct/courtweb1/index.htm

VIII. Related Resources

b. Bay Area Public County Law Libraries Websites

Santa Clara County Law Library
360 N. First St.
San Jose, CA
408-299-3567
www.sccll.org

Santa Cruz County Law Library
701 Ocean St.
Santa Cruz, CA
www.lawlibrary.org

San Mateo County Law Library
710 Hamilton Ave.
Redwood City, CA
650-363-4913
www.smcll.org

San Francisco County Law Library
401 Van Ness Ave.
San Francisco, CA
415-554-6821
www.ci.sf.ca.us/sfll

VIII. Related Resources

c. Codes and Cases

Legislative Information, Codes
http://www.leginfo.ca.gov/calaw.html

California Case Law, Searchable Opinions from 1850-present
http://www.courtinfo.ca.gov/opinions/continue.htm

Court Rules
http://www.courtinfo.ca.gov/rules/

Civil Jury Instructions Resource Center
http://www.courtinfo.ca.gov/jury/civiljuryinstructions/index.htm

California Courts Self-Help Center
http://www.courtinfo.ca.gov/selfhelp/

Findlaw
www.findlaw.com

VIII. Related Resources

d. Video Resources

1. The Supreme Court of the United States *(24 minutes)*

This is the same outstanding video shown in the museum theater at the Supreme court building in Washington, D.C. Available for purchase (7.95 + 5.95 shipping) from the Supreme Court Historical Society. Call toll free, 1-888-539-4438, Monday – Friday 9 a.m. – 5 p.m. EST.

2. State of California Justice System: The Appellate Process *(16 minutes)*

This excellent video on the appellate process features the justices of the California Court of Appeal, Fifth Appellate District. Available for purchase ($15; add shipping for non-Kern instructors). Contact Pat Harp at 661-636-4758

IX. Justices of the Sixth District Court of Appeal

Seated from Left to Right: Justice Premo, Presiding Justice Rushing, Justice Elia
Standing from Left to Right: Justice McAdams, Justice Mihara,
Justice Bamattre-Manoukian, Justice Wunderlich

1. Presiding Justice Conrad L. Rushing
http://www.courtinfo.ca.gov/courts/courtsofappeal/6thDistrict/justices/rushing.htm

2. Justice Eugene M. Premo
http://www.courtinfo.ca.gov/courts/courtsofappeal/6thDistrict/justices/premo.htm

3. Justice Franklin D. Elia
http://www.courtinfo.ca.gov/courts/courtsofappeal/6thDistrict/justices/elia.htm

4. Justice Patricia Bamattre-Manoukian
http://www.courtinfo.ca.gov/courts/courtsofappeal/6thDistrict/justices/bamattre.htm

5. Justice William M. Wunderlich
http://www.courtinfo.ca.gov/courts/courtsofappeal/6thDistrict/justices/wunderlich.htm

6. Justice Nathan D. Mihara
http://www.courtinfo.ca.gov/courts/courtsofappeal/6thDistrict/justices/mihara.htm

7. Justice Richard J. McAdams
http://www.courtinfo.ca.gov/courts/courtsofappeal/6thDistrict/justices/mcadams.htm

X. CALIFORNIA SUPREME COURT SPECIAL ORAL ARGUMENT SESSION PLANNING COMMITTEE MEMBERS

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V. SANTA CRUZ COUNTY SUPERIOR COURT

Hon. Michael E. Barton, Presiding Judge
Santa Cruz County Superior Court
Main Courthouse
701 Ocean St.
Santa Cruz, CA 95060
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VI. MONTEREY COUNTY SUPERIOR COURT

Hon. Terrance R. Duncan, Presiding Judge
Monterey County Superior Court
240 Church St., Rm. 317
Salinas, CA 93901
(831) 775-5576
duncant@monterey.courts.ca.gov

Hon. Wendy Duffy
Assistant Presiding Judge
Monterey County Superior Court
P.O. Box 1819
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(831) 775-5484
duffyw@monterey.courts.ca.gov

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VII. SAN BENITO COUNTY SUPERIOR COURT

Hon. Harry J. Tobias, Presiding Judge
San Benito County Superior Court
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Hollister, CA 95023-3833
(831) 636-4057
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