OVERVIEW

As we move into this new century, courts are facing unprecedented pressures, from within the system and outside from communities and constituents that are redefining the administration of justice. 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 and changing demographics including an aging population are leading to the need for new and innovative approaches to the delivery of court services. Greatly impacting these expectations from our communities is the recent and prolonged economic downturn that has placed tremendous strains on judicial branch budgets.

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, a lack of understanding of the role and purpose of the courts, new attacks of 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, services for self-represented litigants, elder abuse, and cultural competency facing the courts and how courts can respond to their communities’ needs;

- Will understand how external factors like the increasing importance and reach of technology in society and expectations of the community impact court operations;

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

- Will be able to analyze the impacts of the 2007-10 economic downturn on the judicial branch throughout the United States and California, and how this downturn will force the judicial branch to effectively manage operations and expectations in what looks to be many years of stagnant and/or diminished resources.

- 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 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 1/28-29/11, 2/18-19/11, 3/18-19/11 and 4/8-9/11.

• Guest lectures featuring judicial officers, executive officers and subject matter experts.

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:** Assignments due for each class are included in this syllabus.
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 discussion question to present to the class/instructor. One person from the group will serve as group leader and each member of the group will actively participate in presenting the issues and recommended solutions 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:

<table>
<thead>
<tr>
<th>Assignment</th>
<th>Points</th>
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<tr>
<td>Paper due 1/28/11</td>
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<tr>
<td>Paper due 2/18/11</td>
<td>100</td>
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<tr>
<td>Article Research due 3/18/11</td>
<td>100</td>
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<tr>
<td>Paper/Article Research due 4/8/11</td>
<td>100</td>
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<tr>
<td>Final Exam on 4/30/11</td>
<td>100</td>
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<tr>
<td>Presentations: In-class</td>
<td>100</td>
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<tr>
<td>Class Participation (engagement in-class discussions, break out group work, etc)</td>
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Total: 1000 points

Grading scale:

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<th>Grade</th>
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<td>A</td>
<td>950-1000</td>
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<td>A-</td>
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<tr>
<td>B+</td>
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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. Details are available at the University Policy Manual found at http://www.csus.edu/umanual/student/UMA00150.htm. If you have any questions, please feel free to discuss them with the instructor.

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.

MAKE-UP ASSIGNMENTS AND MISSED CLASSES

Late assignments will not be accepted. At 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 (e.g., a family emergency or serious illness constitutes a good reason; a competing requirement for another course does not).

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

January 28-29, 2011

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; the demand for culturally appropriate services 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): TBA

Read:

See reading list at the end of the syllabus – “January 2011 Seminar Readings”
Assignment Due on January 28, 2011 (100 points)

In a 5-8 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. 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?

3. 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?

4. 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?

5. 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?

6. 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?

7. 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?

8. According To Barton, what is “Civil Gideon?” Is this concept the answer to the dramatic increased in the number of self-represented litigants? Is yes, why? If no, why not?

9. Does Judge Shepard believe that justice is being adequately delivered to self-represented litigants? How should the courts address the problems of providing “equal access to justice to all who come to our courthouses?”

10. Engler believes that we should “make counsel available when basic needs are at stake.” What does the available information indicate are possible areas of greatest need? What are potential future areas where greater legal assistance is needed?

11. According to Zimmerman and Tyler, why does it matter what type of experience litigants have with the legal system? How is their experience influenced by whether they represent themselves or they are represented by an attorney? What conclusions did the authors draw regarding whether having an attorney makes a difference in improving one’s access to justice?

12. 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?

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

14. 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?

15. 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?

16. 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?
17. 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?

18. 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?

19. 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?

20. What is cultural competence? Why is cultural competence important to the courts? How does a court become culturally competent? What are the benefits of becoming more culturally competent?

February 18-19, 2011

Courts in the Digital Age and the Media

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. In addition, the seminar will look at the increasing media attention and scrutiny facing the courts and the response of courts in dealing with this attention and in ensuring that accurate and timely information reaches the public regarding the operations of the judicial branch.

Guest Lecturer(s): TBA

Read:
See reading list at the end of the syllabus – “February 2011 Seminar Readings”

Assignment Due on February 18, 2011 (100 points)

In a 4-7 page paper answer the following question:

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 (such as forensic animation) 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?

13. What are Narkiewicz’s technology predictions for 2014? Are they realistic or simplistic? Are they achievable or out of reach? Which ones do you think are reasonable for California courts and what steps do we need to implement to make these predictions a reality?

14. What is the potential role of the media, referred to by R. Luberda, as the 4th branch of government, in “finding a proper balance between the safeguards of judicial independence and the need for checks on the judiciary?”

15. Is the media, “acting in its traditional watchdog role,” responsible for “eroding public confidence in the judiciary?”

16. How should the courts work with the media? How should judges work with the media? What are the advantages of a positive relationship between these two institutions?

17. K. Podlas describes the results of a study evaluating the “effects of frequent syndic-court viewing on jurors.” What were the effects she reported? What are the implications of these findings on the courts and on the justice system?

18. Krygier calls cameras in the courtroom “the thirteenth juror.” How have courts tried to reconcile the potential conflicts between the First and Sixth amendments? How do cameras in the courtroom impact jurors, witnesses and the whole trial experience? Is it appropriate to allow court proceedings to be televised?

19. How is the internet changing the way in which the media covers criminal trials? Is this a positive or negative change?

March 18-19, 2011

Courts: A Changing Society, New Challenges and an Uncertain Budget Future

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 of the role and functioning of the courts, the potential for increasing politicization of the judiciary, and changing expectations of the public.
This seminar will also look at the impact of the current economic downtown on courts throughout the United States and California. How have courts responded to budget reductions imposed on them, what has been the impact on services to the public, and what needs to be done to continue providing effective services and access to the courts in a future of diminished resources.

Guest Lecturer(s): TBA

Read:
See reading list at the end of the syllabus – “March 2011 Seminar Readings”

Assignments Due on March 18, 2011 (100 points)

There are three assignments for this seminar:

1. Find two peer review/academic articles (from the Sacramento State database and published within the past 5 years) on:
   - the changing demographics in California (or the United States), and/or
   - the reach of politics and/or political parties into judicial elections and/or judicial governance, and/or
   - the current state and/or future directions of public finance

For each article, summarize the article in no more than one page and in no more than three pages (overall four pages maximum) describe how you see the issue(s) presented in the article impacting the administration of justice in the California courts.

Once you have identified the articles you intend to summarize, you must inform the instructor of the subject and author/title of the article so that there are no duplicate articles within the class.

Select one of the two articles for presentation to the class. Your presentation should summarize the article and provide the class/instructor with an analysis of the article relative to the administration of justice. Make sure you bring a hard copy of both articles to class with your name on each article.

2. Review the materials in the cases of Caperton v. Massey and Citizens United v. Federal Elections Commission heard by the United States Supreme Court. The materials can be viewed at http://www.brennancenter.org and on a number of other web sites. Be prepared to discuss these cases in class.

3. Access the “Budget Resource Center” on the home page of the National Center for State Courts website (www.ncsc.org). Review the information provided in the budget resource center, including the NCSC newsletters “State Courts and the Economy” (and whatever other resources available to you) and come to class prepared to actively discuss: the impact of the economic downturn on court systems throughout the country, the nature and extent of the budget
reductions, and responses of the courts to the budget reductions. Also, be prepared to discuss solutions/alternatives that you would offer to the courts in these challenging budget times.

Reading/Discussion Questions

1. What is judicial independence? What is independence of the judiciary? What are the origins of these concepts? What are their limitations? Are they both important concepts or is one more important than the other? If so, why? Are they important to the functioning of the court system, or not?

2. Does the American public understand the concepts of judicial independence, independence of the judiciary, separation of powers, and checks and balances? How are they informed and educated about these concepts? From your review of the readings do they support these concepts?

3. How will the changes in the legal profession and the practice of law identified by Quintin Johnstone impact the courts? How do the courts respond to these changes?

4. Roger Warren opines that “state judicial elections have become like elections for political office.” What does he mean? What implications does this have for judicial independence and the independence of the judiciary?

5. What are the factors and trends identified by the American Bar Association that have led to the “excessive politization of the state courts? What recommendations to they make to address these factors and trends?

6. How does Chief Justice George believe that the principles of separation of powers and independence of the judiciary can best be advanced and supported? What are the major steps that the California judicial branch has taken in this regard?

7. What implications do Caperton and Citizens United have on judicial elections, judicial independence and for the courts in general?

8. What does the empirical evidence cited by Cummings and Greene show regarding the ability of “partisan elected judges” to sit on cases involving corporate campaign contributions? What are the potential implications for our California courts?

9. According to Bodoh, confidence and faith in the judicial system is based on what? Is he correct and/or are there additional factors that lead to confidence and faith in the judicial system?

10. Should judges to “what is right,” or what the law dictates? Are they the same or different? Why? How does this impact on perceptions of courts by the public, attorneys, other court users?
11. How do judges judge? How should be judge judges?

12. According to Rottman, how does the public’s experience with the courts influence their perceptions of confidence in the courts? Why? Have perceptions changes since the initial study on the subject “The Public Image of the Courts” in 1977?

13. Should court executives and managers care about the public’s perceptions of the courts? How can public perceptions be influenced, both positively and negatively, by the courts?

14. According to Frank Williams, are the courts changing from “decision-makers to life-changers?” What does he mean? What examples does he cite to support his conclusion? Do you agree with his perspective? Why?

15. Are courts agents of social change, or do they react to changes in society?

16. If the budget of the judicial branch is threatened, should courts invoke their “inherent power” to compel adequate funding? Under what circumstances should such power be used? Are there any risks in invoking this power?

17. What types of changes are the courts (around the country) implementing to address fiscal challenges in this time of economic uncertainty?

April 8-9, 2011

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.

Guest Lecturer(s): TBA

Read:
See reading list at the end of the syllabus – “April 2011 Seminar Readings”

Assignment Due on April 8, 2011 (100 points)

Choose from ONE of the two options below:
1. Find one peer review/academic article (from the Sac State database and published within the past 5 years) on the managing/management challenges in the 21st century. Summarize the article in no more than a one page and in no more than three pages (overall length four pages maximum) describe how you see the issue(s) presented in the article impacting the administration of justice in the California courts.

Once you have identified the article you intend to summarize, you must inform the instructor of the subject and author/title of the article so that there are no duplicate articles within the class.

Be prepared to present the article to the class. Your presentation should summarize the article and provide the class/instructor with an analysis of the article relative to the administration of justice. Make sure you bring a hard copy of your article to class with your name on each article.

2. Peter Drucker in his book Managing in the Next Society, provides a number of insights, ideas and identifies a number of issues that will affect “the ever-expanding management roles required of us all,” in the 21st century. Select three of these insights/ideas/issues that you believe are relevant to those managing in the courts today and describe how you believe the issue will affect judicial administrators in the 21st century. Your paper should be 4-6 pages.

Reading/Discussion Questions

1. What are the trends identified by Fruin and Borys that will shape the court system of the future? How should the courts respond to these trends?

2. As identified by Greacen, are court governed by formal organizational structures, or are they “organized anarchies.” Define these two concepts, and then describe how they relate to governance within the courts.

3. How has computerization changed the court workplace? What do you see in the future? Include in your answer consideration of the changes in the roles and responsibilities of workers, managers and judges, and possible changes in the organizational structures of the courts.

4. Is trust important in organizations like the courts? Why or why not? How is trust built and maintained? How can trust be damaged or lost?

5. Ahuja and Carley state that “Today’s organizations are faced with a dynamic and turbulent environment that requires flexible and fast responses to changing business needs.” Does this apply to courts? If yes, how? If no, why? In your answer, discuss the extent to which courts are virtual organizations within the definition offered by the authors.

6. Kurland and Egan believe that “telecommuting has the potential to benefit individuals, organizations and society.” What are the views of managers and employees regarding telecommuting? Does telecommuting work in the courts? If yes, how? If not, why not?
7. What are the types of workplace education and training identified by Peter Smith? What is the importance of such training in the court environment? Are there other ways beyond those identified in the readings that training can/should be provided in the courts?

8. What is work-life balance (as introduced in the U.K.)? Do these policies have a place in the U.S. courts? How would the introduction of work-life policies impact the management of the courts, either positively or negatively?

9. Leana and Barry believe that “change and stability are simultaneous experiences in organizations.” Why do organizations pursue change? Why do they pursue stability? How do these concepts fit into the court environment? Are there different forms of change and stability that affect the courts than those affecting other public/private sector organizations?

10. According to Cordada, et al., what are the “drivers outside the realm of government control” shaping society? How do these drivers affect the courts? How should courts respond to these forces?

11. Marquis, et al, state that “businesses must maintain a cadre of personnel who are both highly qualified and highly diverse.” Why? Does this private sector analysis apply to the courts? If yes, how? If not, why not?

12. How can managers foster and support creativity in the courts? What are the benefits of encouraging creativity in the workplace? Are there any negative consequences of such encouragement?

13. What do “millennial” workers want? How can we attract and retain the new generation of workers? Why should we care about this?
January 2011 Seminar Readings


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


February 2011 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).


March 2011 Seminar Readings


Alex Aikman, *The Art and Practice of Court Administration*, Chapter 4, section 4.2 and Chapter 11, Section 11.5.


April 2011 Seminar Readings


Alex Aikman, *The Art and Practice of Court Administration*, Chapter 7, sections 7.1 and 7.2.


