

UCDC Law Externship Seminar – Fall 2021

Law and Lawyering in the Nation’s Capital

Professor:

Nicole Lehtman, UCDC Law Program Director
nicole.lehtman@ucdc.edu

*To reach me by phone, it is best to email first and schedule an appointment.

Virtual Office Hours: Monday, 3:00 – 5:00 pm EST (12:00 – 2:00 pm PST)

Zoom Info.

<https://berkeley.zoom.us/j/96781268838?pwd=RzNIWThlTDILM1VydmZwQXhZS3Nvdz09>

Meeting ID: 967 8126 8838

Passcode: 620331

Course Information: Tuesday, 6:00 – 9:00 pm EST (3:00 -6:00 pm PST)

Units: 3

Zoom Info.

<https://berkeley.zoom.us/j/98087316802?pwd=RE0wdUtTazExYTJ6QklmcTRTKzBGQT09>

Meeting ID: 980 8731 6802

Passcode: 664033

Program Description:

The UCDC Law Program has two main components: the 10-credit field placement and the 3-credit companion seminar.

The seminar is designed to enhance the externship experience in three principal ways. First, students will learn about the process of federal lawmaking directly from leading government lawyers, lobbyists, and public interest advocates. Second, they will explore new career opportunities unique to lawyering in Washington, even as they enhance their skill sets for success in any career path. Third, they will investigate the unique roles lawyers play in making and changing federal law and policy. Class sessions include frequent guest speakers and class discussion based on students’ questions. Each student will write a final paper on a legal topic relevant to their externship, selected in consultation with the instructor and the externship supervisor. The final classes of the term are devoted to student presentations on their final papers. **Occasionally we will have events outside of class. Outside events will be announced in advance.**

Learning Outcomes:

- Students will learn the unique challenges and responsibilities of ethical law practice in the federal government.
- Students will discuss statutory and other sources of ethical rules for federal employees and opportunities for reform.
- Students will engage in a critical examination of the multiple roles lawyers play in federal government offices and will examine these roles both substantively and through reflective writing.
- Students will acquire an understanding of judicial, legislative, and/or administrative processes.
- Students will learn other professional skills needed for competent and ethical participation as a member of the legal profession.
- Students will set their own learning goals for their individual placements.

Course materials: There is no casebook, but all class readings, handouts and assignments are posted on bCourses: <https://bcourses.berkeley.edu/>.

Seminar requirements:

You will receive a letter grade for the UCDC Law seminar (HH, H, P, NC for Berkeley Law Students). Hastings Law students will be graded Pass/Fail.

Your seminar grade will be based on:

Class participation (25%). Effective class discussions depend on the contribution and preparedness of each student. Your grade will reflect your attendance, class participation, active engagement with our guest lecturers, and questions for the guest lecturer. Each week you must submit a question for that week's speaker. Questions should be drawn from the reading and experiences at your placement. The questions will be shared with the speaker ahead of time. **Questions are due on bCourses <https://bcourses.berkeley.edu/> every week on Sunday by 8 pm EST.**

Attendance is mandatory. For those students attending class remotely, class meetings will be offered on Zoom at the log-in number above. Class will only be recorded as required for individual student disability accommodations or if requested ahead of time for good cause such as illness. If you are unable to attend in real-time, you should provide me with timely advance notice (or subsequent notice of an unanticipated emergency). In the case of an emergency or unavoidable absence students will be provided with an alternative assignment.

Writing Assignments (50%). During the semester you will complete three writing assignments.

1) **Writing Assignment 1 and 2** (*Two parts: Part 1 - 5 pages; Part 2 - whatever is required to fully respond to each prompt*)

The first writing assignment has two parts: Part 1 is a learning objectives memorandum; and Part 2 is a mid-term assessment and reflection in the form of a narrative questionnaire that you can find on bCourses.

2) **Writing Assignment 3** (*min. 5 pages*)

The second writing assignment requires you to discuss a topic we have covered in class or read about in the readings and how you have witnessed that topic "in action" at your placement. For example, consider your work this semester - What has your own agency experience revealed to you about the power of the administrative state as the "fourth branch"? Does your experience square with our speakers assessments or readings regarding the power of the administrative state?

3) **Writing Assignment 4** (*min. 10 pages*)

Analyze a substantive issue or policy matter you have worked on during your placement or that is related to your placement. Successful papers include clear and concise legal analysis as well as your original analysis. Be sure to include support for your original ideas. You may not use an assignment submitted as part of your externship.

You should observe the confidentiality and privilege rules of your placement host organization and of the D.C. Bar, which generally means you should omit information that could identify an individual client or breach an agency's deliberative process privilege. I am here to help you resolve any questions you may have on this and other subjects.

Class Presentation (25%). Every student will make a formal presentation to the class during the final class sessions. The presentation will be related to the topic of your final paper. Presentation should be no more than **15 minutes** in length and must be well-organized and prepared. **Student attendance during ALL presentation days is mandatory.**

Remote Instruction Guidelines:

The relevant skills to participate in remote instruction are not only technology skills. You also need to exercise good communication, judgment, and professionalism. To that end, please follow these recommendations for conduct if attending class remotely:

- I ask that you please use video for all classes. Your ability to engage meaningfully with your instructor and classmates, exercising the full range of your communication skills, will be enhanced if you can talk to each other and see each other. I realize that this will not always be possible for a variety of reasons.
- The benefits of video will be compromised if your background is distracting. If you can't avoid being in a place with distractions in the background, consider using a virtual background.
- Along the same lines, try to present yourself with the same professionalism you bring to in-person classes. In other words: wear appropriate clothes and sit upright facing your screen as you would face the instructor in class.
- Note that recordings of Zoom classes typically capture images of participants, screen-shared material, and a transcript of all chats that are displayed to the meeting host. So (1) all of your participation should be class-appropriate (i.e. avoid snarky comments in the chat); (2) you must not distribute class recordings (including video, audio, or screenshots).
- Do not share your screen with the class unless instructed to do so by me.
- Please keep yourself on "mute" when you are not speaking. This will help to minimize background noise for everyone.
- When you would like to speak in class, use the "raise hand" function in the "participants" pane. Then, wait for me to call on you before speaking.
- We will use the chat function from time-to-time for asking questions, responding to questions, etc.

In-Person Participation Instructions:

If you are attending class in person at the UCDC building, please follow the instructions below.

- Bring your laptop and earphones or headset to each class.
- You must wear a mask at all times during class or until conditions change and masks are no longer required.
- You must follow all UCDC protocols to enter the building including completing the [UCDC Daily Screen](#).

Externship requirements:

The field placement credits are pass/fail. You are eligible to receive 10 credits for your field placement work. To be awarded 10 credits for your field placement you must comply with the following requirements:

- **Hours:** You must complete 560 hours or more over a minimum of 14 weeks. You do not have to make up the hours if your office is closed for a federal holiday, snow day, or other reason. If you miss a day or more at your placement, please inform Professor Lehtman and your supervisor. If you are working part-time during fall 2021 please confirm your hours/unit selection with Professor Lehtman. Please note that regardless of the number of hours you are working each week, you must still meet the 14-week requirement.
- **Timesheets.** Timesheets must be submitted every two weeks on the date they are due. Timesheets are a close equivalent of billable hour logs. **Professor Lehtman will not accept late timesheets at the conclusion of the semester.** Failure to submit timesheets on the due date will result in the hours from late timesheets not being counted toward your end of semester total. Please submit your timesheets using the template provided by the UCDC Law Program via bCourses <https://bcourses.berkeley.edu/> according to the schedule below. **All timesheets must be typed, not handwritten.**

Timesheets Due: September 17 (weeks 1 and 2); October 1 (weeks 3 and 4); October 15 (weeks 5 and 6); October 29 (weeks 7 and 8); November 12 (weeks 9 and 10); December 3 (weeks 11, 12 and 13); December 17 (weeks 14 and 15).

- **Anti-racism and anti-bias:** You may count ten (10) hours of reading, podcasts, videos, community events, or speaker panels towards your fieldwork hours. These activities should not include assignments that you are already doing (i.e., reading or assignments you are completing for another class or your externship would not count towards this option). My hope is to provide you space to further commit to learning, identifying, examining, and reflecting on bias and racism and their impact

on the legal system and profession, and to encourage your self-exploration and examination. You may find your own resources, but here are some options.

Other important dates and requirements for externship (all forms can be found on bCourses):

- Submit externship agreement form signed by you and your attorney supervisor. Professor Lehtman will sign it last.
- Complete Supervisor Contact Form
(If your supervisor information has changed since this summer, please resubmit.)
- Receive a satisfactory evaluation from your supervisor at the end of the semester meeting your supervising attorney's expectations for attendance, performance and professionalism (completed by supervisor).
- Complete the final evaluation about your placement (completed by student).

Class One: Thursday, September, 9

Part One: Introduction to the UCDC Law Seminar and Program Orientation

We will introduce ourselves and our externship placements, discuss foundational questions for the seminar, review course requirements and expectations.

Class Discussion: Setting goals and designing and managing your externship experience. Come prepared to talk about your personal goals for the externship, and any obstacles you anticipate to achieving them. We will brainstorm strategies for overcoming those obstacles, including developing your lawyering skills, managing your own work, time, and interactions with the office, managing your superior(s), matching your interests to your work, obtaining important assignments and more. Discuss first writing assignment – Learning Objectives Memo.

Reading:

- 1) Learning From Practice, Setting Goals for the Externship, Chapter 2, J.P. Ogilvy, Leah Wortham, Lisa Lerman, etc.
- 2) Empirical Research on the Core Competencies Needed to Practice Law: What Do Clients, New Lawyers, and Legal Employers Tell Us? The Bar Examiner, September 2014. <file:///C:/Users/nlehtman/Desktop/SSRN-id2502924.pdf>
- 3) *Avoiding Miscommunication in a Digital World*, Harvard Business Review Ideacast (November 6, 2018), <https://hbr.org/ideacast/2018/11/avoiding-miscommunication-in-a-digital-world>
- 4) BACE: Working Remotely & Finding Success: Communicating with Your Supervisor: BACE WRFS: Part I and BACE WRFS Part II

Part Two: Overview of Seminar: Executive Branch

Reading:

- 1) Chang, Ailsa, host. "Former Deputy Assistant AG Offers Perspective On Unitary Executive Theory." All Things Considered, NPR, May 8, 2019. Chang, Ailsa, host. "Former Deputy Assistant AG Offers Perspective On Unitary Executive Theory." All Things Considered, NPR, May 8, 2019. <https://www.npr.org/2019/05/08/721552525/former-assistant-ag-offers-perspective-on-unitary-executive-theory>
- 2) <https://www.washingtontimes.com/news/2018/apr/25/at-war-and-with-the-separation-of-powers/>
- 3) Margaret Talbot, Trump, Barr, and The Rule of Law, *The New Yorker*, May 5, 2019. <https://www.newyorker.com/magazine/2019/05/13/trump-barr-and-the-rule-of-law>
- 4) Law Fare Podcast, *Goldsmith and Bauer on "After Trump"* (September 18, 2020). <https://www.lawfareblog.com/lawfare-podcast-goldsmith-and-bauer-after-trump>

Class Two: Tuesday, September 14

Overview of Executive Office of the President/White House Counsel

Speaker: Funmi Olorunnipa, Special Assistant to the President and Associate Counsel, White House Counsel's Office (Zoom)

Reading:

- 1) Maryanne Borrelli et al., *The White House Counsel's Office* (White House Transition Project Report No. 2009-29).
- 2) Bruce Ackerman, *Abolish the White House Counsel*, *SLATE*, Apr. 22, 2009.
- 3) Trevor W. Morrison, *Constitutional Alarmism*, 124 *Harv. L. Rev.* 1688, 1731-49 (2011).
- 4) Bruce Ackerman, *Lost Inside the Beltway: A Reply to Professor Morrison*, 124 *Harv. L. Rev. F.* 13, 26-41 (2011).

Writing Assignment 1: Learning Objectives Memo - Due September 19

This writing assignment should be in the form of a **Memo** that you will submit to your supervisor with a cc to your Professor. You should include in this Memo your goals for the externship. Your goals should be specific, i.e., not "I hope to get real work experience" but rather, "I hope to experience first-hand the process an agency undertakes when drafting and promulgating a regulation." Your goals should be measurable. For example, "I hope to draft significant portions of xx briefs and attend xx trials" or "I want to reach out to x, y and z components of my agency to better understand what they do" or "I expect to attend xx trainings." Please explain how you plan to achieve these goals, and exactly what steps you plan to take to help you achieve these goals. You may include both professional and personal goals relevant to your time in Washington DC. For example, what do you hope to learn and discover? How do you hope to improve or enrich yourself this term, personally and professionally? You should submit the memo to your professor first who will provide feedback. After receiving and incorporating feedback please share with your supervisor.

Class Three: Tuesday, September 21

Legal Policy Making

Speaker: Robyn Thiemann, Chief of Staff Law Enforcement, US Department of Justice and Armando Bonilla, Vice President, Ethics and Investigations, Capital One

Reading:

- 1) DANIEL J. MEADOR, *THE PRESIDENT, THE ATTORNEY GENERAL, AND THE DEPARTMENT OF JUSTICE* 1-49 (1980).

- 2) Department of Justice Organizational Chart, available at <http://www.justice.gov/agencies/index-org.html>.
- 3) Robert H. Jackson, *Federal Prosecutor*, 24 J. AM. JUD. Soc'Y 18 (1940).
- 4) Janet Reno & Geoffrey M. Klineberg, *What Would Jackson Do? Some Old Advice for the New Attorney General*, 2 HARV. L. & POL'Y REV. 197 (2008).
- 5) <https://www.youtube.com/watch?v=EHqHjwNAQMO>

Class Four: Tuesday, September 28

Agency General Counsel

Speaker: Mary Mcleod, General Counsel, Consumer Financial Protection Bureau

Reading:

1) Michael Herz, *The Attorney Particular: Governmental Role of the Agency General Counsel*, in GOVERNMENT LAWYERS: THE FEDERAL LEGAL BUREAUCRACY AND PRESIDENTIAL POLITICS 143-179 (Cornell W. Clayton ed., 1995).

Part 2: Student Mini-Presentations (Day 1)

Each student will make a short presentation about their organization. Each student should be prepared to discuss the organization's mission, the role of the agency within the larger organization, the role of the agency within the federal government, and the hierarchical structure of the organization. You will also share informally the work you are doing at your placement.

To prepare: Interview at least one attorney at your agency to help you prepare to discuss the topics above; read the mission statement of your organization; review your agencies organizational and hierarchal structure. Power point or other handouts are optional.

Class Five: Tuesday, October 5

Congressional Lawyering: House

Speaker: Douglas Letter, General Counsel to the House of Representatives

Reading:

- 1) Valerie Heitshusen, Introduction to the Legislative Process in the U.S. Congress, Congressional Research Service (July 24, 2014).
- 2) Ann E. Marimow, *In Court, He Speaks for Speaker Nancy Pelosi*, WASH POST, Dec. 25, 2019.
- 3) Talking Feds Podcast, S. 1 E. 17, *A House Divided*, <https://podcasts.apple.com/us/podcast/a-house-divided/id1456045551?i=1000441034459>
- 4) Charlie Savage and Nicholas Fandos, *The House vs. Trump: Stymied Lawmakers Increasingly Battle in Courts* (August 2019). [NYT Article](#)
- 5) Caitlin Emma, *Dems prepare for party-line House vote on Biden's pandemic aid bill* (February 2021). [Politico Article](#)

Part 2: Student mini-presentations cont'd (Day 2)

Writing Assignment 2: Mid-Term Reflection – Due October 10

The narrative form can be found on bCourses. Use this writing assignment to reflect on what you are accomplishing at your placement. You should write about what you have learned in your placement and the seminar with regard to law, policy, the functions of institutions, supervision, professionalism, etc. Please refer back to any topics we have discussed in class that have helped you better understand the role of your agency. This is also the opportunity to re-read your goals memorandum to evaluate whether you are reaching the goals you set out for yourself. Establish concrete steps on how you will accomplish your remaining goals. Although this writing assignment is in the form of a questionnaire, for grading purposes it will be weighted equally with your other 5 page writing assignments.

Week of October 11: Individual meeting with Professor Lehtman and Site Visits. This is your chance to discuss specific issues or problems in confidence before the visit to your externship site. Sign-up sheet will be provided on bCourses.

Class Six: Tuesday, October 12

Legislative Lawyering

Speaker: Elliot Williams, Principal at The Raben Group

Reading:

- 1) Harold A. McDougal, *Lawyering and the Public Interest in the 1990s*, 60 Fordham L. Rev. 1, Oct. 1991.
- 2) Chai Rachel Feldblum, *The Art of Legislative Lawyering and the Six Circles of Theory Advocacy*, 34 McGeorge L. Rev. 785, Summer 2003.
- 3) Alan N. Fernandes, *Ethical Considerations of the Public Sector Lobbyist*, 41 McGeorge L. Rev. 183, 2009.
- 4) Ronald Brownstein, *The Decision that Will Define the Democrats for a Decade*, The Atlantic (January 2021).

Part 2: Student mini-presentations cont'd (Day 3)

Class Seven: Tuesday, October 19

Federal Public Defender

Speaker: A.J. Kramer, Federal Public Defender

Reading: See bCourses (Readings can be found on bCourses)

Class Eight: Tuesday, October 26

Solicitor General

Speaker: Beth Brinkmann, Partner at Covington and Burling

Reading:

- 1) Stephen Vladeck, *The Solicitor General and the Shadow Docket*, 133 Harv. L. Rev. 123 (2019).
- 2) Talking Feds Podcast, *The Very Model of a Modern Solicitor General* (January 6, 2021).
- 3) Address to the Supreme Court Historical Society by Seth Waxman: The Solicitor General in Historical Context (June 1, 1998). <https://www.justice.gov/osg/about-office> (Background Reading)

Writing Assignment 3: Due October 31

This writing assignment should be related to a topic we have discussed in class or to one of the reading assignments. Discuss how you have witnessed that topic “in action” at your placement or in Washington, DC, generally. How have the class topics or readings helped you to have a deeper understanding of the role of your agency and the dynamics at your placement? For example, have you seen real world examples of the importance of defining who the “client” is? Have you identified or witnessed the tension that can sometimes occur between political or practical necessity and “pure” legal reasoning? Have you participated in or witnessed strategic approaches to interacting with Congress, other agencies, and the courts? Have you seen conflicts between the branches of government, e.g., between Congress and the Executive, or Executive and the Judiciary? Have your observations helped you identify issues that affect “lawyering in DC.”

Class Nine: Tuesday, November 2
Judicial Branch
Speaker: Timothy Kelly, US District Court Judge
Reading: TBD

Class Ten: Tuesday, November 9
Federal Non-profit/Advocacy Lawyering
Speaker: Janelle Byrd-Chichester, Director of the Thurgood Marshall Institute of the NAACP Legal Defense and Educational Fund, Inc. (LDF)
Reading:
1) Talking Feds Podcast: *Who fights for the People when the Government Won't*
<https://podcasts.apple.com/us/podcast/who-fights-for-the-people-when-the-government-wont/id1456045551?i=1000446156220>
2) Matthew R. Segal, *America's Conscience: The Rise of Civil Society Groups Under President Trump*, 65 UCLA L. Rev. 1574 (2018).

Paper topics: Due November 14

Submit at least two topics for your Presentation and Final Writing Assignment. (See Final Writing Assignment description, below.) You must include enough information for your professor and classmates to provide you feedback on your topics. For examples of past presentation topics, please see bCourses.

Class Eleven: Tuesday, November 16

Class discussion: Each student should be prepared to present to the class two ideas for their final presentation and paper topic. Students will be expected to provide feedback to their fellow students on the topics presented.

Week of November 15 and 22: Paper Topic Meetings: Meet with Professor Lehtman to discuss paper topics and presentations

Class Twelve, Thirteen and Fourteen: Tuesday, November 23; Tuesday, November 30; and Tuesday, December 7 *Part-time students with other class obligations must present on Tuesday, November 23

Final Presentations. Each student will make a 15-minute oral presentation on their paper topic. Treat this assignment as if it were a presentation of a case or project for a meeting with colleagues interested in your work. It is strongly suggested that you use a power point or hand out materials. You will be graded according to the rubric found on bCourses. Students are

expected to engage with the presenters throughout the presentations and during the Q & A period.

Supervisor Evaluation of Student: Due December 17. Student is responsible for providing the evaluation to their supervisor and ensuring the evaluation is returned signed to Professor Lehtman. Found on bCourses.

Student's Evaluation of the Placement: Due December 17. Found on bCourses.

Final Writing Assignment: Due December 19. The final writing assignment should analyze a substantive issue you worked on during your field placement or is related to your field placement. This paper should reflect substantive analysis of an issue of your choosing. The paper should not be a memorandum of law which would only explain the current state of the law. Your final writing assignment must be original work and cannot be an assignment you have submitted as part of your externship.