

**CRIMINAL
PROCEDURES**

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CRIMINAL PROCEDURES

This booklet and the accompanying videotapes were produced under a grant conceived by Judge F. J. de Larios of the Northern District Municipal Court of San Mateo County, California. The project was financially assisted through a federal grant from the Law Enforcement Assistance Administration and the California Office of Criminal Justice Planning. Opinions, findings and conclusions in this publication are those of the project staff and not necessarily those of LEAA, COCJP or assisting agencies.

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OCT 1 1976

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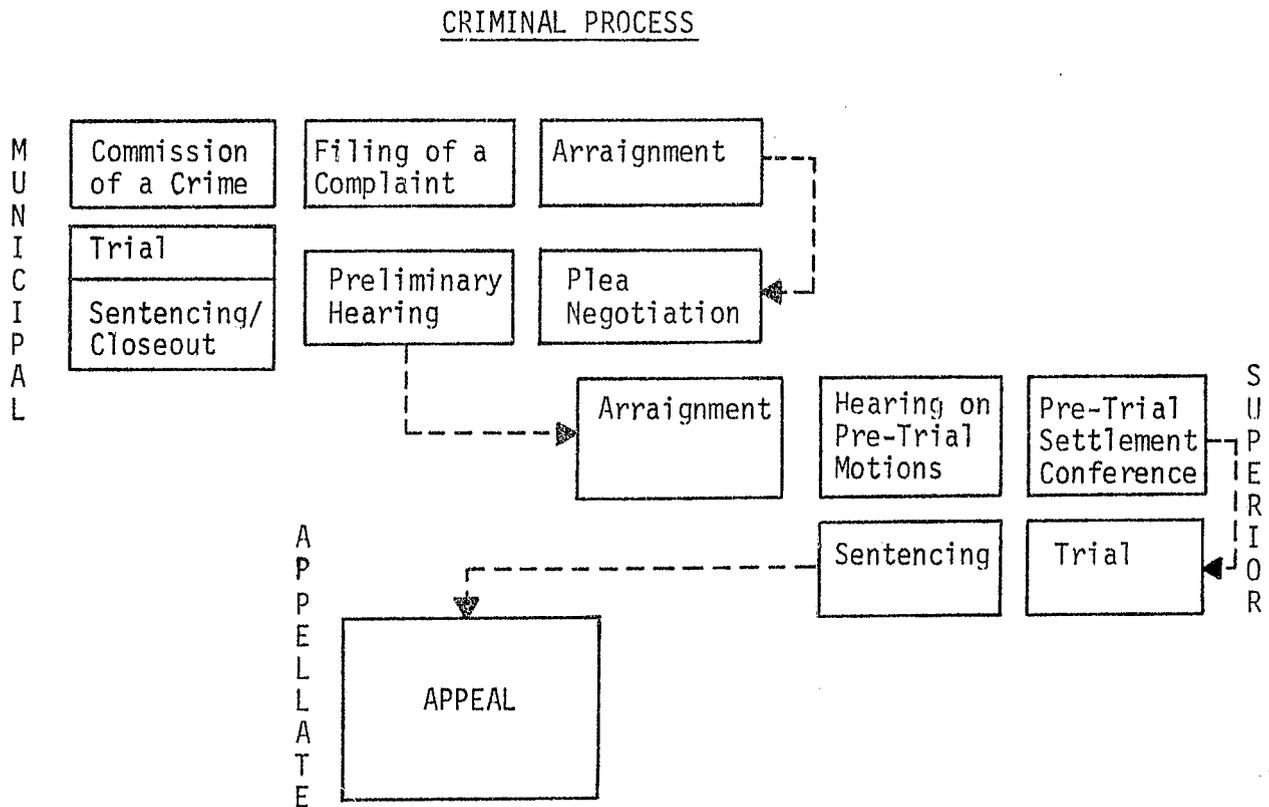
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CRIMINAL PROCESS

Thousands of arrests are made in California each day for crimes ranging from minor misdemeanor offenses to serious felonies. This high incidence of crime places a heavy burden on California courts, so it is important for California's court personnel to have a thorough knowledge and understanding of the criminal process. The intent of this eight-part series on Criminal Procedures is to present a realistic picture of the criminal process at work. We will provide an in-depth look at each stage in the process and also describe the clerical support duties which must be performed along the way. Here is our criminal process model:



To illustrate how the process works, this series will follow the progress of three separate criminal cases from the point of arrest through final disposition. Each of the three cases will take a different path around and through the stages of the above process, according to its individual characteristics.

CASE A involves a misdemeanor drunk driving charge brought against defendant Bruce Bowers.

CASE B is more serious, involving charges of felony wife beating and felony assault on an officer against Harmon Johnson.

CASE C is most serious of all. Two defendants, Joe Ryan and Dan Peterson are charged with armed robbery and assault with a deadly weapon. After the victim of the assault dies, the charges are amended to include first degree murder.

SUPPORT STAFF

The clerical support staff is an important part of the court system. In this series, we have isolated a number of general procedures performed by deputy clerks:

Intake

1. File-stamping documents
2. Recordkeeping
3. Preparing case file folder
4. Calendaring

Pre-Court

1. Pulling, sorting and distributing files
2. Preparing and distributing calendar

In-Court

1. Liaison and assistance to judge
2. Formal duties
3. Recordkeeping
4. File-stamping documents

Post-Court

1. Calendaring
2. Recordkeeping
3. Follow-up activities

Disposition

1. Preparing and distributing documents and forms
2. Recordkeeping

Appeal

1. Preparing and distributing documents and forms
2. Recordkeeping
3. Liaison to appeals court

The specific way in which these procedures are performed will differ from court to court, but the basic procedures are the same everywhere. For instance, recordkeeping occurs in every clerk's office, but records may be handwritten in a book, typed on a form, logged into a computer or placed on microfiche. The examples of procedures shown in the accompanying videotapes are based on specific methods used at the Northern District Municipal Court in San Mateo County.

All of these procedures must be performed properly if the criminal process is to operate smoothly. Speed, accuracy and efficiency are some of the characteristics required in a good deputy clerk. In addition, he or she must understand the criminal process. As Ann Degen, a deputy clerk in San Mateo County and a participant in this series, said: "There have been clerks who have gone in and not known criminal procedure and have survived." But if a clerk does not understand why a form is prepared or what the purpose of various court proceedings are, he or she is more likely to make an error.

HOW THE SERIES WORKS

Included in this series are eight videotaped programs and one coordinated instruction booklet. There is one chapter in the booklet for each videotape program. Following is a list of chapters.

C	<u>MUNICIPAL COURT</u>	1. Commission of a Crime
H		2. Filing of a Complaint
A		3. Arraignment
P		4. Plea Negotiation
T		5. Preliminary Hearing
E		6. Sentencing and Closeout
R		
S	<u>SUPERIOR COURT</u>	1. Trial
		2. Sentencing and Appeal

To use the booklets, turn first to the chapter corresponding to the tape you will be watching. Read the pre-viewing section in full. Then watch the videotape to conclusion. Stop the tape. Then go back to the booklet and read the post-viewing reading for that tape.

Pre-viewing reading includes an introduction to the program, a status report on each of the three criminal cases in the series, and a list of program objectives. Post-viewing reading includes a short summary with some supplementary information, and a restatement of the program objectives with answers.

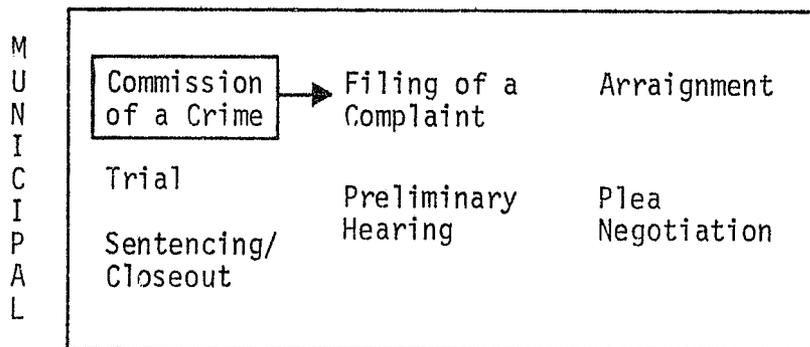
SERIES OBJECTIVES

The series objectives which follow represent what we want you to be able to do when the series is over. Each program and its accompanying chapter in the booklet should contribute to your ability to perform the objectives. Individual program objectives which relate directly to the series objectives, and answers to those objectives, are included in each chapter of the coordinated instruction booklets. This way, you will be able to keep a running record of what you have learned, and, at the end of the series, have a substantial body of knowledge to draw on. The series objectives are:

1. Given a diagram, label the stages of the criminal process in sequential order and then mark the diagram to show the specific routes that Cases A, B and C follow.
2. Briefly describe the purpose of each stage of the criminal process.
3. List the appropriate procedures for each of the following categories: intake, pre-court, in-court, post-court, disposition and appeals.
4. Briefly describe the purpose of each procedure.
5. List some important qualities of court personnel's job performance and give examples of how job performance can negatively or positively influence how well the criminal process works.

MUNICIPAL COURT

① COMMISSION OF A CRIME



PRE-VIEWING

Reproduced above is the criminal process model for the Municipal Court. The accompanying videotape will provide an introduction to this series on Criminal Procedures, first by familiarizing you with the three crimes in this series. Reenactments of the following three crimes will be shown:

- CASE A: Drunk Driving
- CASE B: Wife Beating
Assault On An Officer
- CASE C: Armed Robbery
Assault With A Deadly Weapon

Secondly, we will describe the purpose of the criminal process as a whole. The program includes an interview with Judge Edward Pliska of the Central District Municipal Court, San Mateo County, in which the judge explains the specific functions of the criminal process.

Objectives

Certain instructional objectives have been established for this particular program. After watching the program, COMMISSION OF A CRIME, you should be able to:

1. Fill in the defendant's name, and the crime committed, for each of the three cases.

CASE A

Defendant: _____
Crime: _____

CASE B

Defendant: _____
Crime: _____

CASE C

Defendants: _____
Crimes: _____

2. State the three main functions of the criminal process.

Now, watch the tape, COMMISSION OF A CRIME. At its conclusion, go on to the Post-Viewing section.

POST-VIEWING

Crimes are violations of specific laws enacted to guide and regulate individual conduct within society. The existence of the criminal process is a result of the need to administer justice when crimes occur, at the same time protecting the constitutional rights of those individuals charged. When a crime is committed, a process is set in motion to bring the violator of the law to account for his actions.

The three functions of the criminal process are (1) to arrive at the truth, (2) to make sure that proper procedure is followed and (3) to impose an appropriate sentence. The second function is particularly important. Throughout the criminal process the individual is protected because of his right, guaranteed under the constitution, to due process

of law. This means that he has a right to a fair trial and that he has certain procedural rights throughout the process.

The defendant is also protected at the time of arrest.

Basically, the arresting officer can act to arrest only on the basis of probable cause. There

are also limitations on the search and seizure of evidence and on the interrogation of suspects. In Case C, for example, the police officer seized two important pieces of evidence - the money bag and gun. Whether or not he had sufficient cause to make the search will be the subject of defense motions later on in this series.

The next stage for all three cases is FILING OF A COMPLAINT. After an officer arrests a suspect, the District Attorney still has the job of deciding whether or not the suspect will be held and charged. If the District Attorney decides to charge the defendants, complaints will be filed in the Municipal Court.

"And the whole idea is to make sure that someone who is really innocent, is not made a victim of circumstances and is not convicted of something that was not done. And so, that takes time, and it takes effort to make sure that at every stage of the procedure, that all the person's rights are protected, so that we don't get into situations where the power of the state is brought to bear to just pluck someone off the street and say, 'You're going away to prison for 5 or 10 years.'"

Judge Edward Pliska

Objectives

1. Fill in the defendant's name and the crime for each of the three cases in this series.

CASE A: Defendant: _____
Crime: _____

CASE B: Defendant: _____
Crime: _____

CASE C Defendant: _____
Crime: _____

Defendant: _____
Crime: _____

2. State the three main functions of the criminal process.

Answers

1. CASE A Defendant: Bruce Bowers
 Crime: Drunk Driving

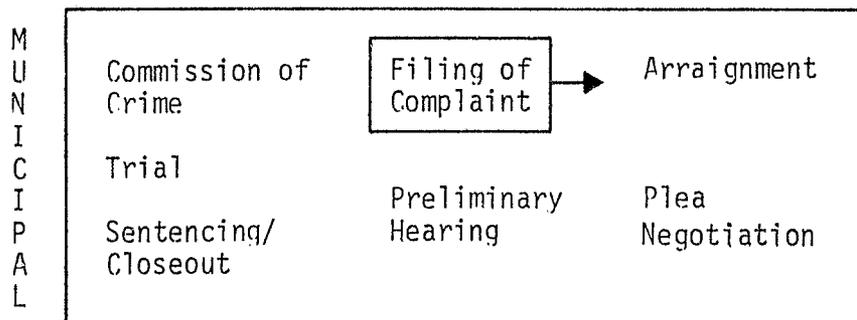
CASE B Defendant: Harmon Johnson
 Crime: Wife Beating and Assault on Officer

CASE C Defendant: Joe Ryan
 Crime: Armed Robbery and Assault with Deadly Weapon

 Defendant: Dan Peterson
 Crime: Armed Robbery

2. a. Arrive at the truth.
 b. Make sure that proper procedure is followed.
 c. Impose an appropriate sentence.

② FILING OF A COMPLAINT



PRE-VIEWING

The first step toward bringing the defendants in each of our three cases to court is the filing of a complaint. The complaint contains key information, including the defendant's name, name of the court and a statement specifying the charge. The law requires that a specific complaint be presented to the defendant. "Due process of law requires that an accused be advised of the charges against him in order that he may have a reasonable opportunity to prepare and present his defense and not be taken by surprise by the evidence offered at his trial."

(In re Hess, 45 Cal. 2d 171; Cole v. Arkansas, 333 U.S. 196).

The District Attorney is the key figure at this stage in the criminal process because it is up to him to decide whether or not a person arrested by the police will actually be charged with a crime. In the following program, you will observe discussions between the District Attorney and the court liaison officer. They will discuss what, if any, charges will be filed against the persons you saw arrested in the last program. The police officer must also get a warrant for the arrest of Joe Ryan, one

of the alleged participants in the armed robbery in Case C, who is still at large.

Objectives

After watching this program, you should be able to:

1. Given a diagram, label the first two stages of the criminal process.
2. Describe the purpose of filing a complaint.
3. List four intake procedures that take place when a complaint is filed and describe the purpose of each procedure.
4. List two pre-court procedures that take place before a court appearance and describe the purpose of each.

Now watch the tape, FILING OF A COMPLAINT. At its conclusion, go on to the Post-Viewing section.

POST-VIEWING

In the videotape you just saw, the decision was made to prosecute the defendants arrested in each of our three cases. In Case A, Bruce Bowers was charged with misdemeanor drunk driving. Harmon Johnson, in Case B, was charged with felony wife beating and felony assault on a police officer. In Case C, defendant Dan Peterson, the driver of the getaway car, was charged with armed robbery. A warrant was issued for the arrest of his co-defendant, Joe Ryan, who is still at large, and Ryan was charged in the complaint with armed robbery and assault with a deadly weapon.

The decision to prosecute is made by the District Attorney. On the basis of information in the police report and supplementary information presented by the court liaison officer, the District Attorney decides whether or not the evidence is sufficient to support a conviction. He must also consider the admissibility of the evidence. For instance, if the search and seizure is in any way improper, there is a risk that the evidence may be excluded from the trial, thus damaging, perhaps destroying, the prosecution's case.

Part of the District Attorney's decision involves a judgment as to the severity of the charge. Misdemeanors are defined as relatively minor crimes punishable by a city or county jail term of less than one year. Felonies are more serious crimes, punishable by imprisonment in state prison or death. There is a difference in the way each of these two types of crimes proceeds through the system. Both felonies and misdemeanors are initially charged in the Municipal Court. The major exception to this rule is that felonies may be brought initially into the Superior Court by means of grand jury indictments. A misdemeanor will ultimately be disposed of in the Municipal Court, whereas a felony (which has been initiated in the Municipal Court) will be screened in the Municipal Court and ultimately disposed of at the Superior Court level.

Here's how it works. In Case A, Bruce Bowers is charged with misdemeanor drunk driving. If he pleads guilty to the charge, he will be sentenced in the Municipal Court. If he pleads not guilty, he will go through a preliminary hearing, and possibly a trial, in the Municipal Court. However, in a felony case, defendants pleading guilty in the Municipal Court will be sentenced in the Superior Court. If they plead not guilty, the case is "screened" in the

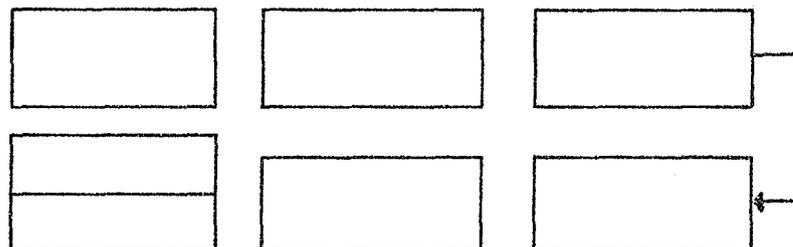
Municipal Court at a preliminary hearing. If sufficient cause is found to hold defendants for trial, the case is transferred to the Superior Court where the information, an accusatory pleading similar to the complaint, is filed and pre-trial proceedings begin.

The actual filing of the complaint takes place in the clerk's office. Intake procedures are performed to get the case on the court records, set up a case file and schedule the defendant's first appearance in court, the arraignment. Before the first court appearance takes place, pre-court procedures ensure that case files go to the proper courtroom and that the case is listed on the daily calendar.

The next stage in the process is the arraignment. Defendants in all three cases will appear at the morning arraignment session where they are formally informed of the charges against them and instructed of their constitutional rights.

Objectives

1. Given a diagram, label the first two stages of the criminal process.

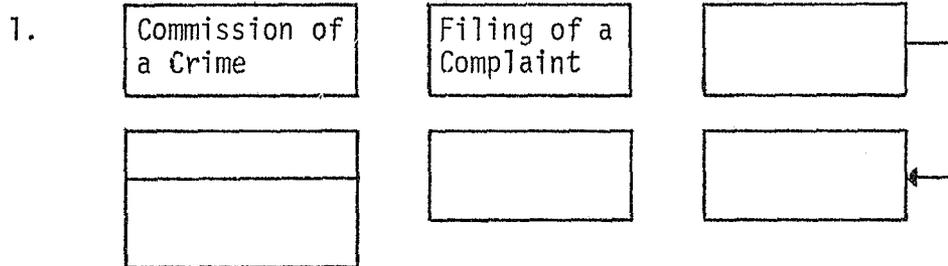


2. Describe the purpose of filing a complaint.

3. List four intake procedures that take place when a complaint is filed and describe the purpose of each procedure.

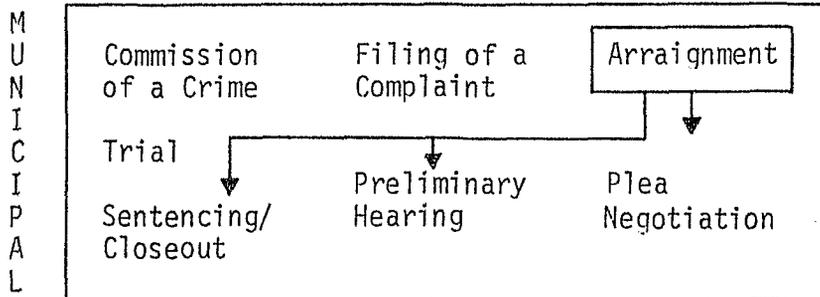
4. List two pre-court procedures and describe the purpose of each.

Answers



2. The purpose of filing the complaint is to formally charge a defendant with a specific crime.
3. a. File-stamping documents. This procedure indicates that the court has officially received the complaint. Copies are conformed to show that they contain information identical to that on the original.
- b. Recordkeeping involves setting up and updating official records on each case entering the court for reference purposes.
- c. Preparing case file folder. This establishes a central record of the case in which all original documents and other records are kept.
- d. Calendaring. The purpose of calendaring is to maintain a schedule of upcoming court events.
4. a. Preparing and distributing daily calendar. The calendar is a list of all court proceedings for any given day, along with the time, place and sequence. It is maintained for the purpose of reference and public posting.
- b. Pulling, sorting and distributing file folders. This process assures that case files are sent to the proper department at the proper time.

③ ARRAIGNMENT



PRE-VIEWING

In the last program, the District Attorney decided to go ahead with the filing of complaints against those persons arrested in Cases A, B and C. In the clerk's office, paperwork setting up the case file and other court records, as well as scheduling the defendants' first court appearances, has been completed. Up to this point, both Cases B and C involve felony charges, whereas Case A involves a relatively minor misdemeanor drunk driving charge. As we noted in the last chapter, felony cases are screened in the Municipal Court, but disposed of in the Superior Court, either by trial (for a not guilty plea) or sentencing (for a guilty plea). Misdemeanor cases, on the other hand, remain at the Municipal Court level through disposition.

The defendants and charges are as follows:

CASE A: Bruce Bowers
Misdemeanor drunk driving

CASE B: Harmon Johnson
Felony wife beating
Felony assault on an officer

CASE C: Joe Ryan
Armed robbery
Assault with a deadly weapon

Dan Peterson
Armed robbery

The arraignment is a critical point in the criminal process because decisions are made which will determine the future pattern of each case. Each case will take a different route through the process. The particular route is determined by many factors, as you will see.

In the accompanying videotape you will observe portions of the arraignments in all three cases. In addition, we will focus in on the activities of the courtroom clerk during the arraignment session, and show how her activities affect the overall courtroom operation. In a special interview, Judge Edward Pliska talks about his concept of the proper conduct of an arraignment.

Objectives

After viewing the tape on the ARRAIGNMENT, you should be able to:

1. Given a diagram, label the first three stages of the criminal process.
2. Describe the purpose of an arraignment.
3. Name four in-court procedures and describe the purpose of each.
4. Give one example of an improperly performed in-court procedure and describe the consequences.
5. Given a diagram, mark it to show the first four stages of the criminal process for Cases A, B and C and tell what circumstances lead to the fourth stage in each case.

Now, watch the tape on ARRAIGNMENT. When it is over, go on to Post-Viewing.

POST-VIEWING

The arraignment is the defendant's first appearance in court. It is at this stage that the defendant is informed of the charge or charges against him and advised of his constitutional rights. Usually, the defendant will also state his plea at the arraignment. Let's review what happened at the arraignments in each of the three cases.

CASE A: Defendant Bruce Bowers appeared without an attorney, and pleaded guilty to misdemeanor drunk driving. After listening to the defendant's description of his drinking problem, the judge delayed sentencing until a pre-sentence report could be prepared.

CASE B: Defendant Harmon Johnson appeared with a private attorney and pleaded not guilty to two felony charges, wife beating and assault on an officer. Because of the not-guilty plea, the case was continued to preliminary hearing. But there is a special consideration in this case. The defendant's wife has shown a reluctance to testify. Her failure to testify will greatly weaken the District Attorney's case, so the defense attorney and District Attorney will seek to settle the case before the preliminary hearing by means of a plea negotiation session.

CASE C: Both defendants have now been apprehended. Because neither Joe Ryan or Dan Peterson can afford to hire a private attorney, the court appointed a private defender to represent them. The court-appointed attorney then requested the case to be continued for a special plea session. At that session, both defendants pleaded not guilty, and the case was set for preliminary hearing. No plea negotiation session was scheduled at this time for Case C.

As you can see, because of the decisions as to plea, and because of certain other factors mentioned above, each of the three cases will proceed to a different stage in the criminal process.

The purpose of an arraignment is to inform the defendant of the charge against him and to inform him of his constitutional rights. The

manner in which the arraignment is conducted can affect the successful fulfillment of this purpose. In some large city courts, the arraignment session resembles an assembly line. There are so many defendants, and so little time, that one wonders if the defendants really understand what is going on. Judge Pliska is aware of the dangers in this situation. We asked him how he determines whether or not the defendant fully understands the instruction of rights and the information of the charge.

"The only way of doing that is by asking him, and observing the answer. Sometimes people will hesitate, or will say, I think I understood them. If they hesitate in any way, I then follow that up and say, 'now if you have any questions, feel free to ask them.' And sometimes that does lead to questions. They've been relaxed a little more, and they're able to ask some very interesting questions at times, not understanding the rights as I stated them. It's very difficult because lawyers and judges get wrapped up in the legal terminology, understanding it, and not realizing that the person out there doesn't, many times, understand it. So I try to make it as simple as possible, and then watch the reactions when I ask the person if they understood it. Some people do, and seem to indicate that they do, and that's as far as I go."

By watching the ARRAIGNMENT tape, you have now had a chance to see the courtroom clerk in action for the first time. The courtroom clerk is the judge's right hand helper and the in-court counterpart of the deputy clerks working in the clerk's office. He or she provides assistance to the judge according to his preferences and also acts as a liaison between the judge and other parties. The courtroom clerk screens calls and makes appointments for the judge. He or she also quickly learns the judge's style and preferences in order to be able to assist him in many other ways. Perhaps the most important job is to keep records of important in-court events. Among the in-court events recorded are motions, instruction of rights, pleas and orders. The accuracy of the minutes kept by the courtroom clerk throughout any court process will affect the accuracy of

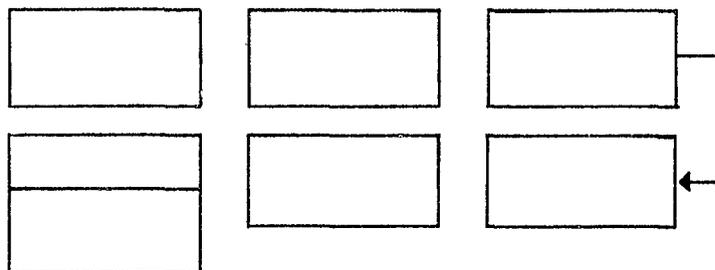
all of the recordkeeping, calendaring and follow-up activities which take place in the clerk's office. Courtroom clerk Ann Degen told us, "It's much easier if you know exactly what will happen when the case file gets out into the clerk's office, and what procedures they'll have to follow out there. That way you can present a good record and they'll know what you're doing, and you'll know what they're doing."

The courtroom clerk also performs certain formal duties, such as swearing in witnesses. Some of the formal duties are required by law; some are established because of the judge's particular preferences.

Our next program is PLEA NEGOTIATION. Only Case B will go through the plea negotiation stage. The other two cases will appear again later on in the series.

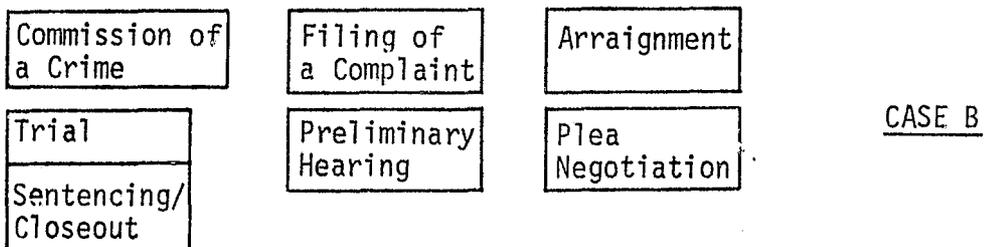
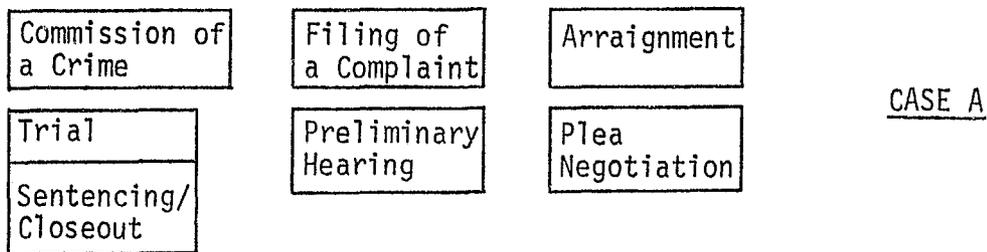
Objectives

1. Given a diagram, list the first three stages of the criminal process.



2. Describe the purpose of an arraignment.

3. Name four in-court procedures and describe the purpose of each.
4. Give one example of an improperly performed in-court procedure and describe the consequences.
5. Given a diagram, mark it to show the first four stages of the criminal process for Cases A, B and C and tell what circumstances lead to the fourth stage in each case.



5. (cont.)

Commission of
a Crime

Filing of
a Complaint

Arraignment

Trial
Sentencing/
Closeout

Preliminary
Hearing

Plea
Negotiation

CASE C

Answers

1.

Commission of a Crime

Filing of a Complaint

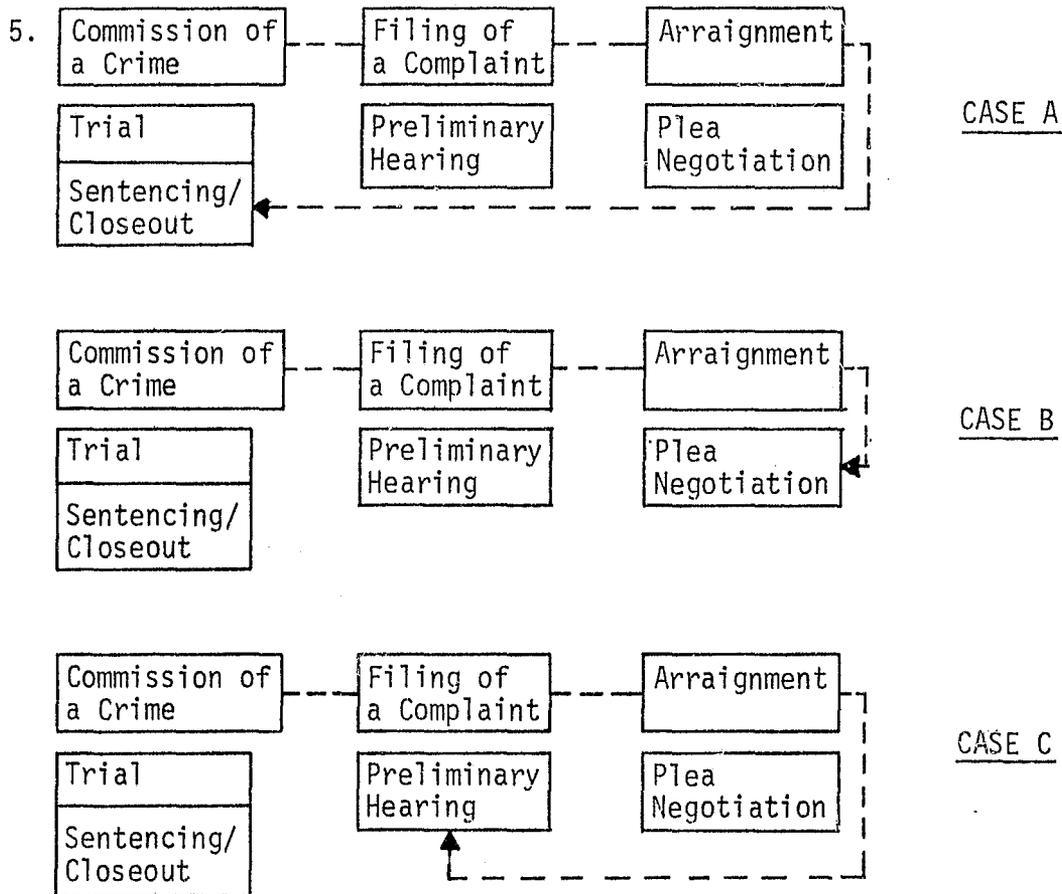
Arraignment

2. The purpose of the arraignment is to instruct the defendant of his constitutional rights and to inform him of the charge or charges against him.

3. a. Liaison and assistance to the judge. The purpose is to provide support to the judge, according to his preferences, and to act as a link between the judge and other parties.
- b. Formal duties. The courtroom clerk performs certain duties required by law, such as swearing in witnesses, and some required by the judge according to his preferences, such as reading the complaint.
- c. Recordkeeping is designed for the purpose of documenting all important in-court events.
- d. File-stamping documents. This procedure is designed to officially acknowledge receipt of documents by the court.

4. Two examples:

- a. If the clerk calls the name of a defendant improperly at an arraignment, the wrong person may stand up, and court time and patience would be wasted.
- b. If the clerk marks the wrong date for the next hearing, the calendar clerk will mark the wrong date in the calendar book, and the file will not be pulled and delivered to the courtroom on the proper date.



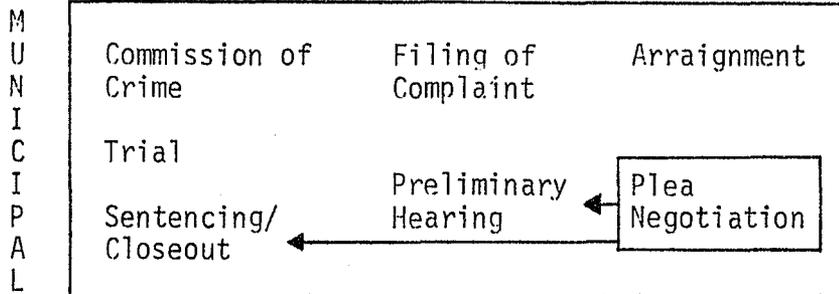
CASE A: The defendant pleads guilty at the arraignment and the judge continues the case to sentencing to allow time for preparation of a pre-sentence report.

CASE B: The defendant pleads not guilty, but a major flaw in the DA's case (the wife's reluctance to testify) moves the two attorneys to meet in a plea negotiation session to attempt to settle the case out of court.

CASE C: The defendants plead not guilty at the arraignment, so the judge sets a date for preliminary hearing. No plea negotiation is held at this time.

4

PLEA NEGOTIATION



PRE-VIEWING

Plea negotiation is a controversial stage in the criminal process. But it is also a very common - some say indispensable - practice. Further, it has the legal sanction of both the California legislature and the U.S. Supreme Court. Plea negotiation is basically a practice wherein the District Attorney and attorney for the defense come to an agreement in which the defendant agrees to plead guilty in exchange for a lesser charge or the promise of a particular sentence.

In the videotape you are about to see, Case B will be the focus. Harmon Johnson has been charged with wife beating and assault on an officer, both felony charges. He has pleaded not guilty to both charges, but now his attorney will meet with the District Attorney to see if they can settle the matter without going to court. The wife's reluctance to testify is the basic bargaining point. In addition to excerpts from the plea bargaining session and the in-court session which follows it, we will present a discussion of the pros and cons of plea bargaining. Participants in this

discussion are Judge Edward Pliska, District Attorney Phil Cronin and defense attorney, Jack McInerney.

Objectives

After watching the tape on PLEA NEGOTIATION, you should be able to:

1. Given a diagram, mark it to show the 'first five stages' of the criminal process for Case B, and tell what circumstances lead to the fifth stage.
2. Describe the purpose of plea bargaining.
3. Give one argument in favor of plea bargaining and one argument opposed to it.
4. Name three post-court procedures and describe the purpose of each.

Now, watch the tape entitled PLEA NEGOTIATION. At its conclusion, go on to read the Post-Viewing section.

POST-VIEWING

Plea negotiation is the process by which the District Attorney and defense attorney settle a case without going to trial. Usually, the prosecution agrees to recommend to the court that the charges be reduced or that a particular sentence be imposed. In return, the defendant agrees to plead guilty. In this way, an expensive, time-consuming trial is avoided. If, for some reason unknown at the time of the bargain, the judge refuses to act on the District Attorney's recommendation or the District Attorney himself reneges on the agreement, the defendant can withdraw his plea

of guilty and re-enter a plea of not guilty.

In days past, plea bargaining was an under-the-table affair in which no one admitted publicly what really took place in plea bargaining discussions. However, after much criticism of secret deals, the situation has altered. Today, the essential content of the negotiation is always repeated for the record in open court.

Plea negotiations are most often informal. They may take place wherever two attorneys involved in the same case get together and talk about its possible disposition. Some counties require a formal pre-trial conference. This is a meeting of the judge and both attorneys in which settlement of the case is discussed. This meeting usually takes place in the judge's chambers. The judge often acts as a catalyst to settlement. Defense attorney Jack McInerney gave the following view of the judge's role in plea negotiations:

"Often times he can arbitrate what appear to be irreconcilable differences or conflicts that appear to be insolvable... sometimes the judge can exercise a certain amount of weight and facilitate the whole process."

There are numerous arguments for and against plea bargaining. The most often heard argument in favor of plea bargaining is that the court system could not possibly operate without it. Already overloaded with work, judges and court personnel couldn't handle a large increase in the number of trials caused by the elimination of plea bargaining. Judge Pliska, however, expresses the opinion that, after an initial upsurge in the number of trials, eventually the same number of defendants would plead guilty.

Both defense attorney Jack McInerney and District Attorney Phil Cronin see the practice of plea bargaining as not only necessary, but useful. Jack McInerney noted that it can act as a further screening device for charges brought by the District Attorney's office. He said,

"The District Attorney himself can't always be sure that he has charged a crime correctly. He is not always sure, in the amount of time that he has, that the police have got all the facts necessary. So if you don't have plea bargaining, you have to go to trial on a lot of cases that may not have enough evidence and you have wasted the jury's time, court's time and everybody else's time."

One charge often made against plea bargaining is that it discriminates against the innocent defendant. It is believed that District Attorneys will initially overcharge defendants with the idea that some of the charges will probably be dropped in a plea bargain. It is also asserted that defense attorneys may coerce their clients into pleading guilty, no matter how loud the defendants' protestations of innocence. Both Jack McInerney and Phil Cronin denied that these practices were widespread, and they had their own charges to make against defendants who use plea bargaining to control the criminal justice system. Because defendants realize that plea bargaining is considered necessary due to an insufficient number of judges and courtrooms to try every case, these defendants may hold out on a plea of guilty until they get the charge reduction or sentence that they want.

Perhaps one of the strongest arguments against plea bargaining is that it encourages disrespect for the system. Judge Pliska said,

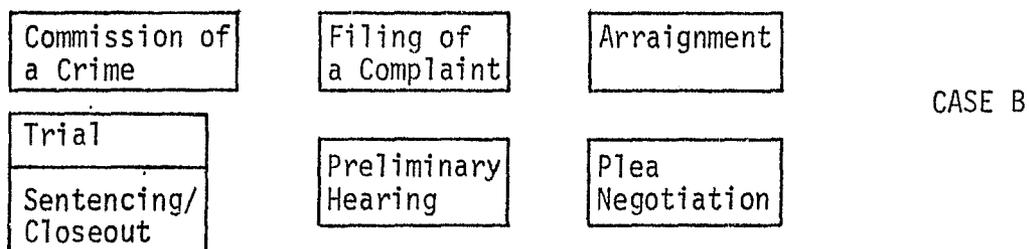
"The defendant leaves the courtroom and looks upon the whole process as just being a sham, because no one is really saying what they mean. They charge him with certain offenses and then even if he's even maybe guilty of some of the offenses, his charges are dismissed because he decides he will plead guilty and save everybody the cost of going through trial."

In the PLEA NEGOTIATION tape, deputy clerks performed post-court procedures. These procedures occur after every court appearance. First, the date of the next court appearance must be placed on calendar. Then, records must be updated and further follow-up activities must take place. Follow-up activities include phone calls, correspondence or the preparation of any materials required by orders of the court which appear in the minutes.

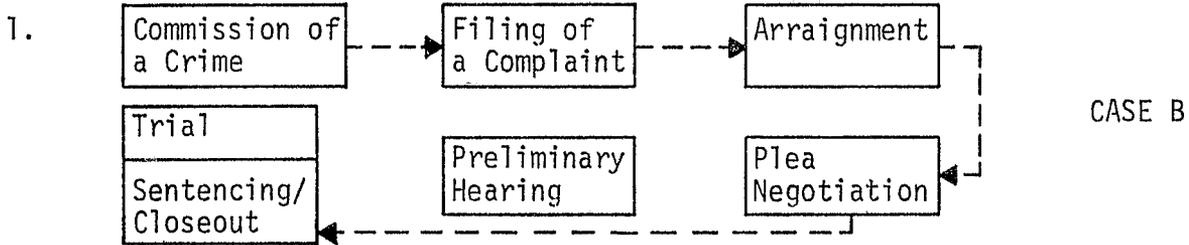
The next show in this series is PRELIMINARY HEARING. Only Case C will go through a preliminary hearing. Since Harmon Johnson has changed his plea to guilty, his next appearance in Case B will be at a sentencing hearing. Bruce Bowers, in Case A, will also appear again in our program entitled SENTENCING AND CLOSEOUT.

Objectives

1. Given a diagram, mark it to show the first five stages of the criminal process for Case B, and tell what circumstances lead to the fifth stage.



Answers



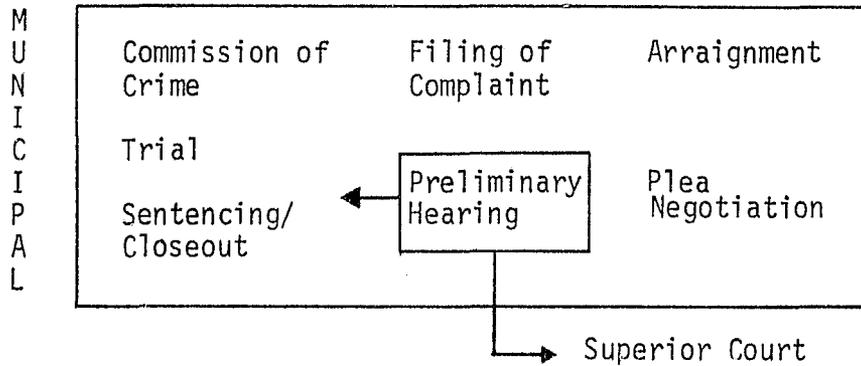
2. The purpose of plea bargaining is to settle a case without going to trial. Usually, the defendant agrees to plead guilty to a lesser charge or in consideration for a pre-determined sentence. In return, the District Attorney asks the court to accept the plea on those terms.

3. Arguments
In Favor:
1. Necessary to prevent court overload.
 2. Acts as further means of screening charges against defendants.
 3. Saves court and defendant from the time and expense of trial.

- Arguments
Opposed:
1. Allows defendant to control system.
 2. Innocent defendant may be coerced into pleading guilty.
 3. Gross disparities in disposition of similar cases.
 4. Encourages disrespect for the system of justice.

4. a. Calendaring. To maintain a schedule of court events on a continuing basis.
- b. Recordkeeping. To update and transfer information to the official court record for immediate and future reference.
- c. Follow-up Activities. To perform all necessary activities, directed by the official court minutes.

5 PRELIMINARY HEARING



PRE-VIEWING

Case B has now been settled out of court by means of an agreement reached at a plea negotiation session. As a result, the preliminary hearing in Case B was cancelled. The defendant, Harmon Johnson, pleaded guilty to the new charge, misdemeanor wife beating, and will next appear for sentencing. Since the defendant in Case A, Bruce Bowers, pleaded guilty back at the arraignment, he, too, will appear next for sentencing.

Case C, however, has not yet reached a point of disposition. Its defendants, Joe Ryan and Dan Peterson, have continued to plead not guilty to felony charges of armed robbery and assault with a deadly weapon. The next step for these defendants is the preliminary hearing. The judge will hear evidence from the prosecution and then decide if the defendant should be held over for trial in the Superior Court.

The preliminary hearing is one of two screening processes designed to determine if a felony case should go to trial in the Superior Court. The other is the grand jury, a secret proceeding at which neither the defendant

nor his counsel are present. Only witnesses for the prosecution appear, and no cross-examination takes place. If the grand jury finds probable cause to believe the crime was committed and the defendant committed it, indictments are issued and filed in the Superior Court. The grand jury eliminates a lengthy pre-trial hearing at which all parties are present and cross-examination is allowed.

In the following program, Case C defendants will appear for the preliminary hearing. The standard of probable cause holds for the preliminary hearing, too. The prosecution need not show guilt beyond a reasonable doubt, but only that there is probable cause to believe that a crime was committed and the defendants committed it.

One final note: Since the arraignment, there has been a new development in this case. Lucky Luciano, victim of the armed robbery, has died of gun wounds inflicted by the robber. This will cause the District Attorney to amend the complaint to include new charges.

Objectives

After watching the videotape, PRELIMINARY HEARING, you should be able to:

1. Given a diagram, mark it to show the first four stages of the criminal process for Case C, and tell what happens after the fourth stage and why.
2. Describe the purpose of the preliminary hearing.
3. Name two disposition procedures and describe the purpose of each.
4. Describe the courtroom clerk's responsibility for exhibits.

Now watch the tape, PRELIMINARY HEARING. At its conclusion, go to read the Post-Viewing section.

POST-VIEWING

"A state of facts as would lead a man of ordinary caution or prudence to believe, and conscientiously entertain, a strong suspicion of the guilt of the accused."

This is the standard for probable cause established in a 1944 case, People v. Nagle, and it is the standard of proof that the judge used to decide that defendants Joe Ryan and Dan Peterson should be held over for trial in Superior Court.

In a way, the preliminary hearing is a preview of the trial. Generally, the District Attorney produces only enough evidence to meet the standard of probable cause. Because of this, he tends to present only a "barebones" case. Even so, the preliminary hearing has a valuable function for the prosecution because it allows the District Attorney to gauge the effectiveness of prosecution witnesses and thus to better evaluate the strength of his case. Meanwhile, the defense attorney gets a chance to see what kind of case the prosecution has against his client.

Rarely will the defense put on a case at the preliminary hearing. The defense attorney does, however, often make a number of motions to the court, such as the motion to suppress evidence, which you saw in the preceding tape. Although these motions are often made for valid reasons, they can also be used to provide tactical advantage for the defense or to find out more about the prosecution's case. We asked Phil Cronin if excessive filing of pre-trial motions could be used to force the District Attorney into a plea

bargain. Cronin said,

"I think that sometimes is true. There is one attorney who has a very active practice in pre-trial motions. He challenges the constitutionality of certain statutes and he has become expert in it. He hopes to, by a process of attrition, wear the DA down and soften him up a little for plea negotiations. But I think and hope the prosecution could see through that and meet him challenge for challenge, and points of authority for points of authority..."

As usual, the courtroom clerk makes an important contribution to a smooth operation in the courtroom. She performs the usual in-court procedures:

- a. liaison and assistance to the judge
- b. formal duties
- c. recordkeeping
- d. file-stamping documents

As part of her recordkeeping responsibility at the preliminary hearing, the courtroom clerk keeps track of exhibits by marking them for identification and when admitted into evidence, maintaining an exhibit record and keeping notes in the minutes to show the status of each exhibit. She must also be careful to note the whereabouts of exhibits since it is her responsibility to maintain their security.

Disposition procedures are those procedures performed in the clerk's office which close out the case at the municipal court level and, in Case C, assure the transfer of all necessary documents to the Superior Court. To accomplish these ends, the clerk must prepare and distribute documents and forms and complete official records in the municipal court.

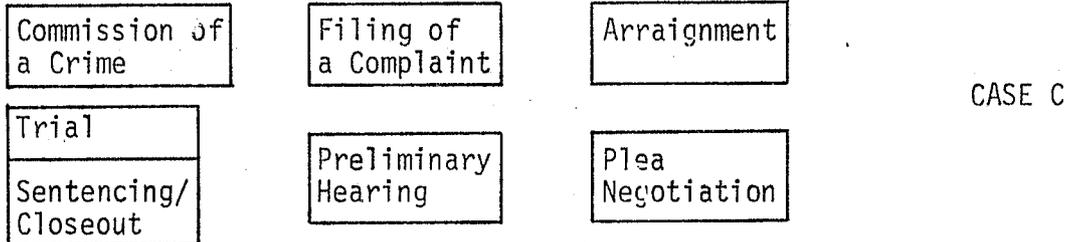
The future of our two defendants in Case C is now in the hands of the Superior Court. Sometime within the next 15 days, Joe Ryan and Dan Peterson will appear in Superior Court to be arraigned on the information. The

information is an accusatory pleading similar to the complaint which is initiated and filed in the Superior Court.

The next program is SENTENCING AND CLOSEOUT. The defendants in both Cases A and B will finally be sentenced by the judge. Their case records will then be completely closed out in the clerk's office.

Objectives

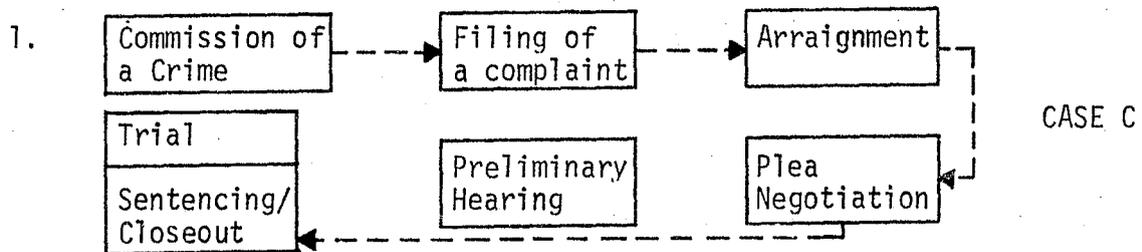
1. Given a diagram, mark it to show the first four stages of the criminal process for Case C, and tell what happens after the fourth stage and why.



2. Describe the purpose of the preliminary hearing.
3. Name two disposition procedures and describe the purpose of each.

4. Describe the courtroom clerk's responsibility for exhibits.

Answers



At the preliminary hearing, the judge ordered the defendants held to answer in Superior Court. That means that an information will be filed in Superior Court charging the defendants with the alleged crimes. The defendants will next appear in Superior Court to be arraigned on the information.

2. The purpose of the preliminary hearing is to screen out weak cases and to protect the defendant in such a case from the time, cost and public shame of a trial.

3. a. Preparing and distributing documents and forms. To prepare any documents or forms required to transfer this case to Superior Court.
b. Recordkeeping. To complete the official court record of the case in Municipal Court.

4. As part of her recordkeeping responsibility, the courtroom clerk must mark exhibits, maintain an exhibit record and keep notes in the minutes as to the status of each exhibit. In this way, she maintains close control of the exhibits.

6

SENTENCING AND CLOSEOUT

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Commission of a Crime	Filing of a Complaint	Arraignment
Trial	Preliminary Hearing	Plea Negotiation
Sentencing/ Closeout		

PRE-VIEWING

In the last show, PRELIMINARY HEARING, Case C was disposed of at the Municipal Court level and transferred to the Superior Court. Now, Cases A and B have reached the final stage of the criminal process, sentencing. The show you are about to see describes the sentencing of each of the defendants and the closeout stage which follows it.

You may note that there has been no Municipal Court trial shown in this series. The Municipal Court trial takes place only in misdemeanor cases in which the defendant pleads not guilty. Since both of our defendants charged with misdemeanors pleaded guilty, the Municipal Court trial was avoided. Because Case C involved felony charges it was transferred to the Superior Court for trial.

The process of sentencing is designed to impose an appropriate punishment on a defendant. The considerations that go into the judicial decision on sentencing are complex. In the following tape, Judge Edward Pliska of

San Mateo County will give you an idea of some of the factors that play a part in the sentencing process.

The closeout of a case occurs after sentencing, and its purpose is to finalize all records of a case and to complete the necessary paperwork to ensure that the sentence imposed in the courtroom is carried out

Objectives

After watching the videotape, SENTENCING AND CLOSEOUT, you should be able to:

1. Given a diagram, label all possible stages of the criminal process at the Municipal Court level in sequential order.
2. Describe the purpose of sentencing and closeout.
3. List the two disposition procedures and describe the purpose of each.

Now, watch the tape, SENTENCING AND CLOSEOUT. At its conclusion, go on to the Post-Viewing section.

POST-VIEWING

*"The administration of criminal justice is marked at the same time by as elaborate a structure of limitation upon the exercise of governmental power and as free an exercise of discretionary judgment as will be found in our legal system. In that part of the criminal process from accusation to conviction and appeal, the two root principles of law, legality and due process, have their historical origins and their fullest expression...On the other hand...after conviction, these two principles become subordinated in favor of a wide ranging freedom of the official to make decisions within the area of his competence..."*¹

¹Kadish, "Legal Norm and Discretion in the Police and Sentencing Process," Harvard Law Review, 904, 905, 915-919 (1962).

The sentencing process is largely a discretionary function of the judge. Judge Pliska gave some insight into the factors that affect his judgment in sentencing decisions. He said that his goal in sentencing is twofold: 1) to tailor the sentence to the defendant and 2) to deter others from committing an offense.

He emphasized the role of the probation report in providing valuable background on the defendant. Judge Pliska sees this report as a tempering force in sentencing.

One of the criticisms of the practice of granting judges such wide discretion is the resulting disparities in sentencing for the same crime. Judge Pliska defends the existence of disparities by noting that two defendants who commit the same crime shouldn't necessarily receive the same sentence. According to his view, each defendant is an individual and no one rule of punishment will work for every defendant. But, Judge Pliska also said,

"I think we need more of judges sitting down to talk about sentencing that they impose and trying to get some common ground....At a recent judge's conference, we all would be given the same probation report and would have to say what sentence we would impose. And by talking to other judges, many times you get the idea that the sentence you would have imposed would not be the correct one. And you can get more and more agreement by these types of discussions."

As you have observed in the videotape, the judge has now imposed sentence on the defendants in Cases A and B as follows:

- A Bruce Bowers was fined and sentenced to six months in the county jail. Imposition of sentence was suspended and defendant was placed on a one-year summary probation on the condition that he enroll in the alcoholic rehabilitation program at Crystal Springs Detoxification Center.
- B Harmon Johnson was sentenced to six months in the county jail, but, again, imposition of the sentence was suspended and the defendant placed on one-year formal probation on the condition that he participate in a domestic relations counseling program.

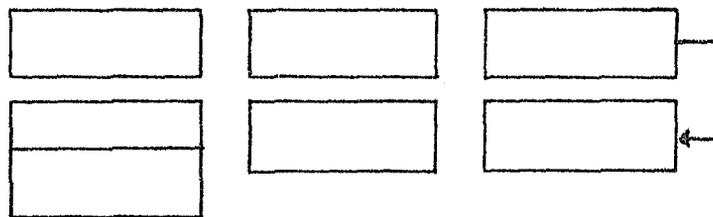
In order to effect closeout of these two cases, certain disposition procedures must take place. The two disposition procedures are:

- 1) recordkeeping and
- 2) preparing and distributing documents and forms.

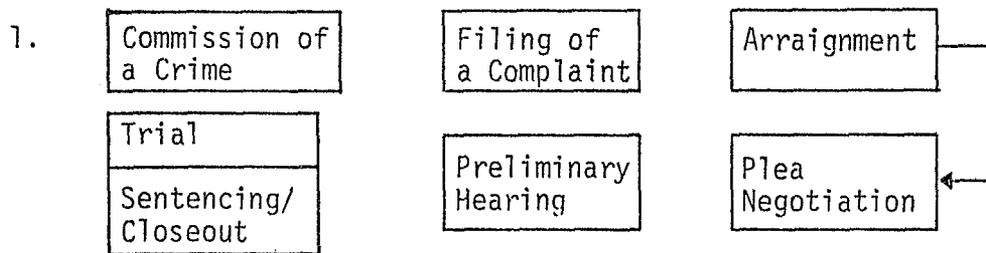
The recordkeeping requires the clerk to transfer rough minutes of the sentencing proceeding to the Register of Actions. This completes the court records reflecting the final disposition of the case, the sentence imposed and any orders of the court. The second procedure includes preparation of such forms as the Abstract of Conviction and the Exoneration of Bail forms.

Objectives

1. Given a diagram, label all possible stages of the criminal process at the Municipal Court level in sequential order.



2. Describe the purpose of sentencing and closeout.
3. List the two disposition procedures and describe the purpose of each.



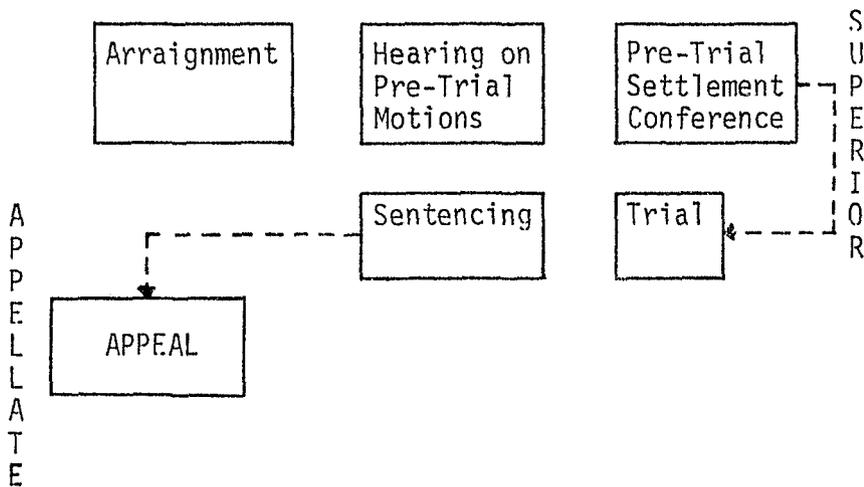
2. The purpose of sentencing is to impose an appropriate punishment on a defendant convicted of a crime.

The purpose of closeout is to finalize court records and ensure that necessary paperwork is done to see that the sentence is carried out.

3. a. Recordkeeping. To complete official court records of a case and, if necessary, compile statistical information.
- b. Preparing and distributing documents and forms. To prepare any documents and forms necessary to implement court orders in the official court minutes.

SUPERIOR COURT

① TRIAL



PRE-VIEWING

We now begin Part II in our series on Criminal Procedures. The setting for the upcoming action is the Superior Court. In the hierarchical system of California courts, the Superior Court is the next court higher than the Municipal Court, and it has original trial jurisdiction in felony matters. This means that, although the defendants in Case C have already been charged on felony counts in the Municipal Court, they will be tried in Superior Court. A felony case which is initiated in the Municipal Court, is only screened in the lower court. The higher court is utilized to re-examine the case and then, if warranted, prosecute it. This constitutes a doublecheck on the initial decision to prosecute the case as a felony, and it is required because of the severity of sentences facing convicted felons.

Once the case has been transferred from Municipal Court, the District Attorney in the Superior Court will re-examine the evidence, including that presented at the preliminary hearing. He then decides whether or not to charge the case as a felony. If he decides that sufficient evidence exists to do so, an information will be filed in the Superior Court. Where no information is filed, the defendant will be discharged. The District Attorney has an additional alternative. He may choose to prosecute the case as a misdemeanor. In that event, he will dismiss the felony complaint and refile a misdemeanor complaint in the Municipal Court.

The filing of the information sets in motion a process in Superior Court which is much like the Municipal Court process. In the following videotape, pre-trial proceedings in Superior Court will be briefly summarized. The main focus of the upcoming program, however, will be the SUPERIOR COURT TRIAL.

Objectives

After watching the videotape, SUPERIOR COURT TRIAL, you should be able to:

1. Given a diagram of the criminal process in Superior Court, label each box to indicate the stages followed in Case C.
2. Describe the purpose of each of the following stages in Superior Court:
 - a. Arraignment
 - b. Pre-Trial Motions
 - c. Pre-Trial Settlement Conference
 - d. Trial
3. Name two formal duties having to do with jury selection, which are performed by the courtroom clerk.

4. Describe the recordkeeping responsibility of the courtroom clerk with respect to jury matters.
5. Name two activities performed by the courtroom clerk after the trial.
6. Name the two post-court procedures performed in the clerk's office and describe the purpose of each.

NOW, watch the tape SUPERIOR COURT TRIAL. At its conclusion, go on to read the Post-Viewing Section.

POST-VIEWING

The trial is over; the verdicts are in. A jury of twelve citizens has found Joe Ryan guilty of first degree murder, special circumstances and of one count of armed robbery. Dan Peterson, his accomplice, has been found guilty of first degree murder and armed robbery. The process leading up to this culminating point in Case C has included a number of procedural stages very similar to those already examined in Municipal Court.

PRE-TRIAL PROCEEDINGS

Arraignment. Once the District Attorney in Superior Court has determined that he will stay with the felony charges brought against the defendants in Municipal Court, the next step is the arraignment on the information. The purpose of the arraignment, as in Municipal Court, is to advise the defendant of his constitutional rights and to inform him of the charge(s) brought against him. Because this case was re-examined by the Superior Court DA, it is necessary to once again formally advise the defendants of the charges pending against them.

Pre-Trial Motions. Usually, defense counsel will make certain pre-trial motions before the trial begins. The purpose of these motions is to either obtain a dismissal of the case outright or, at the least, to achieve some advantage which will strengthen the defense case. Pre-trial hearings most commonly involve the following 3 areas:

- 1) defense discovery of evidence,
- 2) suppression of seized evidence and
- 3) suppression of the defendant's confession.

In Case C, we saw defense counsel make a motion to sever the trial so that Joe Ryan would be tried independently of Dan Peterson. This motion relates to the third area above. The motion to sever was made on the grounds that, even though Dan Peterson's confession implicating Joe Ryan cannot be used against Joe, its admission at a joint trial would necessarily prejudice the case against Ryan. Two other motions are brought by defense counsel in this case:

- 1) Motion to set aside the information on the grounds of insufficient evidence and
- 2) Motion to suppress evidence on the grounds that the search producing it was illegal.

All motions are denied by Judge deLarios and the case remains active.

Settlement Conference. The third and final pre-trial proceeding is the pre-trial conference. This conference is a meeting of the District Attorney, the defense attorney and the judge. As in the Municipal Court plea negotiation, the object of this meeting is to reach a compromise settlement between the prosecution and defense which will eliminate the need for a trial. Usually, the defendant will agree to plead guilty to a lesser charge or in exchange for the promise of a particular sentence. In Case C, no

agreement is reached. The case moves to trial.

TRIAL

The Sixth Amendment to the Constitution gives a defendant in a criminal trial the right to a "public trial." This right is somewhat limited by controlling U.S. Supreme Court law which excludes from the right to trial by jury those offenses carrying a punishment of six months or less. At any rate, only a small percentage of criminal cases (from 10 - 15%) actually do go to trial. The primary reason is that most cases settle before trial by means of plea negotiations.

Despite the low percentage of tried cases, the jury trial is a significant element of the criminal justice system because it reflects a certain commitment to the democratic principle. By giving twelve lay citizens the power to decide the fate of persons accused of crimes, the jury trial places a check on official (in this case, judicial) power.

Jury Selection. Traditionally, the jury is a panel of twelve men and women who must come to a unanimous decision regarding the guilt or innocence of the defendant(s). The jury is allowed to deliberate in secret and come to a decision which it is not required to justify. For this reason, jury selection is an important part of the trial and thus we have chosen, in our videotape, to focus on this and other activities involving the jury.

The names of prospective jurors are taken from the voter registration lists. Twelve jurors are then selected at random from the list of prospective jurors. This is accomplished by putting all of the names in a jury wheel and drawing out 12 names at random. After the initial twelve jurors are selected, a voir dire examination takes place. Attorneys for the prosecution

and for the defense are allowed to challenge a specified number of jurors, either for cause or peremptorily (no reason need be given for the challenge). In the voir dire exam, individual jurors are asked questions to determine their qualifications to serve on the jury in the particular case.

During the trial, testimony and evidence are presented by both the prosecution and defense. Unlike the preliminary hearing, the prosecution now must prove - beyond a reasonable doubt - that the defendants committed the crime.

Jury Instructions. On the basis of testimony, the evidence and arguments of counsel, the jury must make its collective decision on the guilt or innocence of the defendants. At this point, the judge delivers special jury instructions, the purpose of which are to advise the jurors "fully, clearly and accurately" on all issues which have been raised during the trial.

THE COURTROOM CLERK

As usual, the courtroom clerk has many duties to perform in order to carry out her responsibilities during the trial. Much of the responsibility involves the jury. Among the clerk's formal duties during jury selection are 1) calling the roll of prospective jurors, 2) drawing from the jury wheel the names of twelve persons out of the prospective juror group and 3) once the final jury has been selected, swearing in of the jury.

Recordkeeping is another important procedure performed by the courtroom clerk, and during the trial, he or she must keep an accurate record of jury members, including those who are challenged and those members substituted, for the minutes. A jury payroll list is also maintained to reflect the fees each juror is entitled to collect at the end of the trial.

In her capacity as liaison between the judge and other parties, she also relays proposed jury instructions from counsel to the jury commissioner's office and then to the judge. The judge will review the proposed instructions and later meet with counsel to settle on which instructions will be given to the jury.

When exhibits are produced during the trial, the courtroom clerk's recordkeeping responsibility again includes marking them and entering exhibit information on an exhibit record and in the court minutes.

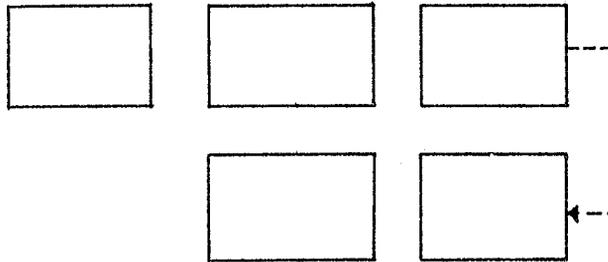
After the trial, the courtroom clerk filestamps the verdicts and the jury instructions. The jury payroll list is also completed and forwarded to the jury commissioner's office where actual payment to the jurors is made. Finally, all exhibits are turned over to the exhibits custodian or placed in a secure storage area in the court for safekeeping.

THE CLERK'S OFFICE

Deputy clerks perform the usual post-court procedures which must take place after every court proceeding. First, recordkeeping requires the transferring of the rough minutes to the Register of Actions page. Secondly, the date set by Judge deLarios for sentencing in Case C must be calendared so that all parties, as well as necessary casefiles will be in the right courtroom, on the right day, at the right time.

Objectives

1. Given a diagram of the criminal process in Superior Court, label each box to indicate the stages followed in Case C.

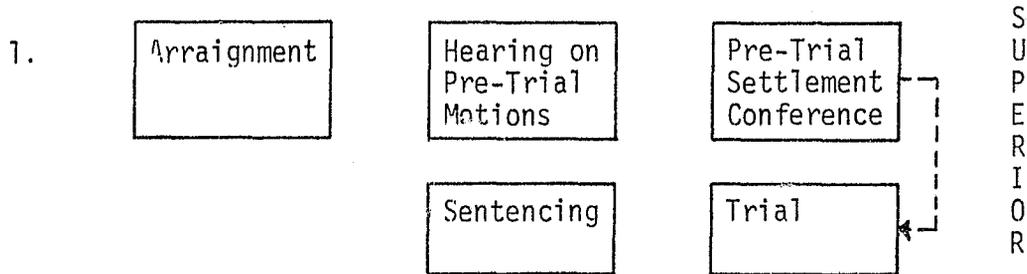


2. Describe the purpose of each of the following stages in Superior Court:

- a. Arraignment:
- b. Pre-trial motions:
- c. Pre-trial settlement conference:
- d. Trial:

3. Name two formal duties having to do with jury selection, which are performed by the courtroom clerk.

Answers



2. a. The purpose of the arraignment is to advise the defendant(s) of their constitutional rights and inform them of the charge(s) brought against them in the Superior Court information.

b. The purpose of pre-trial motions made by defense counsel is to obtain a dismissal, or to secure some advantage over the prosecution which will promote the chances of acquittal for the defendants.

c. The purpose of pre-trial settlement conference is to settle the case without going to trial. Usually, the defendant agrees to plead guilty to a lesser charge or in exchange for the promise of a particular sentence.

d. The purpose of the trial is to determine the guilt or innocence of the accused.

3. Three possible examples:

a. Calling the roll of prospective jurors

b. Selecting names from the jury wheel to seat 12 jurors

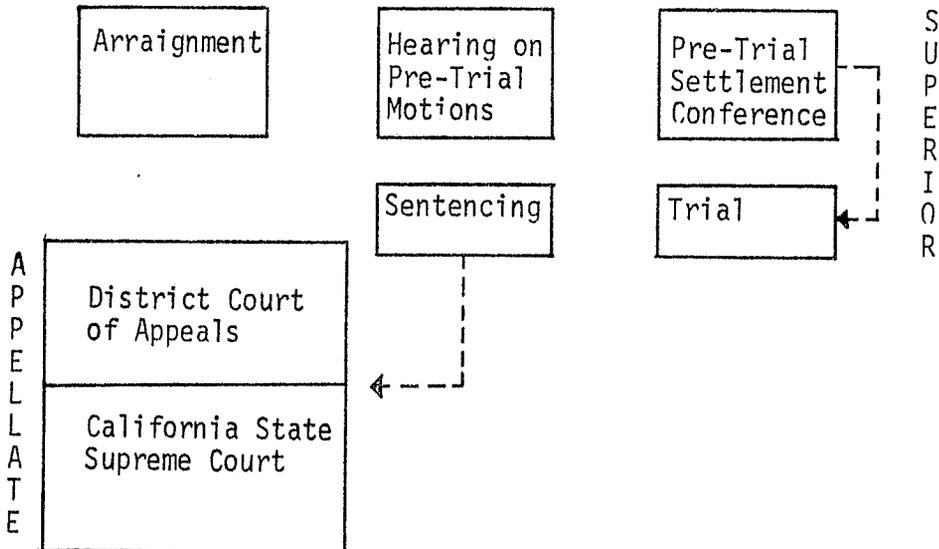
c. Swearing in the final jury panel

4. The courtroom clerk keeps a record of jury members, noting any challenges and substitutions which may occur. The clerk also keeps a jury payroll list to keep track of jury fees owed to each juror throughout the trial.

5. a. File-stamping verdicts and jury instructions
 - b. Forwarding the jury payroll list to the jury commissioner's office for payment
 - c. Turning over exhibits to the exhibits custodian or depositing them in a secure area for safekeeping.
-
6. a. Recordkeeping. To update and transfer information to the official court records for immediate and future reference.
 - b. Calendaring: To maintain a schedule of all upcoming court events on a continuing basis.

2

SENTENCING AND APPEAL



PRE-VIEWING

Our final program in the series on Criminal Procedures, and the terminating point of the criminal process for the defendants in Case C, is SENTENCING AND APPEAL. In the accompanying videotape, you will observe the sentencing proceeding, beginning with a defense motion for new trial and ending with the pronouncement of judgment by Judge deLarios. The subsequent initiation of an appeal for each of the defendants will also be described.

Objectives

After watching the videotape, SENTENCING AND APPEAL, you should be able to:

1. Given a diagram, label all Superior Court stages and explain where the case of each defendant will go next and why.
2. Describe the purpose of sentencing and the purpose of appeal.
3. Name two disposition procedures which take place after the sentencing hearing and give one specific example of each.
4. Name three appeals procedures and describe the purpose of each.

NOW, watch the videotape, SENTENCING AND APPEAL. At its conclusion, go on to the Post-Viewing section.

POST-VIEWING

SENTENCING

Sentencing involves a determination of the type, length and conditions of sentence and its imposition. The basic principles of sentencing are set by the State legislature and by Congress. This legislation determines who will set the sentence, the range of permissible sentences, the alternative sentences that may be imposed and formal procedures to be followed in imposing them. As a result of the sentences imposed on Joe Ryan and Dan Peterson, each is now scheduled to enter State Prison pending their appeals. But, let's go back to review the sentencing proceeding as it occurred in the videotape.

The Hearing. The initial action was a motion for new trial made by defense attorneys as a last attempt to convince the judge to set aside the jury's verdict and grant a new trial. Usually, this motion is made on the grounds that the defendant was deprived of certain rights, or that errors were made in the conduct of the trial that prejudiced the verdict. In Case C, Judge deLarios, denied this motion so that the sentencing hearing proceeded as scheduled.

For Joe, the automatic penalty for his crime is death, so the judge must note this in his pronouncement of judgment. For Dan, Judge deLarios again has no discretion to set the length of sentence. He is required to impose the statutory minimum and statutory maximum sentence set by State law. So, when pronouncing judgment against Dan, the judge will order that he be sentenced to the Department of Corrections for the "term prescribed by law." In states other than California, the judge might have discretion in setting either the maximum sentence or the minimum sentence, or both, according to the statutes of that particular state.

Clerk's Procedures. During the hearing, the courtroom clerk must mark all important in-court events on her minutes. Included on the minutes for this hearing, for example, is the fact that the motion for new trial was made by defense counsel and denied by the judge. The courtroom clerk also enters the judgment and any other court orders in her minutes.

After the sentencing proceeding, disposition procedures are performed in the clerk's office to complete records of the case in Superior Court. The disposition procedures are: 1) recordkeeping and 2) preparing and distributing documents and forms. The recordkeeping responsibility involves transferring the rough minutes to the Register of Actions page and updating the Disposition of Arrest and Court Action form. This form is a statistical source for the State of California.

Finally, as part of the procedure, preparing and distributing documents and forms, the deputy clerk file-stamps the Abstract of Judgment (commitment order) and the probation reports. Conformed copies of these documents are distributed to relevant parties.

APPEAL

The primary purpose of an appeal is to review alleged errors of law made during the course of a trial which may have violated the rights of

the defendant or prejudiced the verdict in the case. If such a legal error is not found by the appellate court, the Superior Court conviction is affirmed. If a legal error is found, the conviction is reversed and the defendant set free. Although the defendant always has a right to appeal, he must follow certain procedures to initiate the appeal. There is one exception to this rule. In Case C, Joe Ryan's conviction carries an automatic death penalty. Because of the gravity of this automatic penalty, the State provides that his appeal is automatic also, and he need not initiate it himself.

Appeals Procedures. The central actor in the performance of appeals procedures is the appeals clerk. The three appeals procedures are:

- 1) Recordkeeping,
- 2) Preparing and Distributing documents and forms and
- 3) Liaison between the Superior and appellate courts.

Recordkeeping. The appeals clerk must maintain accurate records on the status of an appeal and preserve copies of all documents and other materials prepared to initiate the appeal. This careful recordkeeping will be made part of the Superior Court record and give the appeals clerk the information she needs to act as liaison between the Superior and appellate courts.

Preparing and Distributing Documents and Forms. The purpose of this procedure is to prepare materials required to transfer the case to an appellate court for review. Joe Ryan's appeal is automatic, so without any action on his part, the appeals clerk will prepare a Notice of Automatic Appeal to the Supreme Court and distribute copies to the Governor, the State

Supreme Court and the District Attorney. Court reporters will also receive a copy. This is their notice to prepare reporters' transcripts to be used in the appeal.

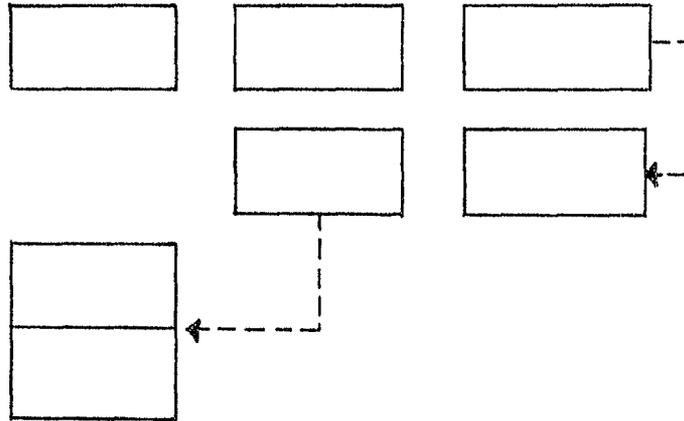
In Dan's case, he must initiate the appeal "in pro per" by filing a Notice of Appeal in his own name. The appeals clerk forwards a copy of this notice to the District Court of Appeal, which will review the case. In addition, the clerk must prepare a Notice of Filing of Appeal for Dan, which again is distributed to proper parties, including the court reporters as their notice to prepare transcripts.

The appellate court for each defendant normally reviews only the written record of the case. This includes the reporters' transcripts and the documentary (or written) exhibits. Also included in the "record on appeal" is the clerk's transcript. This transcript includes copies of all official minutes and specified documents from the case file. It is the responsibility of the appeals clerk to see that the record on appeal is completed and certified as correct within the time allowed. It should be noted that the record on appeal in a death penalty case is much more complete than that in any other case.

Liaison Between Superior and Appellate Courts. Finally, the appeals clerk acts as an intermediary between the Superior and appellate courts, facilitating the exchange of information between the two.

Objectives

1. Given a diagram, label all Superior Court stages and explain where the case of each defendant will go next and why.

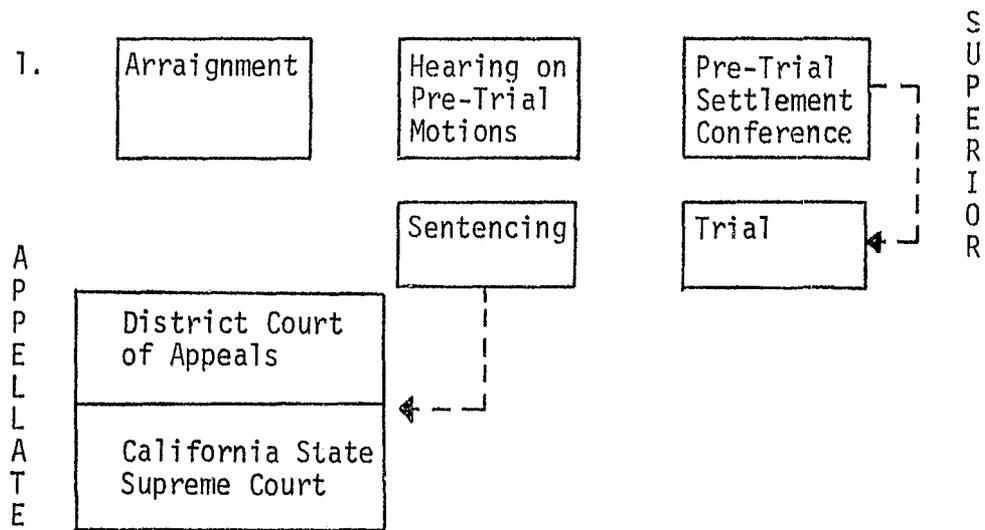


2. Describe the purpose of sentencing and the purpose of appeal.

3. Name the two disposition procedures which take place after the sentencing hearing and give one specific example of each.

4. Name three appeals procedures and describe the purpose of each.

Answers



1. (cont.) Joe Ryan's sentence is the death penalty. Because of the gravity of the penalty, his case will be reviewed automatically by the California State Supreme Court.

Dan Peterson is sentenced to the State Prison for the term prescribed by law. His case will be reviewed by the District Court of Appeal.

2. a. The purpose of sentencing is to impose an appropriate punishment on a defendant convicted of a crime.
b. The purpose of the appeal is to decide whether alleged legal errors made during the trial may have violated the rights of the defendant of prejudiced the verdict.

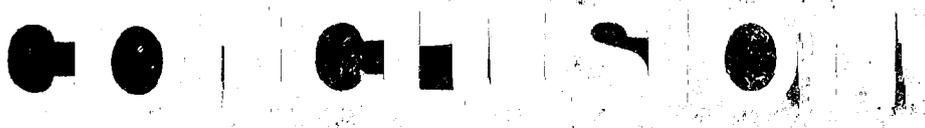
3. a. Recordkeeping.

Two examples: 1. Transferring rough minutes to Register of Actions
2. Updating the Disposition of Arrest and Court Action form

- b. Preparing and Distributing Documents and Forms.

Two examples: 1. File-stamping and distributing conformed copies of abstract of judgment to proper parties.
2. File-stamping and distributing conformed copies of probation report to proper parties.

4. a. Recordkeeping. To maintain official records on the status of appeal.
b. Preparing and Distributing Documents and Forms. To prepare and distribute materials, including notices, transcripts and exhibits to effect the transfer of the case to an appellate court for review.
c. Liaison between superior and appellate courts. To act as the appellate court's contact with the superior court throughout the appeal.



As the crime rate in California rises, the existence of an effective and efficient criminal process increases in importance. One of the greatest influences on the function of any system - including the one set up to administer justice in California - is the quality of people who work in it.

The intent of this series has been to describe the duties of court support personnel in the context of the overall criminal process, and in so doing communicate the importance of the clerk's role in maintaining an effective and efficient system. This has required us to spend a large amount of time explaining criminal procedure, so that deputy clerks might better understand the meaning behind the forms and documents, that is, not only what to do, but why it needs to be done.

We hope, too, that in describing the criminal process as it works today, we have exposed not only its order and its flexibility, but also its problems. The system is not perfect, and there are many today who are working to alter it. Some want to cut down on complex procedural requirements designed to protect the individual's rights in favor of a less time-consuming and more efficient system. Others, however, are working to protect the procedural safeguards which do exist and attack any shortcuts which save time, but may mean a compromise in the quality of justice.

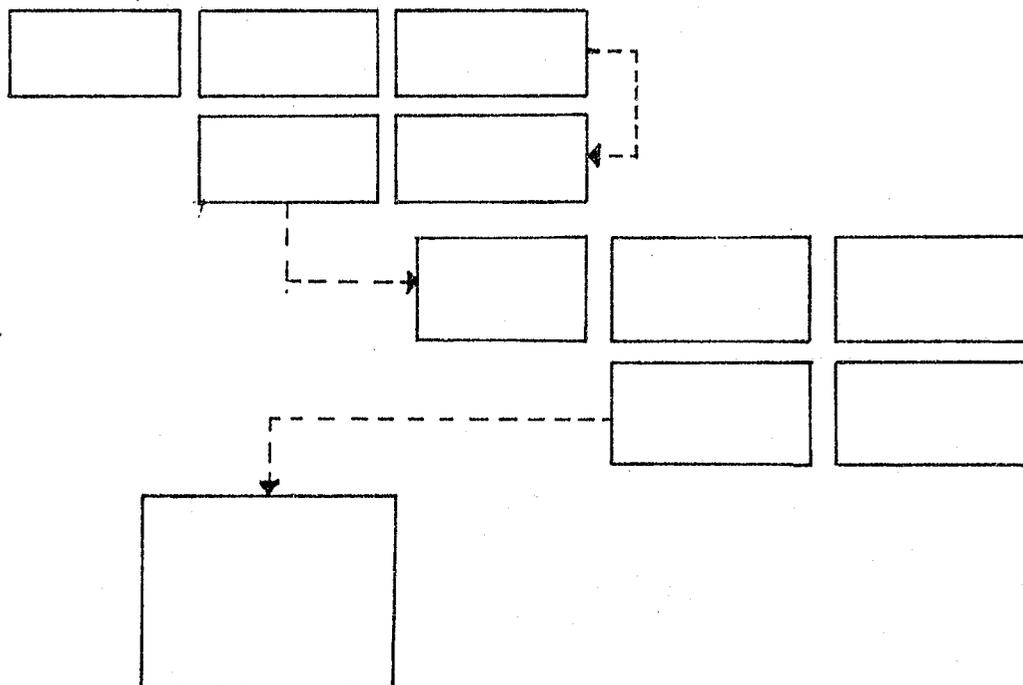
At first glance, the role of court support personnel in this controversy may appear to be minor. After all, deputy clerks do the job they are told to do. But, perhaps this videotape series has provoked some thought among clerks on improving their own efficiency, with the added knowledge of what their duties really have to do with the overall goals of the criminal

justice system.

SERIES OBJECTIVES

Following is a list of the overall series objectives first introduced to you in the beginning pages of this booklet. We have allowed space for you to answer. Hopefully, your experience in answering the objectives at the end of each chapter will provide you with the knowledge you need to answer these major objectives with no trouble at all. This time, there are no answers at the end, so you're on your own!

1. Given a diagram, label the stages of the criminal process in sequential order and then mark the diagram to show the specific routes that Cases A, B and C follow.



2. Briefly describe the purpose of each stage of the criminal process.
(Excluding Commission of a Crime)

Municipal Court:

- a.
- b.
- c.
- d.
- e.

Superior Court:

- a.
- b.
- c.
- d.

Appellate:

- a.

3. List the appropriate procedures for each of the following categories:

a. Intake

b. Pre-court

c. In-court

d. Post-court

e.. Disposition

f. Appeal

4. Briefly describe the purpose of each procedure.

a. Intake

b. Pre-court

c. In-court

d. Post-court

e. Disposition

f. Appeal

5. List some important qualities of court personnel's job performance and give examples of how job performance can negatively or positively influence how well the criminal process works.

ACKNOWLEDGEMENTS

This videotape was produced with the assistance of the following persons:

Northern District Municipal Court, San Mateo County

Judge F. J. de Larios
Richard Liberty, Clerk of the Municipal Court
Ann Degen, Deputy Clerk
Maxine Orosco, Chief Deputy Clerk
Ellen Rasmussen, Deputy Clerk
Renee Patton, Deputy Clerk
Marie Kuwamota, Deputy Clerk
Rita Gretter, Deputy Clerk
Lorraine Kolden-Strodt, Deputy Clerk

Marvin Church, County Clerk, San Mateo County

Superior Court, San Mateo County

William Sitnek, Deputy Clerk
Sandy Rowell, Deputy Clerk
Karyn Roberson, Deputy Clerk
Marguerite Waggoner, Deputy Clerk
Betty Weems, Deputy Clerk
Emily Galloway, Retired Deputy Clerk

Central District Municipal Court, San Mateo County

Judge Edward Pliska

Private Defender's Office, San Mateo County

Jack McInerney, Esq.
Ramon S. Lelli, Esq.

Office of the District Attorney, San Mateo County,

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Redwood City
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San Bruno Police Department

Officer Russell Nicolopoulos

Pacifica Police Department

Officer Ted Kendricks

San Mateo County Sheriff's Department

Actors

Case C: Joe O'Connor - Joe Ryan
Randy Bloom - Dan Peterson
Laura Speros - Witness

Case B: Jan Kirkpatrick - Harmon Johnson
Sharon Kirkpatrick - Elizabeth Johnson

Case A: Dan Branch - Bruce Bowers