Below is the syllabus for the seminar portion of the class. Each of the 14 sessions of the class 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 through readings, which should be completed before class, and through in-class discussions. The readings will come from three sources:

1) A required casebook: GREGORY C. SISK, LITIGATION WITH THE FEDERAL GOVERNMENT, CASES AND MATERIALS (Foundation Press 2000) (abbreviated here as “Sisk”). This casebook is available for purchase from the NYU Professional Bookstore, and all students are required to purchase it. There is a 2004 UPDATE AND SUPPLEMENT available (abbreviated here as “Sisk Supp.”), but it has not yet been published in hardcopy. Instead, it is available here (pp.1-39) and here (pp. 40-82) on Blackboard. All students should print it out for use during the semester.

2) The FEDERAL CIVIL PRACTICE MANUAL: a 2001 publication of the U.S. Department of Justice’s Office of Legal Education which serves as the basic substantive-law guidebook for Assistant United States Attorneys in the Civil Divisions of United States Attorney’s Offices across the country. The relevant chapters from the Manual are available here on Blackboard.

3) Additional Readings: A number of additional articles and readings will be assigned during the course of the semester. These are or will be made available on this website, either directly or via hyperlink, under the Tab “Readings.”

The substantive theme(s) for each session of the seminar is/are 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 addressed through exercises, which should be completed before class, as well as through in-class discussions and simulations. These themes will be explored through the use of three simulated case files: Local 333, Shi, and Claimant.

As set forth below, over the course of the semester, you will be assigned to read portions of these case files, and then to complete various exercises which will call upon you to integrate your learning of substantive law, your understanding of the simulated case files, and your development of lawyering skills.
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 is listed the exercise assignment for that session. Students are expected to complete the exercise assignment before the session.

**WEEK 1**  –  **Tuesday, August 31**

**Introduction to the Seminar**
*The United States as a civil litigant, and the lawyers who represent it*

**Readings:** Sisk v-ix, 1-4, 10-25, 39-47  
*Sisk Supp.* 2-5, 9–11  
*Jaspen article*

*Ethics/professional responsibility of the government lawyer; identifying the client*

**Exercise:** Review referral package in *Local 333* case.  
Think about the following questions:

1. Who is the Department of Justice’s (“DOJ”) client in this case?  
2. What if any ethical responsibility does the DOJ have towards the complainants?  
3. How would you, as a government lawyer, measure success in this case?

**WEEK 1½**  –  **Date and time TBA, at One Pierrepont Plaza, 14th Floor Library**

**Orientation to the Clinic and to the U.S.A.O.-E.D.N.Y.**

**Readings:** Browse “Resources,” “About Clinical,” “About E.D.N.Y.,” and “About Seminar” Sections of Website

**WEEK 2**  –  **Tuesday, September 7**

**Sovereign immunity and other jurisdictional defenses**

**Reading:** Sisk 119-159, 453-69  
*Sisk Supp.* 18-22, 49-52  
Federal Civil Practice Manual, sections 25.1-25.2

*Understanding the client’s interests; formulating a defense strategy based on the law*

**Exercise:** Review complaint and litigation report in *Shi* case.
WEEK 3 – Tuesday, September 14

**The Federal Tort Claims Act, Part I**

Reading: Sisk 160-226

Sisk Supp. 23-30

*Drafting a pleading: asserting defenses*

Exercise: In the *Shi* case, review Ennis affidavit. Think 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?
4. What is your defense strategy in this case?

WEEK 4 – Tuesday, September 21

**The Federal Tort Claims Act, Part II**

Reading: Sisk 226-311, 680-701, 788-794

Sisk Supp. 30-34, 67-68

*Drafting a dispositive motion*

Exercise: Draft an answer to the complaint in *Shi* (graded assignment – to be turned in at or before class).

WEEK 5 – Tuesday, September 28

**Constitutional money damages claims against the United States and its employees (Bivens, the PLRA, Tucker Act, etc.)**

Reading: Sisk 701-741

Sisk Supp. 69-72

Federal Civil Practice Manual sections 7.1, 7.2, 7.10, 7.11, 7.16, 7.18, 7.28-7.29

Optional reading: Federal Civil Practice Manual, remainder of Chapter 7

*Writing a winning legal brief*

Exercise: In the *Shi* case, review 56.1 Statement and pre-motion conference letter. Each student should begin drafting a memorandum of law in support of a motion to dismiss the complaint in *Shi*. This memorandum of law, which should be 10-20 pages in length, is due October 21.
WEEK 6 – Tuesday, October 5

The Social Security Act, Part I

Reading: Sisk 384-396, 794-808
Sisk Supp. 39, 74-75

Orally arguing a dispositive motion; arguing a Social Security case

Exercise: Review briefs and record excerpts in Claimant. Think about the following questions:

1. If you were the claimant’s attorney, what are the main themes and arguments that you would want the court to come away with in this case? What are the main arguments of the government that you would want the court to reject?

2. If you were the government’s attorney, what are the main themes and arguments that you would want the court to come away with in this case? What are the main arguments of the claimant that you would want the court to reject?

WEEK 7 – Tuesday, October 12

The Social Security Act, Part II

Reading: Federal Civil Practice Manual Chap. 24

In class exercise: Presentation of oral arguments in Claimant case

Exercise (Graded assignment):

Each student will prepare and present a 15-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 8 – Thursday, October 21

[Note: Because October 19 is a religious holiday for the instructor, this week we will meet on Thursday night]

Employment cases involving the Federal Government

Reading: Sisk 72-79, 152-59, 353-362
          Sisk Supp, 15-16, 21-22, 38-39
          Federal Civil Practice Manual, section 26.4

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

Exercise (Graded assignment):

          Complete and turn in memorandum of law on motion to dismiss the complaint in Shi Wen Shi (10-20 pp. in length).

WEEK 9 – Tuesday, October 26

Discovery in cases against the Federal Government, Part I

Reading: Sisk 56-72
          Sisk Supp, 13-15

Taking and defending depositions; litigating discovery disputes

Exercise: Review sample discovery instructions and definitions; begin drafting interrogatories and document requests in Local 333.

WEEK 10 – Thursday, Nov. 4

[Note: Because November 2 is Election Day, this week we will meet on Thursday night]

Discovery in cases against the Federal Government, Part II

Reading: Federal Civil Practice Manual, sections 7.20-7.23
          Johnson article

Asserting privileges in discovery

Exercises: In Local 333, read transcript of Oravets deposition, as well as government’s privilege log. Complete and turn in (graded assignment) interrogatories (Group A) or document requests (Group B) in Local 333.
WEEK 11 – Tuesday, Nov. 9

**FOIA, the Privacy Act, and access to government information**
Evidentiary and disclosure privileges available to the government

Reading: Sisk 362-384
*Federal Civil Practice Manual*, sections 17.1, 17.4-17.7, 17.10, 17.16, 17.20, 17.23

Optional Reading: Federal Civil Practice Manual, *remainder of Chapter 17*

*Orally arguing a discovery motion*

Exercise *(Graded assignment):*

Each student must draft and turn in a letter motion to the Magistrate Judge in *Local 333* seeking relief in the discovery dispute created by the government’s assertions of privilege. The letter motion may not exceed three pages.

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

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WEEK 12 – Tuesday, Nov. 16

**Suits against the Federal Government seeking equitable relief (mandamus; APA)**

Reading: Sisk 598-631, 645-664, 742-759
Also, skim Sisk 119-135, which we read in week 2
*Sisk Supp*. 62-66, 73

Optional Reading: *Federal Civil Practice Manual, chapter 1*

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

Exercise *(Graded assignment):*

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

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

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Tuesday, Nov. 23 NO CLASS: PROFESSOR OUT OF TOWN
WEEK 13 – Tuesday, Nov. 30

The Federal Government as Plaintiff, Part I

Reading: Sisk 912-955
Sisk Supp, 80-82

Optional Reading: Federal Civil Practice Manual, Chapter 6

Drafting a settlement agreement

Exercise: Review settlement memorandum in Local 333

WEEK 14 – DATE AND TIME TO BE ANNOUNCED

[Note: This is the make up session for the Nov. 23 class]

The Federal Government as Plaintiff, Part II
Recap and conclusion of class

Reading: To be announced

Ethics revisited

Exercise: Review settlement agreement in Local 333