



Making an Appeal Appellate Courts and How They Work

**Just Comment Column by Judge Curtis Karnow
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You got a traffic ticket. And you want to appeal. You're furious that the trial judge went along with the story told by the police officer—your version was so much more credible, and anyway, you had a witness who confirmed you were telling the truth! Yet the judge still tagged you with a fine. Appellate courts are supposed to fix such injustices, aren't they?

They are not.

Appellate courts and trial courts have very different roles (with one exception I'll get to, concerning Small Claims). And indeed, the Supreme Court has a different role from that of other appellate courts.

First, a brief reminder of the structure of our courts. Recall that the federal government has its court system for federal cases, and each state has a court system for cases arising under state law. In each of these systems, we begin with the trial courts: in California these are known as the Superior Court. Appeals go to the Court of Appeal. From there, a losing party can ask the California Supreme Court to take the case.

There are fifty-eight Superior Courts in this state, one for each county. Those courts have from two to many hundreds of judges. There are six Courts of Appeal responsible for different areas of the state; and one Supreme Court.

(Actually, it's a little more complicated than that, because in California we have two different tracks to appeal cases. I have just described the track that criminal felony cases take (a felony is a crime punishable by more than a year in state prison), as well as civil lawsuits where the amount of money at stake is more than \$25,000. But if the case is not a felony (i.e. it's a misdemeanor, punishable by up to a year in jail, or an infraction, only punishable by a fine, like a traffic ticket), or if the case is a civil suit worth less than \$25,000, the appeal from the Superior Court judge is to a court known as the *Appellate Division*. But the sequence is almost the same, and the same sort of rules apply whether the appeal is to the Court of Appeal or to the Appellate Division.)

A word, first, about the difference between a legal issue and a factual issue. This will help explain what different kinds of judges do.

Often, people in a lawsuit disagree about what happened in the past. In a traffic accident case, Ann says the light was red, Bob says it was green. In a contract case, Bob says Ann promised to sell her cat; Ann swears she never made such a promise. These are disputes

about facts: *about what happened*. Some disputes are about the law; these are *legal* disputes. Ann might argue that it doesn't matter what color the light was, because under the law Bob had to stop *anyway* when he saw Ann's car; or in the contract case Ann might argue that under the law it doesn't matter if she agreed to sell a cat, because it's illegal to sell cats (of course, I am not saying that *is* the law).

This difference between fact issue and legal issues is important to understanding the difference between the jobs of trial judges and appellate judges.

As I suggested, trial judges and appellate judges do not do the same thing. A trial judge deciding a traffic ticket is entitled to believe whomever she wants. She can believe one witness instead of three other people who say something else. She's looking at body language, looking at the witnesses as they testify. She decides who is telling the truth. She decides what happened. An appellate judge can't do that. Appellate judges have no idea who is telling the truth. If a trial judge decides to believe a drug addicted convicted murder, and reject the word of a respected member of the community such as the Mayor—well, the judge is entitled to do so. Appellate judges usually never tamper with the *factual findings* of the trial judge.

There are two other sorts of decisions trial judges make. Appellate courts might reverse some of those.

First, trial judges decide *legal* issues: they decide what the law is. I provided some examples of legal issues before. A few more examples: the trial judge might decide that the law requires a certain type of lawsuit (say, breach of an agreement) to be brought to court within 4 years of the breach—and so, if more than 4 years went by, the judge would dismiss the case. Or she might decide that certain evidence cannot be admitted at trial (say, a photograph, or a written document). Or a judge might decide that there's no such thing as a certain kind of legal claim (for example, she might decide that you just can't sue your neighbor for laughing at your car's weird paint scheme.) Those sorts of legal determinations can be reviewed by the appellate courts; and if the decision of the trial judge was wrong, then the appellate court might reverse the decision and send the case back for another trial, or some other proceeding.

(But it is important to recall that, to reverse, the trial judge's wrong decision has to have a made a *difference to the outcome*. So, for example, if the judge was wrong to exclude a photograph from a trial, but admitting it would have made no difference to the result, then the appellate court will not reverse. This is a rule called "harmless error." No harm, no foul.)

The third kind of decision trial judges make is, in a way, between the two types I've discussed—these are *discretionary* decisions, where the trial judge has room to decide an issue either way. A lot of these decisions are relatively trivial, and you won't be surprised to learn that appellate courts usually do not reverse trial judges on their discretionary decisions. Discretionary decisions range from everything from where lawyers stand, how much time they can have to ask questions, and which days will be set aside for trial, to more important issues such as letting in evidence when, although admissible, it might possibly prejudice the other party. For example, judges use their discretion in deciding whether the jury will see gruesome photos of a murder scene—the photos are probably relevant and admissible, but they might have an *emotional* impact on the jury that might not be fair to the person accused of the crime. Another example: when lawyers fail to follow the rules (such as filing papers late, or not at all), judges use their discretion in

deciding whether to punish a lawyer with fines, or to refuse to read the late paper. Judges also use their discretion in sentencing after a criminal trial.

Appellate courts don't like to reverse judges for these sorts of discretionary rulings—although, if the ruling is really bizarre and arbitrary, or simply had no basis at all (i.e. the papers weren't late at all!), the appellate courts will then reverse. And if a judge sentences a criminal defendant to ten years in prison, and the law only allows one year, that's not a discretionary ruling—that's legal error. And the Court of Appeals will reverse.

Again, the theory here is that the trial judge is the person who really knows what's happening, what is needed to keep cases moving fairly and rapidly, and how the jury is likely to react. Appellate judges don't see the trial, or the witnesses, or the jury. All they have is the stone cold record—the transcript of the trial, and the papers filed by the lawyers—and they see this perhaps a year or more after the trial.

So, trial and appellate judges have very different roles; except in one sort of case, which is termed *Small Claims*. Small Claims court is available for people who want to sue someone for up to \$7500. There are no lawyers at trial, and the trial is very fast and efficient. It's a good way for people to ask the courts to resolve many disputes. If the person who started the suit—the plaintiff—loses in Small Claims, the case is over. There's no appeal. But if the person *defending* the case (the defendant) loses, he does have a right to appeal: he gets a new trial in front a different judge, and this time, lawyers can be present. This is an exception to the usual course—because here the second trial really is a new start—no one cares what the first judge did. This kind of 'appeal' is called a trial *de novo*: a new proceeding.

Once an appellate court has decided an appeal, that's usually the end of it: the trial decision gets affirmed; or reversed, or gets reversed and *remanded*, which means the case goes back to the trial court for more proceedings (perhaps another trial). Whatever the appellate courts does, that's usually the end of the matter. It's very difficult to get the decision of the appellate courts itself reversed—the only court that can do that is the Supreme Court. And while we usually have a "right of appeal" to the appellate court, there is *no right* to go the Supreme Court (the only exceptions are death penalty cases, which are automatically appealed to the Supreme Court).

The Supreme Court *chooses* which cases it will hear. It usually never takes a case just because it thinks the lower appellate court was wrong; and it sometimes takes cases even when it appears the appellate court was *right*. The Supreme Court takes only about 100 case a year (compared to the eight million cases filed every year in the trial courts), and does so only when there are very important, state-wide issues, or when different courts of appeal have decided a legal issue in opposite ways. The intermediate courts of appeal are there to correct legal errors for the particular parties in that case. But the Supreme Court does not have that role: it settles important statewide issues, issues that affect a lot of people.

The different types of judges on our courts systems have very different jobs, and look at different issues: it's a division of labor. Arguments that may be effective with a trial judge may make no difference to an appellate judge. Together, all the courts work to make sure that people and companies get fair hearings, that significant mistakes are corrected, and that there is consistency of law across the entire state.

Key Vocabulary

| Word | Meaning |
|-------------------------------|---|
| Appeal | Appeal means to make a request of a higher court to change the ruling of a lower court. |
| Appellate Court | An appellate court has the jurisdiction to review decisions of a trial-level or other lower court. |
| Defendant | The defendant is the party sued in a civil lawsuit or the party charged with a crime in a criminal prosecution. |
| Discretionary Decision | Discretionary decisions are those where the judge may decide in multiple ways. |
| Plaintiff | A plaintiff is the person or party that initiates a lawsuit by filing a complaint with the clerk of the court against the defendant(s) demanding damages, performance and/or court determination of rights. |
| Remand | To remand is to send back. An appeals court may remand a case to the trial court for further action if it reverses the judgment of the lower court. After a preliminary hearing, a judge may remand into custody a person accused of a crime if the judge finds that there is reason to hold the accused for trial. |
| Transcript | Transcripts are the written record of all proceedings, including testimony, in a trial, hearing, or deposition (out of court testimony under oath). |

Lessons to Support Appellate Courts and How They Work

Elementary School

Supreme Court: **The Great Debate** – students learn about Supreme Court cases, write persuasive essays, and create podcasts. <http://www.courts.ca.gov/5174.htm>

Levels of the Judicial Branch: **Planet Fourth Grade is Researching the Constitution** - students create their own constitution by researching our government, which includes information about the structure of the judicial branch. <http://www.courts.ca.gov/5174.htm>

Middle School

Court of Appeals: **Let's Take This Baby Up** – a lesson from iCivics about taking a case to the Court of Appeals <http://www.icivics.org/lesson-plans/appellate-courts-lets-take-baby>

Supreme Court: **Supreme Court Decision** – a lesson from iCivics about the Supreme Court that involves students in playing an on-line game
Game: <http://www.icivics.org/games/supreme-decision>
Lesson: <http://www.icivics.org/teachers/lesson-plans/supreme-supreme-decision>

*Levels of the Judicial Branch: **Judicial Branch in a flash*** – iCivics provides this introduction to the three levels of the courts <http://www.icivics.org/teachers/lesson-plans/judicial-branch-flash>

High School

*Court of Appeals: **Appellate Court Experience*** – lessons related to a visit to a real Appellate Court in California <http://www.crf-usa.org/materials-catalog/free-lessons.html>

*Supreme Court: **Interactive Lessons on U.S. Supreme Court Landmark Cases from***

CRF: <http://crf-usa.org/online-lessons-index/free-lessons-index.html>

Korematsu Institute (Korematsu v. U.S.)

<http://korematsuinstitute.org/fredkorematsumday/curriculum/>

NEH: <http://edsitement.neh.gov/lesson-plan/supreme-court-judicial-power-united-states>

PBS: <http://www.pbs.org/wnet/supremecourt/educators/index.html>

Street Law: <http://www.streetlaw.org/en/landmark.aspx>

Additional Resources:

California Supreme Court – an introduction and information on high profile cases. <http://www.courts.ca.gov/supremecourt.htm>

Courts in the Classroom – animated, graphic novel style cartoons depicting U.S. Supreme Court landmark cases www.courted.org

iCivics – students try out their persuasive abilities by arguing a real Supreme Court case through the on-line educational game Argument Wars. Many other games and resources.

<http://www.icivics.org/games/argument-wars>

Sunnylands Classroom – video interviews with Supreme Court justices and more <http://www.sunnylandsclassroom.org/>

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