This is the printer-friendly syllabus for the seminar portion of the Program. There is a separate syllabus for the clinical fieldwork portion of the Program.

Most of the Tuesday-evening sessions of the seminar will have one or more substantive themes and one or more practical skills themes. The substantive themes of each session will cover substantive areas of law germane to the practice of litigation with the Federal Government, and specifically to the practice of law in the Civil Division of the United States Attorney’s Office for the Eastern District of New York. These themes will be addressed primarily through readings, which should be completed before class, and through in-class discussions. Many of the readings on our substantive themes will come from a required treatise:

**GREGORY C. SISK, LITIGATION WITH THE FEDERAL GOVERNMENT**  
(ALI-ABA 4th ed. 2006)

Abbreviated in this Syllabus as “Sisk,” this treatise, which was published earlier this year jointly by the American Law Institute and the American Bar Association, is available for purchase from the NYU Professional Bookstore, and all students are required to purchase it. (Important note: This is not the same book as the casebook by the same author with the same title, which was published by Foundation Press in 2000, and which students used in this Program in previous semesters.)

In addition to the Sisk treatise, a number of cases, statutory provisions, articles, and other readings will be assigned during the course of the semester in connection with the substantive themes we will explore in the seminar. Many of the supplemental articles and readings are derived from internal Justice Department monographs, practice manuals, and training materials. All of these supplemental articles and readings are available on the class Blackboard site, under the Tab Readings, and they can also be accessed through hyperlinks directly from the interactive on-line version of this Syllabus. Most of the cases and statutes assigned for reading can also be accessed through hyperlinks directly from the interactive on-line version of this Syllabus, which will connect you to the Westlaw report of the case or statute in question. Note that when cases are assigned for reading, you are only required to read the majority (court) opinion; any concurring or dissenting opinions should be considered as optional reading.

The substantive theme for each session of the seminar is set forth below in **boldface** type. Underneath the entry for each session is listed the reading assignment for that session. Students are expected to have completed the reading assignment before the session and to come to class prepared to discuss the assignment, and the cases and topics presented therein, in some detail.

The practical skills themes of each session will cover lawyering skills and practical applications of substantive law, as germane to the practice of litigation with the Federal Government, and specifically to the practice of law in the Civil Division of the United States Attorney’s Office for the Eastern District of New York. These themes will be explored through readings, which should be completed before class, as well as through in-class discussions, and through exercises based on three simulated case files: Local 333, Shi Fan Shi, and Claimant. Many of the readings on our practical skills themes will come from a second required textbook:
R. Lawrence Dessem, Pretrial Litigation: Law, Policy & Practice (West 3d ed. 2001)

Abbreviated in this Syllabus as “Dessem,” this textbook is available for purchase from the NYU Professional Bookstore, and all students are required to purchase it. Note that many of the passages assigned from the Dessem textbook include what the author describes as “exercises”; you can skip these.

A number of additional articles and readings, as well as rules of procedure, will be assigned during the course of the semester in connection with the practical skills themes we will explore in the seminar. These are available on the class Blackboard site, under the Tab Readings, and they can also be accessed through hyperlinks directly from the interactive on-line version of this Syllabus.

For each of the three simulated cases we will be using in the seminar, you will be called upon to read materials related to the case, which can be found under the Tab Exercises on Blackboard. On two occasions during the semester, you will be called upon to present oral arguments based on these simulated case files before a “guest jurist” on the schedule set forth below.

The practical skills theme(s) for each session of the seminar is/are set forth below in italics type. Underneath the entry for each session theme is listed the reading and/or exercise assignment for that session. Students are expected to complete the reading and/or exercise assignments before the session.

A note on optional reading assignments: the syllabus contains a number of optional reading assignments directed towards both the substantive themes and the practical skills themes we will be covering in the class. Many of the optional readings consist of sample documents from real cases, but there are also optional readings from the textbooks and other materials. As suggested by the name “optional,” these readings are not required but rather are being made available to you as an additional set of resources to enhance your learning experience. If your time permits you to review them, you will find these readings to be very helpful and informative to you not only with regard to your work in the seminar but also with regard to your clinical fieldwork experience.

WEEK 1 – Tuesday, September 5, 2006

Introduction to the Seminar

Readings:  
- Sisk vii-xii (Forward)  
- Browse Program Handbook

The United States as a civil litigant, and the lawyers who represent it, Part I

Readings:  
- Sisk 1-18 (§§ 1.01-1.02)  
- Article: Marie Louise Hagen, “Roles of the Department of Justice and Agency Attorneys, or a Brief History of the Department of Justice and Agency Attorneys and Why We Need Each Other in Spite of It,” pp. 1-10 (to end of part III.E)  
- Browse http://www.usdoj.gov/dojorg.htm  
WEEK 2 – Tuesday, September 12, 2006

The United States as a civil litigant, and the lawyers who represent it, Part II

Readings:
- Sisk 18-31 (§ 1.03)
- Book Excerpt: Lester and Noone, Litigation with the Federal Government (3d ed. 1994), § 1.118 (pp. 19-23)
- Article: Robert W. Jaspen, “Who is the Client of the Department of Justice Attorney?”

Introduction to Sovereign Immunity

Readings:
- Sisk 73-99 (Chapter 2), 101-02 (§ 3.01)

WEEK 3 – Tuesday, September 19, 2006

Special Considerations When the Government is a Party to Litigation

Readings:
- Sisk 33-36 (Jurisdiction, Venue, and Justiciability)
- Sisk 36-38 (Service of Process Upon the Federal Government)
- Sisk 51-53 (No Jury Trials)
- Fed. R. Civ. P. Rule 4(i), 4(m)

Agencies with Sue-and-Be-Sued Clauses

Readings:
- Sisk 216-24 (§§ 3.22-3.24)

Federal Program Litigation

Reading:
- Sisk 331-36 (§ 4.10), 355-57 (§§ 5.02-5.04)

Binding the Federal Government

Reading:
- Sisk 399-425 (Chapter 6)

WEEK 4 – Tuesday, September 26, 2006

The Federal Tort Claims Act, Part I

Reading:
- 28 U.S.C. §§ 1346(b), 2401(b), 2671 to 2680.
- Sisk 102-24 (§§ 3.02-3.04), 358-73 (§§ 5.05-5.06)
- Review the “Defensive Litigation Checklist.”

Understanding the client’s interests

Exercise: Review complaint and litigation report in Shi case.
WEEK 5 – Tuesday, October 3, 2006

The Federal Tort Claims Act, Part II

Reading: ● Sisk 124-54 (§§ 3.05, 3.06(a-b))

Exercise: In the Shi case, review the Feller declaration. Begin thinking about the following questions:

1. What defenses are available to the government in this case?
2. Which of these defenses are jurisdictional in nature?
3. Which of these defenses are elements of sovereign immunity?

WEEK 6 – Tuesday, October 10, 2006

The Federal Tort Claims Act, Part III

Reading: ● Sisk 154-70 (§§ 3.06(c-f), 3.07, 3.08), 429-30 (§ 7.03)
         ● DOJ Torts Branch Monograph, “Compendium of FTCA Defenses”

Answering the complaint; Drafting a dispositive motion

Reading: ● Dessem 175-198, 474-488
         ● Fed. R. Civ. P. Rule 4(i), 8, 12, 56, and Local Civil Rule 56.1.

Optional: ● Review the sample Notices of Motion and Notice to Pro Se Litigant
          ● Review the sample answers

Exercise: After class, begin drafting an answer to the complaint in Shi (graded assignment – to be turned in at or before class on October 17).
WEEK 7 – Tuesday, October 17, 2006

Constitutional money damages claims against the United States and its employees (*Bivens*)

Reading:  
  * Sisk 373-97 (§ 5.07)  
  * DOJ Torts Branch Monograph: “A Practical Overview: Defending the Personal Liability Case from the Pre-Trial Through the Appellate Stage,” pp. 1-27, 36-43  

*Writing a winning legal brief*

Reading:  
  * Book Excerpt: Irwin Alterman, Plain and Accurate Style in Court Papers, pp. 95-129

Exercise: In the *Shi* case, review 56.1 Statement and summary of relevant New York State law. Each student should begin drafting a memorandum of law in support of a motion for summary judgment (or motion to dismiss the complaint) on behalf of the defendants in the *Shi* case. This memorandum of law, which should be 15-20 pages in length, is due November 14.

Assignment: Deadline to turn in answer to the complaint in *Shi* (graded assignment)

WEEK 8 – Tuesday, October 24, 2006

*The Social Security Act*

Reading:  
  * Sisk 202-05 (§ 3.17)

Optional:  
  * Federal Civil Practice Manual Chap. 24

Exercise: Review the following materials from the *Claimant* case:
  * The ALJ’s administrative decision  
  * The Transcript of the administrative hearing  
  * The Appeals Council’s administrative decision  
  * The Commissioner’s opening brief  
  * The Claimant’s opening brief  
  * The Commissioner’s reply brief  
  * The Claimant’s reply brief

*Orally arguing a dispositive motion*

Reading:  
  * Dessem 456-468
WEEK 9 – TUESDAY, October 31 and WEDNESDAY, November 1 (times TBA)

In class exercise: Presentation of oral arguments in Claimant case

Note: Each pairing of students will be given a specific day and time to present their oral arguments before an AUSA who will act as a simulated “judge.” These arguments will be presented at the United States Attorney’s Office in Brooklyn, in a location TBA. There will be no class at Furman Hall this week.

Assignment: Each student will prepare and present a 15-20 minute oral argument on behalf of his or her client in Claimant – Group A represents the plaintiff; Group B represents the Commissioner of Social Security.

WEEK 10 – Tuesday, November 7, 2006

Understanding discovery; developing a discovery plan; modes of paper discovery

Reading:
- Fed. R. Civ. P. Rule 16, 26, 30, 32, 33, 34, 36, 45
- Dessem 222-232, 277-282, 290-94, 304-309, 311-319, 368-392
- Article: Tom Majors, “Responding to Plaintiff’s Discovery Requests or How I Keep From Being Sanctioned (A Practical View)”

Optional:
- Read sample interrogatories, interrogatory responses, document requests, document request responses, automatic discovery disclosures, and notices of deposition.

WEEK 11 – Tuesday, November 14, 2006

Obtaining Information from the Federal Government

Part I – Discovery: how it is the same and how it is different when the government is a party

Reading:
- Sisk 38-42 (§ 1.07(a, b))
- Article: Marcia W. Johnson, “Ethical Issues for Civil Attorneys”
- Federal Civil Practice Manual, sections 7.20-7.23

continued on next page . . .
Part II – FOIA and the Privacy Act

Reading:
- Sisk 199-202 (§ 3.16), 42-44 (§ 1.07(c))
- Federal Civil Practice Manual, sections 15.1, 15.2, 15.10, 15.14

Assignment: **Deadline** to turn in briefs in support of dismissal/summary judgment in *Shi Fan* case.

Exercise: In *Local 333*, read the referral package. Then read pp. 1-5 and 44-52 of the transcript of the Oravets deposition. (If you have time, read the entire deposition (optional)). Finally, read the remaining exercise materials, which consists of a letter from the AUSA to counsel for the defendant, as well as the government’s privilege log, a declaration, and some documents being produced. Each student should begin drafting a letter motion to the Magistrate Judge in *Local 333* (due November 28) seeking relief in the discovery dispute created by the government’s assertions of privilege in the deposition of Mark Oravets and in the privilege log submitted to the defendant’s counsel. **The letter motion may not exceed three pages.** Group B is to submit motions to compel on behalf of the defendant labor union; Group A is to submit motions for protective order on behalf of the plaintiff government.

**WEEK 12 – Tuesday, November 21, 2006**

Obtaining Information from the Federal Government

Part III -- Evidentiary and disclosure privileges available to the government

Reading:
- Sisk 44-51 (§ 1.07(d-e))
- Federal Civil Practice Manual, sections 17.1, 17.4-17.10, 17.17, 17.18, 17.20, 17.21, 17.23, 17.24
- Federal Trial Manual, Article V (Privileges), sections 5.1-5.8, 5.11-5.17, 5.26, 5.28-5.35
- Dessem 232-243, 255-269

**Asserting privileges in discovery; litigating discovery disputes**

Readings:
- Fed. R. Civ. P. Rule 37; Local Civil Rules 26.2, 37.1, 37.3
- Dessem 406-418

Optional:
- Read sample motion to compel and response to motion to compel
The Federal Government as Plaintiff

Readings:
- **Sisk**, Chapter 8 (pp. 503-37)
- Department of Justice, ACE Manual, pp. 1-13, 23-24
- Article: Leslie J. Westphal, “Criminal and Civil Forfeiture after CAFRA and USA Patriot Act: Separating the Defendant from Property”
- Article: Jean B. Weld, “What is Forfeitable as Criminal Proceeds?”

Optional:
- Sample Civil Forfeiture Complaint and Criminal Forfeiture Indictment

Settlement and alternative dispute resolution in federal government litigation.

Readings:
- **Sisk** 53-66 (§ 1.09)
- Article: Marie Louise Hagen, “Roles of the Department of Justice and Agency Attorneys, or a Brief History of the Department of Justice and Agency Attorneys and Why We Need Each Other in Spite of It,” pp. 10 (sec. F)-15
- Department of Justice, ACE Manual, pp. 85-95

Optional:
- **Dessem** 533-70

Exercise: Review settlement memorandum and settlement agreement in *Local 333*.

Assignment: Deadline to turn in your letter motions in *Local 333*.

WEEK 14 – Tuesday, December 5 and Wednesday, December 6, 2006 (times TBA)

*In class exercise: Presentation of oral arguments in Local 333 case*

Each pairing of students will be given a specific date and time to present their oral arguments before an AUSA who will act as a simulated “judge.” These arguments will be presented at the United States Attorney’s Office in Brooklyn, in a location TBA. There will be no class at Furman Hall this week.

Assignment: Each student will prepare and present a 10-15 minute oral argument on behalf of his or her client in *Local 333*.

Group B will argue motions to compel on behalf of the labor union; Group A will argue motions for protective order on behalf of government.