The purpose of this course is to complement the Fellow’s placement in the California Judicial Branch with a “toolkit” of theories and perspectives that are useful for making sense of the management challenges facing court leaders.

The lack of a general theory of judicial administration means that we are forced to put together our own. There are three levels of concepts that we will use to do so:

1. General organization theory;
2. Individual bits and pieces of judicial administration theory (from the other readings);
3. Fellows’ reflections upon their placement experiences.

The challenge for the Instructor and the Fellows is to knit together these three levels into a coherent and theoretically informed understanding of what judicial administration means and how it should be practiced.

Toward this end, here are three tips on preparation for the seminars:

1. Do the reading,
2. Do the reading,
3. Do the reading.

The instructor will not review or recap the reading. It is up to the Fellow to learn the written material prior to the seminar. We will use the seminar time to move beyond the readings: applying and critiquing them – especially in the context of the Fellows’ experiences in their placements. Early in the course, we will begin discussing together how to get the most out of your placement.

You can download the readings here: public.me.com/bryanborys
ASSIGNMENTS

POLICY PAPER

Identify a current issue that you have some interest in and provide a decision maker (this will probably, but not necessarily, be your mentor) with a briefing memo about the issue. As appropriate, consider the political, organizational and policy dimensions of the issue. Help the reader understand the complexities of the issue as well as how the issue may be understood differently by different groups of interested people. Be careful to distinguish between fact and opinion in your analysis.

You are free to suggest your own policy topic. To get you started thinking, here are some issues that are percolating in most courts:

1. Response to the budget crisis
2. Community outreach
3. Strategic planning
4. Self-help programs for self-represented litigants
5. Collaborative and/or problem-solving courts
6. Customer service
7. Management succession planning
8. Judicial branch governance

A suitable topic for a policy paper would be something like the following: “Recommendation to establish a Homeless Court in the XYZ Superior Court,” or “Problems in Implementing the Omnibus Probate Reform Bill.”

SHORT PAPERS

A number of short papers are required to give you a jump-start in thinking through questions at issue in the upcoming class. Each paper is a maximum of four pages, double-spaced. These are deliberately too short: the questions typically call for more than the page limit allows. This forces you to sharpen your argument and get to the point. Please do so. I’ll be looking for one main thing: Did you do the reading and can you use it in a paper? You can show this by using – not just mentioning – concepts from the reading (this means more than just dropping in a quote or an author’s name). Be concrete: if you can apply abstract concepts to real-world situations, it shows your grasp of the concepts. The best way to write a paper like this may be to write a longer one, read it, and reflect on what you’ve learned through writing it, so you can then focus your final draft on the major points.

Each paper is due the Friday BEFORE the seminar meeting (no matter what day of the week seminar is on; even if that Friday is a court holiday). Each calendar day the paper is late, its grade drops one letter grade (e.g., an “A” paper received on Tuesday gets a B). By the end of the week (our usual seminar day), it’s worthless, so you should make yourself whatever reminders or other arrangements you need to get the papers in on time.
ISSUE ANALYSIS

Due on Monday, February 8, 2010, this 10-page paper assignment asks you to use the ideas we have been developing to understand a real-world issue at your placement. Choose an open issue in your placement; one that has resisted solution for some time. Your paper should characterize that situation in terms of open systems and/or organized anarchies and offer an action plan for moving forward on the issue. You may choose for whom the action plan is written: the PJ, the CEO, yourself, some other person. The paper should include (at least) the following things:

1. A one-paragraph summary of the entire paper;
2. A clear statement of what the substantive issue is and what an appropriate resolution would be;
3. An analysis of the issue in terms of the theory. Do not make this academic. You do not need explicit references to the authors of the papers you are using (although you may do so if it helps the paper). The paper should read like a memo or white paper, suitable for consumption by your colleagues at your placement. Your application of the theory to the issue should be clear enough in the analysis;
4. Implications of your analysis; as appropriate: what will likely happen next; what should be done to address the issue; what obstacles lie in the way of progress and how they should be dealt with.

LEARNING AND SURPRISES PAPER

Making the most of the placement experience requires some degree of reflection upon what you are learning and experiencing. To facilitate that reflection, you are required to turn in a 3-5 page paper summarizing a few of the central lessons you are learning in the Fellowship. You are explicitly encouraged not to recap lessons from the readings; instead, you should focus on your experiential learning, rooted in your placement. Toward this end, it is a good idea to keep a journal of your thoughts and reflections upon your experiences, as a document of the changes in your thinking that occur throughout your Fellowship.
Grading

40%: Short papers (8 papers, 5% each)
25%: Issue analysis
25%: Policy Paper:
   5%: First draft
   20%: Final draft
10%: Learning and Suprises Paper
CLASS SCHEDULE

General preparation:

Before you do specific preparation for the September seminar, you should take time to read carefully:

- Scott and Davis, chapters 1-4.

September: Introduction to Judicial Administration

During orientation we will focus on some of the basic nuts and bolts of the California justice system. Read the following to get a general familiarity with terminology and structure. We will be reviewing the contents of these readings, as well as discussing more prosaic matters such as the cultural norms you will encounter in your placement.

Readings:

- Meador, American Courts, chapters 1 and 2;
- Korey, California Government, chapter 8;
- Article VI of the California Constitution;
- AOC, California Judicial Branch;
- Stoltz, The California Judicial Council;
- PRU, The California Superior Court;
- Flango, “The basic functions of court staff”;  
- Authorities and resources regarding court administration in California.

October: A rational system perspective: The job of court manager

Here is our baseline perspective: The use of standard tools of bureaucracy in the pursuit of the court’s goals.

Read:

- Mintzberg, “The manager’s job”;  
- Los Angeles Superior Court, Planning and Research Unit, Judicial Leadership Structure;
- Aikman, The Art and Practice of Court Administration, chapters 1-2;
- California Courts Review, Summer, 2007, pp. 12-17 (found at AOC website);
- Straub, Framing the Issue, pp. 1-37.

Assignment due:

- Short paper #1: What are the three most-used management tools available to managers in your placement? What are their strengths and weaknesses? In general, are they suitable? sufficient?
November: A natural system perspective: Courts as organizations

As Scott and Davis point out, organizations are more (and less) than rational systems. Goal complexity and goal ambiguity impede rational approaches to managing courts – in fact, they are the heart of the adversarial system! So must we throw up our hands and call it a hopeless task?

Read:
- Heydebrand, “The context of public bureaucracies”;
- Cohen and March, “Leadership in an organized anarchy”;
- Feeley, “Two models of the American criminal justice system”;
- Saari, American Court Management, chapters 1-4
- Eisenstein and Jacob, Felony Justice, chapters 1-3;
- Pound, The Causes of Popular Dissatisfaction with the Administration of Justice.
- Teaching note: Managing to Achieve Justice.

Assignment due:

Short paper #2: If justice systems cannot be managed by a classically rational approach, what factors keep them from complete dysfunction? Be specific: name specific factors and give examples of how they work.

December: An open systems perspective: The role(s) of courts; judicial independence

A major preoccupation of court management is the question of judicial independence. If you are not familiar with the concept of separation of powers in American government, check out Wikipedia. We’ll focus on the problematic aspects of the courts’ place in society: why judicial independence is such a major concern of court leaders and why the American separation of powers is more easily outlined on paper than followed in reality.

Read:
- Montesquieu, “Of the Constitution of England” (on the separation of powers);
- The Federalist 78;
- Abadinsky, Law and Justice, chapters 1 and 2;
- Tobin, Creating the Judicial Branch, Introduction and chapters 1, 3 and 9;
- Wheeler, Judicial Administration: Its Relation to Judicial Independence;
- Hartley, Judicial Independence and Budget Politics, notes for a talk (please do not distribute).

Assignment due:

Short paper #3: Describe a possible future in which the independence of the California judiciary is significantly eroded. What would that look like? Feel free to pick one area of court operations, or one case type, if you wish. If you would like, make it read like a narrative, or like a novel.
January: Politics and leadership within courts

A specific problem raised by the natural systems perspective is the ubiquity of natural, non-formal sources of power – both within organizations and in their environments. This is a particular issue for courts, where elected officials constitute not only the “board of directors” but also the “line workers” of the organization. This situation calls for a special kind of leadership.

Read:
- French and Raven, “The bases of social power”;
- Birnbaum, How Academic Leadership Works, chapter 1;
- Jacob, “The governance of trial court judges”;
- Lipscher and Conti, “A post unification approach to court organizational design and leadership”;
- Tobin, chapter 5.

Assignments due:

Short paper #4: In a sentence, describe a non-trivial change that might be made in your placement. Then lay out a strategy for implementing that change and explain each element of your strategy. Feel free to make this paper read like a personal note to a colleague, giving him or her your advice.

One-page brief description of likely Policy Paper topic.

February: The re-assertion of rational management: Caseflow management

Caseflow management is more than a technique: it is an ideology; an assumption that managerial considerations are important enough to give control over adjudication to judges so that the judges can run the cases. When you read Hasenfeld, think of how useful it might be to consider judges as “street-level bureaucrats”.

Read:
- Hasenfeld, Human Service Organizations, specific chapters to be determined;
- Kerwin, Henderson and Baar, Adjudicatory Processes and the Organization of Trial Courts;
- Solomon and Somerlot, chapters 1-5;
- Review: Eisenstein and Jacob, Felony Justice, chapters 1-3;

Assignments due:

Short paper #5: What would Hasenfeld say about Solomon and Somerlot’s ideas of caseflow management?

Policy Paper proposal (brief). Must include: Problem Statement, Policy Alternatives, list of possible sources of information about pros and cons.
March: The re-assertion of rational management: Measuring court performance

A strong assertion: regardless of the ambiguity of what the courts try to accomplish, if one cannot specify what one is trying to achieve, management is impossible. So, then: what kinds of performance standards might we use to evaluate the work of the courts?

Read:
- Bureau of Justice Assistance, Trial Court Performance Standards with Commentary.
- Saari, chapter 5;
- Burke, *Procedural Fairness*;
- Ostrom and Hansen, “Efficiency, timeliness and quality.”

Assignment due:
Short paper #6: How could you tell whether things at your placement are working well? (Note: you probably should begin by briefly explaining what you mean by “working well”.)

April: The re-assertion of rational management: Judicial Performance Evaluation systems

Given that we can reasonably discuss performance evaluation for the courts, can we do the same for judges?

Read:
- Elmore, *Building a New Structure for School Leadership*. (Note: read “teachers” as “judges,” “school administrators” as “court managers”. There are some significant differences, but also many parallels.)
- Ryan, “Measuring judicial performance”;
- Kourlis and Singer, “Using judicial performance evaluations to promote judicial accountability.”

Assignment due:
Short paper #7: In what ways do typical JPE systems ignore the natural and open systems realities of courts and of the job of judging? In your opinion, are these factors fatal to the goals of JPE?
May: Opening up the open system: Therapeutic jurisprudence, collaborative justice and problem-solving courts

Consider our initial discussions about the role of courts in society. Here is perhaps the most significant challenge to conventional thinking in this area. The courts have considerable power; why not use it for things other than the resolution of legal disputes?

Read:
- Thompson, *Without Sympathy or Enthusiasm*,
- Wexler, “Justice, Mental Health, and Therapeutic Jurisprudence”
- Lowenkamp, “Are drug courts effective”;
- Hoffman, “Therapeutic jurisprudence”;
- Casey, “When good intentions are not enough”;
- Boston Municipal Court, Standing Order 1-06.

Assignments due:
- Short paper #8: Imagine and describe two futures in which problem-solving courts have become institutionalized: a positive future and a negative one. What should court managers do to avoid the negative and bring about the positive outcomes?

First draft of Policy Paper.

June: What’s next?

Depending upon circumstances, we may scratch these readings and focus on the judicial branch budget or other current issues. But Friesen and Baar both have powerful warnings about the prospects for American courts.

Read:
- Friesen, Successful or Merely Surviving?
- Baar, “Will urban trial courts survive the war on crime?”

Assignment due:
- Learning and Surprises Paper

July (no seminar meeting): Final draft of Policy Paper due