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 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 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 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. 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”; these oral argument presentations will be scheduled on dates to be announced and will require your attendance and participation in addition to the 14 Tuesday evening seminar sessions scheduled 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.
WEEK 1 – Tuesday, January 11, 2005

Introduction to the Seminar

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

Readings: Sisk v-ix, 1-4, 10-25
Sisk Supp. 2-5
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 – Thursday, January 13, 2:30-5:30 p.m. at One Pierrepont Plaza, 14th Floor Library

Orientation to the Clinical Fieldwork Component of the Class and to the United States Attorney’s Office for the Eastern District of New York

Readings: Browse “About the Program” and “About E.D.N.Y.” Sections of Course Website

Note: All students should plan on attending this orientation to the clinical fieldwork component of the class. The orientation will include a session in the human resources office, at which students will complete certain paperwork, view videos, and obtain their security badges, as well as a session in the Civil Division library, at which the instructor will provide students with a general overview of and orientation to their clinical experience and will introduce them to their assigned attorney(s). Any students who are unable to attend an orientation at this time must make special scheduling arrangements with the instructor. (Note: attendance at this orientation counts towards the minimum work hours required for the clinical component of the course.)
WEEK 2 – Tuesday, January 18

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

Readings: Sisk 39-47
Sisk Supp. 9–11

Introduction to Sovereign Immunity

Readings: Sisk 104-159
Sisk Supp. 18-22
Federal Civil Practice Manual, sections 25.1-25.2, 25.8

WEEK 3 – Tuesday, January 25

The Federal Tort Claims Act, Part I

Reading: 28 U.S.C. §§ 1346(b), 2401(b), 2671 to 2680
Sisk 160-204, 217-226
Sisk Supp. 23-30 (except for part (b) on p. 29)

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

Exercise: Review complaint and litigation report in Shi case.
**WEEK 4 — Tuesday, February 1**

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

Reading: Sisk 204-217, 226-278  
*Sisk Supp.* 30-31, and part (b) on p. 29

*Drafting a pleading; asserting defenses*

Exercise: In the *Shi* case, review *Feller declaration*. Review Fed. R. Civ. P. 4(i), 8, and 12. Review the sample answers from the *Johnson* and *Cavas* cases. Think about the following questions in the *Shi* case:

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 5 — Tuesday, February 8**

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

Reading: Sisk 283-311, 680-701  
*Sisk Supp.* 31-34, 67-68

*Drafting a dispositive motion*

Exercise: Begin drafting an answer to the *complaint* in *Shi* (graded assignment – to be turned in at or before class on February 15). Review sample *Notices of Motion* and *Notice to Pro Se Litigant*. Review Fed. R. Civ. P. 12, 56, and *Local Civil Rule 56.1*.

**WEEK 6 — Tuesday, February 15**

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

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, Part I*

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

Also, please read the chapter from Alterman’s book on briefwriting.
TUESDAY, FEBRUARY 22 — LEGISLATIVE MONDAY (NO CLASS)

WEEK 7 — Tuesday, March 1

The Administrative Procedures Act; mandamus; equitable estoppel

Reading: Skim Sisk 104-135, which we read in week 2
Sisk 598-631, 645-664, 742-759
Sisk Supp. 62-66, 73

Optional Reading: Federal Civil Practice Manual, chapter 1

Writing a winning legal brief, Part II

Exercise: In the Shi case, review 56.1 Statement and summary of relevant New York State law. Also, review actual answer to the complaint in Shi and chapter from Terrell & Armstrong’s presentation on briefwriting.

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 March 22. For a sample memorandum, see here.

WEEK 8 — Tuesday, March 8

The Social Security Act

Reading: Sisk 384-396
Sisk Supp. 39

Optional Reading: Federal Civil Practice Manual Chap. 24

Orally arguing a dispositive motion; arguing a Social Security case

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
WEEK 8½ – Dates and Times To Be Announced (between Mar. 9 and Mar. 25)

In class exercise: Presentation of oral arguments in Claimant case

There will be no classroom component for this session. 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 specified on the website.

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

TUESDAY MARCH 15: SPRING BREAK (NO CLASS)

WEEK 9 – Tuesday, March 22

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: Read Fed. R. Civ. P. 16, 26, 30-36

Graded assignment: Turn in memoranda of law in support of motion for summary judgment or motion to dismiss in Shi (see Week 7 for assignment).
WEEK 10 – Tuesday, March 29

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, 17.4-17.10, 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

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

Asserting privileges in discovery; litigating discovery disputes

Exercises: Read Fed. R. Civ. P. 37; Local Civil Rules 26.2, 37.1, 37.3

In Local 333, reread (or at least re-skim) the referral package which we visited in Week 1. Then read pp. 1-5 and 44-50 of the transcript of the Oravets deposition. (If you have time, read the entire deposition). 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. In reading these materials, keep in mind the instructions for the letter-motion (Week 11) and oral argument (Week 13½) exercises.

WEEK 11 – Friday, April 1, 2005 3:05-4:55 p.m.

[Note: This is a special makeup class to make up for the class that we will miss on April 26 due to the instructor’s planned absence. It will meet at the U.S. Attorney’s Office in Brooklyn (room TBA) on Friday afternoon from 3:05 to 4:55 p.m.]

Discovery in cases against the Federal Government

Reading: Sisk 56-72
Sisk Supp. 13-15
Federal Civil Practice Manual, sections 7.20-7.23
Johnson article

Orally arguing a discovery motion

Exercise (Graded assignment):

Each student should begin drafting a letter motion to the Magistrate Judge in Local 333 (due April 12) 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. Click here for complete instructions. For a sample discovery motion, click here.
WEEK 12  –  Tuesday, April 5

The Federal Government as Plaintiff, Part I

Reading: Department of Justice *Affirmative Civil Enforcement Manual, selected excerpts*  

WEEK 13  –  Tuesday, April 12

The Federal Government as Plaintiff, Part II

Reading:  
Sisk 912-955  
*Sisk Supp.* 80-82  
*Federal Civil Practice Manual, Chapter 6*

Drafting a settlement agreement; Ethics revisited

Exercise:  
Turn in (graded assignment) your letter motions in *Local 333* (click here for complete instructions).

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

WEEK 13½  –  Dates and Times To Be Announced (between April 12 and April 18)

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

There will be no classroom component for this session. Each pairing of students will be given a specific date and time to present their oral arguments before the judge. These arguments will be presented at a location to be specified on the website.

Exercise (Graded assignment):

Each student will prepare and present a 10-15 minute oral argument on behalf of his or her client in *Local 333*. (Click here for complete instructions.)

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.

WEEK 14  –  Tuesday, April 19

Recap and conclusion of class

Readings to be announced.