New York University School of Law

Spring 2016

LAW-LW.11450.001 Legal Practice in Highly Political Environments

Furman 318 Mon 4:00-5:50[[1]](#footnote-1) Charles Cameron

This class teaches practical skills and career strategies for lawyers working in or with governments (federal, state, and local). Weekly lectures and cases emphasize legislative strategy, advocacy, crisis management, press relations, organizational reform, litigation by state Attorneys General, regulation and regulatory capture, managing activists, undertaking collective action, supervising civil servants, and advising chief executives. Students prepare decision memos and briefing documents, undertake simulations, and engage in role-playing exercises. There is opportunity for a voluntary, career-enhancing extra-writing assignment for those interested.

# Teaching Approach

Knowledge + Skills + Engagement = Learning

The goal of each class is to build your skills in a concrete and specific way. I indicate the goals for each class.

You will write policy and decision memos of the kind you would actually write for a client or employer. Doing so in a professional way is an essential skill, and we spend considerable time helping you master it (including one-on-one critique of memos). Some of the memos are individual memos. Others are group memos. During our second class session I will ask you to form study groups. Study groups may have 3-5 members. At regular intervals I will ask groups to prepare a professional-quality presentation or briefing that will form the basis for class discussion.

In order to make our time together as productive as possible, I have several lectures on-line. You can therefore watch them on your own schedule, and re-watch parts as needed, but *you should watch them before class.*  Often they are essential for your class assignment. Though some blocks of class time remain as traditional lectures, mostly we will engage in fast-paced, engaged (and I hope engaging!) case analysis, simulations, and role-playing. I will make available the slides from the remaining traditional lectures.

If your group has not opted to prepare a case for a particular week, you should still be prepared to discuss the case in an active fashion.

# Course Requirements and Grading

Grades in the course will be based on five components:

1. Two individual memos, with class discussion (15% each, for a total of 30%);
2. Two group memos with in-class presentations and role-playing (15% each, for a total of 30%)
3. Peer evaluation of your performance in your group (10%)
4. A mid-term exercise (analysis and short answers) (20%). This year’s Midterm Exercise concerns the enactment of the Dodd-Frank legislation.
5. Class participation and pass-fail materials(10%)

There is no final exam for this class. Class will be finished on the last day of classes.

GROUP WORK: Most of your work life will be spent working with others to produce memos, reports, briefs, and similar work products. Practicing this is important. Therefore I will organize you into groups and your group will write and present in class two group memos. Each of the groups “at bat” is to hand in its memo and materials. The memo must be submitted as a **word or pdf document by email** to [ccameron@princeton.edu](mailto:ccameron@princeton.edu), by noon of the day of class. Grading will be based on the memo and in-class presentation. It is important that you take the role-playing aspect seriously. The presenters should make a formal presentation with Power Point slides, transparencies or other media. In all cases, *if you face a conflict between preparing a high quality case discussion and completing the other readings, work on the case*.

PARTICIPATION and ATTENDANCE: Attendance, preparation, and participation are essential for this class to be value adding. If you have to miss class, please let me know in advance. Much of the learning in this course comes from class discussion of cases and in-class formulation of analytical frameworks. Learning opportunities are maximized when you are actively engaged in the discussion. Active engagement means you listen carefully to the comments of other students and seek opportunities to contribute relevant comments that move the class discussion forward. Therefore, I expect minimal use of laptops and maximal engagement in class discussion.

### Substantial Writing Credit

Many students have used this class as a vehicle for substantial writing credit. Typical projects evaluate the political strategy employed by a potential client (including ones they hope to work for). Examples include:

* + An elite private university pursuing a major expansion in a poor and heavily minority neighborhood,
  + A leading law school determined to construct a new building in a crowded urban area despite historically poor relations with the local community,
  + The Department of Education, trying to regulate for-profit colleges
  + A human rights organization trying to attract foundation support to support its organizational mission,
  + An administrator of the Environmental Protection Agency whose agency must set standards for acceptable levels of arsenic in drinking water,
  + A Justice Department official deciding whether to prosecute a software company for possible anti-competitive activities,
  + A state Attorney General contemplating a suit against a large corporation,
  + A drug company seeking approval for a new product from the F.D.A.,
  + A legal defense fund considering which cases to litigate,
  + A large corporation striving to open a “big box” store in a large urban community with strong well-organized groups in opposition,

*I am very open to potential ideas but I must approve them in advance.*

A successful case should be usable for possible future class discussion. Cases should resemble the Kennedy School or Woodrow Wilson School cases we employ, and be about 20-25 pages in length.

Preparation of a successful case requires careful planning and a long lead time. For example, interviews with busy officials or high-level executives typically must be scheduled weeks or even months in advance. To encourage you to begin preparing your case **as quickly as possible** I ask you to submit a work plan at the beginning of class 5 (**2/21**). The work plan should indicate the issue and actors, include a list of interviewees and information sources, milestone dates for internal deliverables, and so on. Your work plan will be graded “pass/revise,” that is, if your work plan is vague or impractical I will ask you to revise it and re-submit it, so you formulate a workable plan for a high quality final project.

Grading: If you decide to do the substantial writing option, you will be excused from the midterm exercise. Thus, your project will count for 20% of your grade.

# Logistics

## Weekly Schedule

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Class** | **Date** | **Lecture** | **Case** | **Assignment Type** |
| 1 | 1/23 | Political Analysis  The 4 I’s | None | None |
| 2 | 1/30 | Interest Analysis | Mud Flaps | Discussion |
| 3 | 2/6 | Collective Action | East LA (1) | Indiv. Memo |
| 4 | 2/13 | Persuasion | East LA (2) | P/F materials |
| 5 | 2/21 (Tuesday) | Media Analysis | EPA & Arsenic | P/F press conf. |
| 6 | 2/27 | Coalition Analysis, Logic of Cong. Action | Disney Copyright | Group memo |
| 7 | 3/6 | Pivotal Politics | Enact. Of ACA | Discussion |
| Spring Break | (3/13) | No Class | | |
| 8 | 3/20 | Midterm Week | Enact. Of Dodd-Frank | Essays |
| 9 | 3/27 | Presidential Politics,  Personnel Politics | ACA Rollout | Indiv. Memo |
| 10 | 4/3 | Regulation | FDA & Tobacco | Group memo |
| 11 | 4/10 | Regulatory capture, Bureaucracies | Uber in D.C. | Indiv. Memo |
| 12 | 4/17 | Reforming Agencies | D.C. Schools | Group memo |
| 13 | 4/24 | Litigation Politics | Oxycontin in W.V. | Group memo |
| 14 | 5/1 | Private Politics | Nike | Individual memo |

Work plan for extra writing option final case due: Class 5

## Availability of Readings

* 1. **Books for Purchase**

+ Robert Kaiser, *Act of Congress*. For Midterm Exercise Week 8.

+ David Kessler, *A Question of Intent*. For Week 10.

+ Richard Whitmire, *The Bee Eater*. For Week 12.

+ Deepak Malhotra and Max Bazerman, *Negotiation Genius*. For Week 14.

* 1. **Reserve Readings.** Copies of David Baron’s textbook *Business and Its Environment* are on reserve in the library.
  2. **Electronic Course Reserves.** Various materials may be accessed through Blackboard, including several of the cases. Copies of the slides for in-class lectures will be posted after each lecture.
  3. **On-line Lectures**. The on-line lectures are available through You Tube. Links are given in the syllabus.

## Times and Places

1. **Seminar Meetings.** Monday 4.00-5.50 Vanderbilt 313

2. **Office Hours.**  Before class or by appointment Room 310E Vanderbilt Hall

609-258-2757 (Princeton)

Email: [ccameron@princeton.edu](mailto:ccameron@princeton.edu)

# Weekly Readings and Assignments

## Introduction/The 4Is

You will learn:

1. What this course is and how it is organized.
2. Your responsibilities in the course and how grading works.
3. Why good policy analysis demands good political analysis.
4. What tools a political analyst needs in her toolbox.
5. Why good policy, good politics, and good practice go together.

In addition, you will learn:

1. The four questions that begin a practical political analysis.
2. The participants in policy making, and how they change over the issue life cycle.
3. What motivates the people who participate in policy-making.
4. What is political ideology and how it differs between political elites and ordinary citizens.
5. The big four political institutions, and how they change over the life cycle of an issue.
6. The importance of information and ideas in politics.

Assignment: Watch On-line Lecture

|  |  |
| --- | --- |
| **The 4I's** | |
| Introduction | <https://youtu.be/c-qNXiuBjeQ> |
| Getting Started | <https://www.youtube.com/watch?v=MB0xtzuUWOY> |
| Interests and Ideology, part a | <https://www.youtube.com/watch?v=CptXRK8Debo> |
| Interests and Ideology, part b | <https://www.youtube.com/watch?v=g3HPNu_QSE8> |
| Interests and Ideology, part c | <https://www.youtube.com/watch?v=B4aTZwn-GYc> |
| Institutions, part a | <https://www.youtube.com/watch?v=6S-wT9kGEOs> |
| Institutions, part b: Power | <https://www.youtube.com/watch?v=GJnjfoJmGKw> |
| Institutions, part c: Information | <https://www.youtube.com/watch?v=5X09IGm9ucU> |
| Summary and Review | <https://www.youtube.com/watch?v=adZbi6CT7bs> |

Optional On-line Lectures (Recommended if you are not a non-US citizen or are a little rusty on civics or public policy)

|  |  |
| --- | --- |
| **The Basics of American Government** | |
| Introduction: Basics of American Politics | <https://youtu.be/HwV549d9OBU> |
| Part I: What Does Congress Do? | <https://youtu.be/6wwY7TNmdpc> |
| Part II: The Executive & Judicial Branches | <https://youtu.be/O6RIU-uYNgs> |
| Part III: How a Bill Becomes a Law | <https://youtu.be/Sr62Gdqs7Og> |
| Part IV: Campaigns and Elections & The American Public | <https://youtu.be/2MLpzXfrtHk> |

|  |  |
| --- | --- |
| **What Does the American Government Do?** | |
| Part I: What Does Government Do? | <https://youtu.be/2aSoyzNsD4M> |
| Part II: Social Insurance Programs & The Military | <https://youtu.be/qjkSLS860mM> |
| Part III: Government Revenues | <https://youtu.be/wmEm3lny9CY> |
| Part IV: What is Distinctive About American Government | <https://youtu.be/1JwZRfhamzk> |

## Interest Analysis

You will learn:

1. How to identify four distinct interest group configurations.
2. What politics to expect in each configuration.
3. What kind of policies emerge from each configuration.
4. The best political tactics for supporting or opposing a policy initiative, in each of the four kinds of politics.
5. How to change the politics you have into the politics you want

Assignment:Watch On-line Lecture

|  |  |  |
| --- | --- | --- |
| **The Interest Group Matrix** | | |
| Introduction | | <https://youtu.be/g7YkPy9cbUM> |
| Interest Groups and Public Policy | | <https://youtu.be/rBE49T7vfj4> |
| Policies Under the Four Kinds of Politics | | <https://youtu.be/eqDyiwRpJxk> |
| Client Politics & Entrepreneurial Politics | | <https://youtu.be/pHUH8HjkEnw> |
| Interest Group Politics | | <https://youtu.be/k5_EjoV3qjU> | |
| Majoritarian Politics | | <https://youtu.be/bA2rOVcl9FA> | |
| Judo Politics | | <https://youtu.be/KBEROptBeBY> | |
| Summary and Review | | <https://youtu.be/zPU9Hzr5a2Q> | |

Interest Analysis Case: Mud Flaps

Tuck School Case: Mud Flaps CR 16-96-940

Case Assignment

Be prepared to discuss the following in class:

1. Should the small manufacturers have rejected Monsanto’s initial overtures? What does the IG matrix look like, either way?
2. After the small manufacturers rejected Monsanto’s initial overture, what other allies could Monsanto have approached? What would the I.G.matrix look like then?
3. Imagine you are Randy Stayin. How do you assess your clients’ position?
4. As Stayin: What do you need to do next?
5. Where is the non-profit organization in the case?

## Collective Action

You will learn:

1. Why collective action in pursuit of a common goal can be problematic.
2. Why free-riding increases as groups get larger.
3. How the mighty are exploited by the meek during collective action.
4. Why leadership is vital for effective collective action.
5. Six basic techniques leaders can use to boost collective action within a group or alliance

You will also learn:

1. Why the policy memo is a good tool for decision making
2. How to organize and write an effective policy memo

Assignment: On-line Lecture

|  |  |
| --- | --- |
| **Getting Organized and Taking Action: Rules for Reformers** | |
| Introduction | <https://youtu.be/6632F-zGe4w> |
| Collective Action & "The" Collective Action Problem | <https://youtu.be/JV2wlVYJM80> |
| Public vs. Private Goods | <https://youtu.be/bjz66S0ldX4> |
| Collective Action and Pure Public Goods | <https://youtu.be/5n6taB2vNbw> |
| Rules for Reformers: Part 1: Rules 1-2 | <https://youtu.be/h1oYjrYoqkA> |
| Rules for Reformers: Part 2: Rules 3-6 | <https://youtu.be/g8Bwpyie6Pc> |
| Summary and Review | <https://youtu.be/LXSaj6Q2Nls> |

Collective Action CASE: Kennedy School Case C14-00-1541.0. “‘No Prison in East L.A.!’ Birth of a Grassroots Movement” (first half, pp. 1-18) The case takes place where this reading ends.

Case Assignment (group memo)

You work in a prominent LA law firm. Hearing about the prison controversy, you meet with Monsignor Moretta to see if he could use some pro bono legal work. After some discussion, it comes out that his biggest concern is mobilizing the community for marches, demonstrations, and opposition to the prison. You volunteer to write a brief memo outlining ways to achieve and maintain a high degree of organization, participation, and effective mobilization. You will present your analysis and recommendations as a briefing for Father John Moretta, Frank Villalobos, Assemblywoman Molina and Juana Gutierrez. They are very busy so your memo should not exceed 1000 words.

Note: Prior to writing your memo, you should look at the slides at the class web site, “The Policy Memo.” You may also wish to look at some of the on-line resources listed at the end of the slides and examine the sample policy memo posted on the class web page.

## Persuasion Analysis

You will learn:

1. The difference between transactional lobbying and informational lobbying.
2. Three pathways for communicating with policy makers.
3. General principles for using each pathway effectively.

In addition, you will learn:

1. Specific techniques for making messages credible to policy makers.
2. Specific techniques for making messages motivational to citizens and group members.
3. How “dark side” lobbying works including soft lobbying, Astro-turf lobbying, and signal jamming.
4. Practical tips for effective direct, indirect, and grass-roots lobbying.

Assignment: On-line Lectures

|  |  |
| --- | --- |
| **Information Power and Persuasion I** | |
| Introduction | <https://youtu.be/3XAfl_qG5xg> |
| Information Power in Policy Making | <https://youtu.be/HUenYyqy3Fg> |
| Transactional Lobbying vs. Informational Lobbying | <https://youtu.be/IB7F94ozMY0> |
| The Three Pathways of Communication | <https://youtu.be/pc2nN4c1en8> |
| The Exposure-Impact Model | <https://youtu.be/ms0uZWvmQ5Q> |
|  |  |
| **Information Power and Persuasion II** | |
| Direct Lobbying, Part A | <https://youtu.be/IQZdWtpiHy4> |
| Direct Lobbying, Part B | <https://youtu.be/XzycEvU_Q5I> |
| Outside Lobbying, Part A | <https://youtu.be/1Ks8Qi6G55Q> |
| Outside Lobbying, Part B | <https://youtu.be/mCOLSo0qhnM> |
| Grass Roots Lobbying | <https://youtu.be/LzH0wt2DnMc> |
| Summary and Review | <https://youtu.be/00TM-t6rCzA> |

Lobbying CASE: Kennedy School Case C14-00-1541.0. “‘No Prison in East L.A.!’ Birth of a Grassroots Movement”. Remainder of case.

Deanna Gelak, *Lobbying and Advocacy*, Chapter 8 “Communicating Effectively with Policymakers,” pp. 228-278 (2008) (you need to read this to do the assignment)

Case Assignment

You have donated your time as a lobbying consultant to MELA, pro bono. Your job is to prepare the mothers for visiting the state capital. *1. Prepare a “one-pager” on their issue*. 2*. Prepare a sample dialogue for a mother, modeled on pp. 261-267 of Gelak (you may imagine a specific legislator in the case, if you wish).* Study the 30 laws of lobbying and be prepared to role play in class EITHER a legislator OR a mother during a lobbying session 3. Be prepared in class to discuss how you would organize a state-wide grass-roots lobbying campaign on behalf of MELA.

## Media Analysis

You will learn:

1. The goals of mass media outlets and how they affect their coverage of politics and policy.
2. How the fragmentation of the media helps create low information people

In addition you will learn:

1. As a member of the press, how to ask effective questions
2. As an official engaged in crisis management, how to answer press questions effectively

Reading

John Zaller, *A Theory of Media Politics: How the Interests of Politicians, Journalists, and Citizens Shape the News* pp. 11-29. (1999) An underground classic. <http://www.uky.edu/AS/PoliSci/Peffley/pdf/ZallerTheoryofMediaPolitics(10-99).pdf>

Media CASE: Christine Todd Whitman at the EPA: The Arsenic Debacle

Woodrow Wilson School Case “Dangerous Waters: EPA Administrator Whitman and the Arsenic in Drinking Water Standard” (on Blackboard).

*New York Times* article (on Blackboard)

Additional Helpful Material

This blog contains many examples of terrible media relations, and some good ones. Have fun browsing! <http://www.mrmediatraining.com/>

But here is a real bell ringer on the bad side: Edward Burkhardt’s (Montreal, Maine & Atlantic Railways CEO) disastrous press conference after the Lac-Magantic train crash. See

<http://www.mrmediatraining.com/2013/07/31/july-2013-the-worst-video-media-disaster/>

and for the missing link to the press conference:

<https://www.thestar.com/news/canada/2013/07/10/lac_megantic_explosion_mma_railway_boss_ed_burkhardt_tours_town.html>

Then watch the terrific press conference of Debbie Hersman (Acting Chairwoman of the NTSB) immediately after the Asiana Air crash at SFO. Carefully note her technique as she handles the Q&A.

<https://www.youtube.com/watch?v=t2sMD-B1d_k>

Case Assignment

1. It is late March 2001. *The New York Times* and *Washington Post* have run their (misleading) stories, the DNC has begun running TV ads bashing the Bush Administration using your decision, and various news programs have run very negative stories. You, Administrator Whitman, decide to hold a major news conference. What do you say and how do you say it? You have one minute to present, then you take questions.
2. You are a reporter from one of the following: *The New York Times*, *Wall Street Journal*, *Mother Jones*, *Business Week*, *Forbe,* and (say) the *Arizona Republic* or another newspaper from the arsenic belt. Decide your general story **before** the conference and write 3 questions that will facilitate writing that story.

NOTE: **We will hold the press conference in class**. I will call on several people to play Whitman (taking turns), so be prepared! The other members of the class will play reporters, for specific newspapers and magazines. As reporters for your publication, you will draft a headline and the first paragraph of the story after the news conference. I will call on individuals to read their headline and paragraph.

## Coalition Analysis/The Logic of Congressional Action

You will learn:

1. How to evaluate the strength of an individual group or firm for legislative politics.
2. How to evaluate the strength of a coalition of groups, firms, or voting blocks, organized around a legislative goal.
3. How to identify the “weak links” in a coalition.
4. Three techniques for making and breaking legislative coalitions under distributive and ideological politics.

In addition, from the in-class lecture you will learn:

1. How congressmen evaluate public policies
2. How to evaluate chains of traceability using the traceability matrix
3. How to manipulate chains of traceability in order to boost or kill policy proposals

Reading Assignment

Cameron, “Coalition Analysis: Gauging, Making, and Breaking Interest Group Coalitions” (this is incomplete but explains the Coalition Analysis Worksheet)

Coalition Analysis CASE: The Copyright on Mickey Mouse

Daniel Diermeier, “Disney Case.”

<http://www.kellogg.northwestern.edu/faculty/diermeier/ftp/other/disney.htm>

Copy of Coalition Analysis Worksheet

Case Assignment

You may write a memo either for Disney, or for Jamie Love.

In either case, formulate a political strategy and make a clear recommendation regarding the Sensenbrenner Amendment. How should you implement your strategy? What would you predict the other side does? HINT: Which interests are opposed to HR 2589 (without the amendment), which interests would support it? How would the interest configuration change if the Sensenbrenner Amendment was adopted? As part of your memo YOU MUST PREPARE DISTRIBUTIVE POLITICS WORKSHEETS ANALYZING THE SITUATION WITH AND WITHOUT THE AMENDMENT AND INCLUDE WITH YOUR MEMO. In class I will may ask you to present your analysis.

## Pivotal Politics

You will learn:

1. How to think about politics spatially
2. How to work from the back to the front
3. Why legislative choke points are so important

In addition, you will learn:

1. How to analyze complex legislative procedures using pivotal politics
2. How to identify when legislative policy windows are open
3. How to identify proposals that can make it through a legislative policy window.

Assignment: On-line Videos

|  |  |
| --- | --- |
| **Pivotal Politics I** |  |
| Introduction | <https://youtu.be/lHewUDNERC0> |
| Game Theory | <https://youtu.be/97EtrJWcFVw> |
| Think Spatially | <https://youtu.be/jOGzjlaADrI> |
| Committee Voting | <https://youtu.be/VUBvX8Hnf8Y> |
| Senate | <https://youtu.be/qLMMVF0GTfI> |
|  |  |
| **Pivotal Politics II** | |
| Combining Institutions | <https://youtu.be/eFVzTm3lRm0> |
| Gridlock and Author Control | <https://youtu.be/0OHRqUHp8Ls> |
| Finding Points in the Policy Space | <https://youtu.be/seWVzOdsr0A> |

In class we will analyze the pivotal politics of the Affordable Care Act. If you have time glance at:

Alex Hirsch and Ken Shotts, “Health Care Reform 2009-2010” Stanford Graduate School of Business. Case P-74.

NOTE: The lecture material on pivotal politics is essential for completing the Midterm Exam!

SPRING BREAK 3/15

## Midterm Week

No Class 3/22, Midterm due at the end of the week.

The midterm is an integrative case, in which you will apply the 4 I’s, the IG Matrix, Coalition Analysis, the Traceability Matrix, and Pivotal Politics Analysis to the Dodd-Frank Act.

Link to Midterm Assignment including the specified pages in *Act of Congress*

Note: The reading is heavy, most of the second half of *Act of Congress*.

## Presidential Management of the Administrative State

You will learn:

1. The varieties of presidential direct action.
2. How to use pivotal politics to create powerful presidential executive orders that stick.

In addition you will learn:

1. The Big Four federal personnel policies – what are they?
2. Why there is a competency-control trade-off.
3. How to politicize an agency using appointments.
4. What the effects of politicization are on the competence of the U.S. federal government.

* Mini-Case Study: Dick Cheney Shows How to Work the Bureaucracy: The Klamath River Intervention

Barton Gellman, *Angler* 199-204, 209-213

* Mini-Case Study: Politicizing FEMA

David Lewis, *The Politics of Presidential Appointments* Chapter 6 “Politicization and Performance: The Case of the Federal Emergency Management Agency” pp. 141-171. On line: <http://www.jstor.org/stable/j.ctt7rnqz>

Presidential Management CASE: The Obamacare Rollout

Steven Brill, *Bitter Pill*, pp. 180-184, 199-204, 210-219, 240-42, 259-260, 264-269, 272-281, 288-302,304-308, 313-315, 316-318, 321-339, 343-344, 349-353, 355-365, 368-370, 371-374, 379-382,385-6,395-403.

Memo from David Cutler to Larry Summers: “Urgent Need for Changes in Health Reform Implementation” May 11, 2010

Amy Goldstein and Juliet Eilperin, “HealthCare.gov: How Political Fear Was Pitted Against Technical Needs,” *Washington Post* November 2, 2013 <http://www.washingtonpost.com/politics/challenges-have-dogged-obamas-health-plan-since-2010/2013/11/02/453fba42-426b-11e3-a624-41d661b0bb78_story.html>

CMS Organizational Chart

Optional Material

Obama on “Between Two Ferns,” starting at 3.30 to end <http://www.funnyordie.com/videos/18e820ec3f/between-two-ferns-with-zach-galifianakis-president-barack-obama>

Daily Show “Shutstorm” <http://thedailyshow.cc.com/videos/l1s6br/shutstorm-2013--america-sits-on-its-balls---web-site-dow>

Sibelius on John Stewart <http://thedailyshow.cc.com/videos/ozeknm/exclusive---kathleen-sebelius-extended-interview-pt--1>

Case Assignment

It is late Summer 2017. Through a purely partisan vote, Congressional Republicans have terminated the Affordable Care Act using the budget reconciliation process, effectively shutting down the ACA in two years. Congress has not yet passed a replacement plan, though one is shaping up. Whatever the details of the final plan, it will require “re-wiring” the exchanges, writing hundreds of regulations, and educating millions of citizens about their obligations and opportunities. White House Chief of Staff Reince Preibus is becoming concerned about the Administration’s ability to manage this. You are a partner at McKinsey and Preibus has approached you on a confidential basis. He wants to know what went wrong with the Obamacare Roll out, what should be the lessons learned, and how the Trump Administration can avoid a similar disaster when it implements the eventual Trumpcare. He asks you to write him a memo with an analysis of the Obamacare rollout and specific recommendations based on that experience.

The Chief of Staff is very busy. So, he wants at most 1000 words. Your memo to her is due to him noon Monday March 27.

NOTE: If you do this as a group project, be prepared to brief the President-elect and White House Chief of Staff in class with a tight, on-point and compelling analysis leading to concrete management recommendations.

## Regulatory Policy Making & Its Pivotal Politics

You will learn:

1. How to apply the IGM in regulatory politics
2. How to analyze the pivotal politics of regulatory rule-making.
3. Tactics for opposing federal rules.
4. What life is like inside a regulatory agency.

Regulatory Policy Making CASE: David Kessler, the FDA, and Regulating Big Tobacco

David Kessler, *A Question of Intent* pp. 3-6, 27-28, 32-36, 62-66, 76-78, 85-94, 156-164, 168-174, 245-250, 257-260, 266-272, 285-308, 309-318, 319-327, 331-333, 336-338,347-352, 353-358, 361-372, 379-384. (NOTE: Book must be purchases)

Case Assignment A

It is Spring 1995. The FDA is working on a rule, which the tobacco companies realize very well. You work for the corporate affairs office of Phillip Morris. Draft a memo to your boss outlining ways to head off the FDA’s rule; or in the event it is published, how to weaken it. Indicate a list of recommended actions. Your memo should be at most 4 pages long.

Note: You may wish to “cheat” a little by examining what the companies did; you may also wish to examine company documents which became available due to litigation (see for example <http://legacy.library.ucsf.edu/tid/xqk92e00> ). A front end to the documents is <http://www.sourcewatch.org/index.php/SourceWatch>

Case Assignment B

It is Spring 1995. You work in the FDA’s Office of Communications, for Sharon Natanblut. David Kessler has privately expressed doubts to Natanblut that an FDA rule on tobacco will be allowed by the Clinton Administration. She has asked you to write a brief confidential memo providing ways to build or maintain support in the Administration for a rule. Your confidential memo to Natanblut can be no more than four double spaced pages.

Note: Again, you can “cheat” some by examining what Kessler actually did.

## Regulatory Capture/Politics of Public Management

You will learn:

1. What is “regulatory capture”
2. Four theories of regulatory capture
3. How to capture an agency, and how to un-capture an agency.

You will also learn:

1. Why managing government agencies is so difficult
2. How to apply the Interest Group Matrix to public agencies
3. How to use the Measurability Matrix to recognize four kinds of agencies
4. Principles for managing each of the four kinds of agencies.

You may wish to examine this optional mini-case study

* Mini-Case Study: Regulatory Capture at the Federal Reserve Bank of New York

<http://www.thisamericanlife.org/radio-archives/episode/536/the-secret-recordings-of-carmen-segarra> James Kwak, 2014. “Cultural Capture and the Financial Crisis,” in Daniel Carpenter and David A. Moss, editors, *Preventing Regulatory Capture*. Chapter 4, pp. 71-98. Available at:

<http://tobinproject.org/sites/tobinproject.org/files/assets/Kwak%20-%20Cultural%20Capture%20and%20the%20Financial%20Crisis.pdf>

Regulatory CASE: Uber Rolls Out in DC

Uber: 21st Century Technology Confronts 20th Century Regulation, Case P-81, Stanford Graduate School of Business (2012)

Case Assignment

You are Chief Legal Counsel for Uber. Write a confidential memo to Travis Kalanick. What political and legal strategy should Uber pursue in D.C.? You answer should address the questions posed in the “What to Do?” section of the case, but you may wish to go beyond those questions.

Reading on Public Management

Steven Kerr, “On the Folly of Rewarding A While Hoping for B”

Optional Reading on Public Management

James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It* (1989). Read in the following order: “Constraints” pp 113-136. Political Environment of Agencies, pp. 75-83. Four kinds of agencies defined by nature of tasks, 154-171. The Key Strategy: 202-205

## Reforming Agencies

You will learn:

1. How to write a strategy statement for a public agency.
2. How to integrate an agency’s operations and its political strategy.

You will also learn:

1. Why reforming urban school districts is so difficult.
2. What it takes to be a force for change in a challenging political environment.

Class Reading

John Roberts, *The Modern Firm: Organizational Design for Performance and Growth* (2007). Chapter 1, “Strategy and Organization,” pp. 1-30.

Reform CASE: DC Public Schools

1. Richard Whitmire, *The Bee Eater: Michelle Rhee Takes on the Nation’s Worst School District* (2011), v-vii, 65-67, 70; 80-83; 87-89; 94-105; 108-110; 126-129; 171-179; 194-198; 214-226 (about 60 pages)
2. Optional Documentary: *Waiting for Superman*

Case Assignment

It is late June 2011. The D.C. City Council has just confirmed Kaya Henderson as the new Chancellor of the D.C. Public Schools. Henderson was Michelle Rhee’s Deputy Chancellor, headed the team that developed the controversial IMPACT teacher evaluation system, and served as a negotiator with the teacher’s union on the last contract.[[2]](#footnote-2) You have accepted a job as an analyst in the Chancellor’s office. Although Chancellor Henderson is extraordinarily knowledgeable about all aspects of the DC system, she would like some fresh eyes to look at the reform strategy for the school system. She hopes that your NYU JD training gives you some tools for doing this. She would like a memo that addresses the following questions: What elements of the Rhee-Fenty strategy should she keep? What elements should she abandon? What should she add or modify? Concretely, what should she do and not do? Your memo will be strictly for her eyes only and no more than 1000 words.

Optional Readings on Race and Urban Education

Jeff Henig, et al. 1999. *The Color of School Reform* pp. 65-71, 118-122, 152-4, 189-92, 197-202, 243-6.

## Negotiation and Litigation Politics

You will learn:

1. How to claim value in negotiations
2. How to create value in negotiations
3. How to learn key information during negotiations.
4. How to achieve influence during negotiations.

You will also learn:

1. The importance of political goals in public sector litigation.
2. How to use pivotal politics thinking in public sector litigation.

Reading Assignment on Negotiation

Deepak Malhotra and Max Bazerman, *Negotiation Genius*, Chapters 1-3, 7, and 12. (pp. 13-102, 159-176, and 259-279). This is fast reading but it is a lot, so budget your time.

Material on State Attorneys General

Michael Vu, “Crusaders Against Big Business” working paper, Princeton University

Eric Lipton, “Link Shows How Lobby Firm Cultivates Influence,” *New York Times* November 9 1014 <http://www.nytimes.com/2014/11/10/us/link-shows-how-lobby-firm-cultivates-influence.html?_r=0>

New York Times Editorial Board, ”Pay to Play, Mr. Trump?” New York Times Sept 6 2016 <https://www.nytimes.com/2016/09/07/opinion/pay-to-play-donald-trump.html?_r=0>

Litigation Politics CASE: OxyContin in West Virginia

Woodrow Wilson School Case: Taking on Big Pharma: OxyContin in West Virginia, on Blackboard

Also: <http://en.wikipedia.org/wiki/Oxycodone>

Case Assignment

You are Chief of Staff to the West Virginia Attorney General. Write a confidential memo advising him whether to litigate or to settle, and if the latter, under what terms. Explain your logic using both expected value/BATNA (settlement) analysis and political analysis, in 1000 words or less.

## Private Politics

You will learn:

1. How to use private politics to alter corporate business practices, political behavior, and philanthropic activities
2. How to pick corporate targets for private politics
3. How to combine media tactics with boycotts and other pain-inducing efforts.
4. How to create a private ordering.
5. How to protect a company from private politics.

Case: Nike and “sweat shop” labor

Baron BIE: 6th edition 112-115; 7th edition 95-97.

Case Assignment

Group Type 1. Nike CEO Phil Knight has asked the general counsel of Nike to review the company’s political liabilities and its responses to the sweat shop issue. In turn, the General Counsel has turned to a rising star in the legal department to do the analysis: you. Draft a confidential memo to the General Counsel, formulating an effective response to the non-market issues facing Nike.

Group Type 2. Your law firm does pro bono work for various human rights groups, including Global Exchange. You become friendly with top managers there, and they ask you to draft a confidential memo outlining a plan for encouraging Nike to be more responsible in its labor practices (as they see it). Formulate a “private politics” action plan that Global Exchange can use – possibly in conjunction with other groups – to achieve its objectives.

Other Materials

Global Exchange web page <http://www.globalexchange.org/>

<http://www.globalexchange.org/campaigns/sweatshops/nike/index.html>

Nike web page <http://www.nike.com/main.html>

Charles Cameron

Tokyo

Saturday, January 14, 2017

1. On 5/2 we will meet in Furman 910. [↑](#footnote-ref-1)
2. See *Bee Eater* pages 87-90 and <http://www.myfoxdc.com/dpp/news/dc/kaya-henderson-discusses-the-state-of-dc-public-schools-on-fox-5-031411> [↑](#footnote-ref-2)