OVERVIEW

As the justice system moves into a new century, courts are facing unprecedented pressure, from within the system and outside from communities and constituents, which are redefining the way they do business. Litigants are looking for ways to resolve disputes outside the traditional adversarial/trial process with or without attorneys. Courts are facing calls to develop new models that incorporate psychological/social science and intensive treatment components in collaborative courts. Finally, changing demographics, including an aging population, are leading to the need for new and innovative approaches to the delivery of court services.

Science and technology are rapidly changing the way information is provided to and used by the courts. New sciences are leading to new types of litigation and decisions facing judges in the courtroom. Traditional notions of privacy and access are being pushed beyond their historical definitions, and new emerging technologies are leading to discussions of the place of telepresence and virtual courtrooms in providing access to the courts.

Beyond expecting the courts to successfully adapt to new service demands and new technologies, courts are also challenged each day to address changing values and expectations of new demographics in the population, emerging values in the information age and a lack of understanding of the role and purpose of the courts. Courts also face new attacks on the neutrality and apolitical nature of courts, more attention and visibility from the media, expectations that government institutions will reach out to constituents, immigration, and concerns about the extent that private judging may replace the public court system. Underlying all these issues is the emergence of the judicial branch as an actual branch of government, separate, interdependent and accountable for its actions.

This course will examine these and other emerging issues confronting the courts and shaping the judicial branch in the 21st century.
SPECIFIC LEARNING GOALS

At the end of PPA 294, it is expected that students:

- Will have an understanding of the new issues and services, such as collaborative courts, restorative justice, specialized courts, therapeutic jurisprudence and services for self-represented litigants facing the courts and how courts can respond to their communities’ needs;

- Will understand how external factors such as technology and expectations of the community impact court operations;

- Will understand how science, technology, the media and affect the public’s perception of courts.

- Will understand the organizational evolution of the courts from a loosely organized organization supported by the legislative and executive branches, into a co-equal branch with the same administrative and management challenges facing all complex public organizations.

CLASS DELIVERY

This one course is designed as an intensive graduate seminar. Classes will be held at the Administrative Office of the Courts, Northern Regional Office in Sacramento, California.

- The location of this class is easily accessible by car, air, train, bus and provides free parking.

- Two meetings per month on a Friday and Saturday from 8:30 a.m. to 4:30 p.m. (six hours of instruction time). This is the equivalent of a standard fourteen week graduate seminar meeting weekly. Class dates are 2/13-14/09, 3/13-14/09, 4/10-11/09 and 5/8-9/09.

- Guest lectures featuring judicial officers and court administrative officers.

CONDUCT OF THE SEMINAR

The structure of this class, its intensive format, and the nature of its topics demand full class participation by each student. Each student must come to class having completed all readings; the instructor will not review or recap the readings. Students must prepare in advance for meetings by bringing with them critical questions in response to the readings. The Seminar is discussion based, and each student is expected to contribute to each class and present questions and/or responses to the materials. Students’ participation will be assessed, in part, by their ability to incorporate into seminar discussions information from the assigned readings and thoughtful reflection.
READINGS


Alex Aikman, *The Art and Practice of Court Administration*, (New York: CRC Press, 2007) (available through Amazon.com)


Additional readings for each seminar are listed at the end of this syllabus. They will be made available by the instructor.

ASSIGNMENTS AND GRADING

**Assignments:** All assignments will be posted on WebCT. Assignments due on 2/13/09 will be available on WebCT by January 11, 2009

**Papers:** The schedule of paper assignments is listed below under *Grades*.

**Presentations:** Every seminar will include breakout sessions where, in groups of 3-5, each group is given a problem to solve. One person from the group will serve as group leader and manager and will present the group’s solution to the class and answer questions from the class and instructor. Each presenter is graded on the group’s final solution, the individual presenter’s presentation and responses to questions posed by the students and instructor.

**Participation:** Student’s participation grade will be based on their contributions to the group work, class discussions and questions/answer sessions with guest speakers

**Attendance:** Attendance is mandatory. You must inform the instructor before class if you must miss a class on a specific day. Except for unusual circumstances, for each two full classes missed, a student will be penalized one entire grade (e.g., a B+ for the course will become a C+).

**Grades:** Course grade will be determined based on the following weights:

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<tr>
<td>due 2/13/09</td>
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<td>due 3/13/09</td>
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<td>due 4/10/09</td>
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due 5/8/09     100 points
final paper due 5/19/09 100 points

Presentations:
In-class 100 points

Class Participation (engagement in-class discussions, break out group work, etc) 400 points

Total: 1000 points

Grading scale:

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Academic Honesty: Academic dishonesty will not be tolerated in this seminar. Students who plagiarize in this class will receive an F for the class and will be referred to the University of California, Sacramento Office of Student Conduct. It is each student’s responsibility to ensure s/he understands what plagiarism is and does not plagiarize or cheat. If you have any questions, please feel free to discuss them with the instructor. An excellent resource on the subject is at http://www.plagiarism.org.

Late Assignment/Makeup: Late assignments will not be accepted. At the instructor’s discretion, a student who misses a deadline may be given a make-up assignment. Whether or not a penalty will be assessed depends on the reason for the late assignment (e.g., a family emergency or serious illness constitutes a good reason; a competing requirement for another course does not).

Missed Classes: You should inform instructor before class if you must miss a class on a specific day. Except under very unusual circumstances, a student who misses three classes will be penalized one entire grade (e.g., a B+ for the course will become a C−), and a student who misses more than three classes will receive a failing grade.
SEMINAR SCHEDULE

February 13-14, 2009

Courts: The New Issues and Approaches Redefining Traditional Court Processes

This seminar explores the nature and extent of the self-representation challenge and courts’ responses to litigants without attorneys; new approaches to addressing the underlying causes of criminal behavior found in problem solving court models such as collaborative courts and drug courts; and new issues such as how to handle issues facing an aging population that affect the way in which courts are organized and provide services.

Guest Lecturer(s): Commissioner Ronald Albers, Ms. Bonnie Hough

Read:

See reading list at the end of the syllabus – “February 2009 Seminar Readings”

Assignment Due on February 13, 2008 (100 points)

In a 4-8 page paper answer one of the following questions:

- Do the current types of services provided to self-represented litigants adequately ensure these litigants have the necessary access to the courts, or do we need to create an “entirely new methodology and redesign civil procedure from the ground up so that access to justice is available to all, rich and poor alike.” Support your answer with sources from the reading materials provided.

- Why were problem-solving courts created? What social functions are being performed by problem-solving courts? To what extent are these courts contributing to the purposes for which the courts are organized? Support your answer with sources from the reading materials provided.

Reading/Discussion Questions:

1. Are courts being selfless or selfish in providing self-help assistance? Does it make any difference in terms of whether the assistance should be provided?

2. What is the “collaborative law” model described by Pauline Tesler? Can this model be applied outside the of the family law area? If so, where and how? If not, why not?
3. How do the pro se (self-represented litigant) systems in England, Norway or Germany compare to the services for self-represented litigants in the U.S. Are they similar or different to U.S. models and can they be adapted/used in our courts?

4. Why do people represent themselves? Are people who litigate their own cases a problem for the courts? Are these people short-changing themselves and effectively being denied justice?

5. Greacen gives us three possible ways to interpret the data collected on self-represented litigant cases. What are they? What does the data show? What implications do these possible interpretations have for the courts and the provision of self-help services?

6. What are the ethical and moral issues facing lawyers, judges and court employees in providing assistance to self-represented litigants? Can these issues be addressed? If so, how? If not, why not?

7. Based on the Statewide Action Plan developed by the Task Force on Self-Represented Litigants, what gaps remain in California in terms of the services provided to assist the self-represented? Which additions should be mandated statewide and which should remain for adoption or not in individual trial courts?

8. Some judges and attorneys still are uncomfortable with the assistance being provided to the self-represented by courts. Are these individuals simply clinging to outmoded concepts of a court’s role in litigation or are there legitimate concerns that are being ignored in the push to provide self-help assistance?

9. What is therapeutic jurisprudence? Give some examples. How does therapeutic jurisprudence differ from the traditional adversarial, retributive justice model in U.S. courts? What are the implications for court managers?

10. Do problem-solving courts affect the neutrality of the courts in the adjudicative process?

11. Some have called problem-solving courts a critical court system function. Are they? How do these types of courts affect the allocation of court resources?

12. Do you agree with Aikman that courts have not done a sufficient job of evaluating the impact of problem-solving courts on internal operations? If so, if you were a court executive officer, what arguments would you use to convince the judges presiding in problem-solving courts that such an internal-impact evaluation is needed and should be conducted?

13. Do you agree with Aikman that problem-solving courts may require staff with different skills and qualities than most courtroom clerks and calendar staff have and thus these staff should be classified differently than the other staff and, possibly, paid
more? If so, how would you document the differences and support the need for extra funding that reclassification might require?

14. Are there any evaluation questions regarding problem-solving courts that the “standard” evaluations (such as detailed in the GAO’s report and Aikman’s list still have not identified? Consider the question for drug courts, mental health courts, homeless courts, and family courts. If so, what are they?

15. What is restorative justice? Is it another option within the traditional, retributive model of our criminal justice system, or is it a departure from tradition? Is it effective?

16. What are the judicial responses to elder issues facing the courts? Are these responses different then responses to issues raised by other cognizable groups using the courts (such as self represented litigants)? What are the implications for the courts?

March 13-14, 2009

Courts in the Digital Age

This seminar explores the impact of technology on the courts. Topics include advances in science and their impacts on the adjudicatory process, how changes in technology affect privacy and access to the courts, how new technologies could change the nature of court proceedings, such as online dispute resolution, virtual courts, and evidence presentation.

Guest Lecturer(s): Judge Michael Garcia, Mr. Alan Carlson

Read:
See reading list at the end of the syllabus – “March 2009 Seminar Readings”

Assignment Due on March 13, 2008 (100 points)

In a 4-8 page paper answer the following questions:

In the digital age, how does an individual’s right to privacy, defined by Samuel Warren and Louis Brandeis in 1890 as “essentially a right to protect one’s inviolate personality from intrusion or unwanted revelation,” co-exist with the requirements and expectations that court files and the information in those files are public records? Has the increasing use of technology in the courts blurred or sharpened the lines between personal privacy and public disclosure? How can we differentiate between public and private information in a court file? What should be protected from disclosure, what should not?
Reading/Discussion Questions:

1. In the article by Anderson, Borgersen, et al, the authors describe a vision for technology in California, progress by the year 2000 and where they see the judicial branch in 2020. It’s now 2008. Has California achieved progress envisioned for the year 2000?

2. What is e-government? What are the issues raised by e-government in general and specifically for the courts? Are they the same or different?

3. How can we facilitate access to the courts in the digital age when we continue to confront the digital divide?

4. What is the doctrine of “practical obscurity?” How is this doctrine impacted by the increased use of technology by the courts? Are the traditional notions of what is public information still valid in the digital age?

5. Mesthene (Teich, Ch. 8) states that “New Technology creates new opportunities for men and societies, and it also generates new problems for them.” What are the opportunities and problems created for the courts?

6. What challenges will new technologies such as stem cell research, genetic engineering, neuroscience, cloning, etc bring to the courts? How will the courts prepare themselves to resolve issues and disputes arising out of new technologies?

7. D. Johnson (Teich, Ch 22) states that “technology creates new possibilities for human action and this means that human beings face ethical questions they never faced before? What are the ethical issues raised by technology that may find their way into the courts for resolution? What are the ethical issues for courts as organizations?

8. How does e-filing impact traditional methods of accessing the courts and court operations? What are the risks and rewards of this technology? What are the implications for the future of the courts?

9. How do technologies like video conferencing and computer generated evidence affect the courtroom, perceptions of judges, juries, the rights of defendants, and ultimately the delivery of justice?

10. Has technology increased access for self-represented litigants? What other types of services and assistance could be provided?

11. Chief Justice Moyer states that “Courts often render legal decisions first about emerging technologies because parliaments are slower to act.” Are the courts prepared for this responsibility? What are the challenges, rewards and risks in assuming this role?

12. Aikman points out the constraints facing the courts in adopting and implementing new technologies. How do courts address and/or overcome these constraints?
April 10-11, 2009

Courts: A Changing Society and New Challenges

This seminar explores how changes in American society are placing new strains and demands on the traditional adjudicative processes of the courts contrasted with a lack of public understanding the role and functioning of the courts, the potential for increasing politicization of the judiciary, changing expectations of the public, increasing media attention and scrutiny, the demand for culturally appropriate services, and public versus private courts.

May 8-9, 2009

Courts as Complex Public Institutions

This seminar explores how courts, having evolved from small, relatively simple organizations whose support was provided by the Executive and/or Legislative branches into a separate, co-equal branch of California state government, must now face challenges faced by other large, complex public institutions. What are the challenges, how has this change affected court managers and what are the skills they need to succeed in the future.
February 2009 Seminar Readings


Alex Aikman, *The Art and Practice of Court Administration*, Chapter 12, section 12.8.


**ADDITIONAL ARTICLES RECOMMENDED BY COMM. RONALD ALBERS – GUEST LECTURER ON FEBRUARY 14, 2009**


Megan K. Miller, *Colaborative Justice and High Risk Young Adult Offenders*, March 2007,
March 2009 Seminar Readings


Alex Aikman, *The Art and Practice of Court Administration*, Chapter 12, section 12.11.


Gregory P. Ewing, *Using the Internet as a Resource for Alternative Dispute Resolution and Online Dispute Resolution*, 52 Syracuse L. Rev. 1217 (2002).


