

Syllabus: LAW 628

Seminar: Law of Politics and Representation

Professor Allison R. Hayward
Mondays, 2:00 pm – 3:50 pm
Room 332

This seminar examines the cases, statutes, and rules that regulate lobbying, political and policy communications with elected officials, civil servants, and the public; gifts, gratuities, and conflict of interest rules applied to Congressional Members and staff, Executive branch officials, and the civil service; other Hatch Act and anti-fraud restrictions, and special rules applicable to foreign agents in the United States and U.S. actors abroad.

In these areas, we face the issue of how to protect important individual and group liberties with a purported governmental need to thwart corruption. How well or poorly these lawmakers evaluate the risks and benefits, and why they single out specific kinds of actors for special treatment, is a topic of great import and interest.

Your final grade will be based on:

- *Your completion, by Sunday before Monday's session, of a response (of no more than 700 words) to the required reading for that session. You can include any questions, comments, or other observations related to the readings;
- *Your participation in discussion;
- *Your succinct oral presentation of your paper at the end of the semester, and
- *Your paper, which should be in conventional law review form and suitable for publication.

I will provide copies of those readings that are not readily available online. I reserve the right to alter the syllabus and the assignments.

Readings

Week 1, 1/12: Goals of Regulation & Modes of Inquiry
Morgan & Reynolds, *The Appearance of Impropriety* Ch. 5 & 10;
Martin Redish, *Money Talks*, Ch. 3

Recommended: Mackenzie, *Scandal Proof: Do Ethics Laws Make Government Ethical?* Ch. 2 & 7.

Monday January 19 is a holiday

Week 2, 1/26: Influence, Then

Materials from the Anti-Saloon League, available at
<http://www.wpl.lib.oh.us/AntiSaloon/>
United States v. Rumely, 345 U.S. 41 (1953)
United States v. Harriss, 347 U.S. 612 (1954)
Communist Party v. Subversive Activities Control Board,
367 U.S. 1 (1961)

Week 3, 2/2: Influence, Now

BNA *Summary of Lobbying Law*
NAM v. Taylor, 549 F.Supp 2d 33 (D.D.C. 2008)
Abramoff plea agreement,
<http://fl1.findlaw.com/news.findlaw.com/hdocs/docs/abramoff/usabrmff10306plea.pdf>

Recommended: Lloyd Mayer, WHAT IS THIS “LOBBYING” THAT WE ARE SO WORRIED ABOUT?, 26 Yale L. & Pol’y Rev. 485 (2008)

Week 4, 2/9: What You Can’t Do Now You Are/Have Been a Officeholder

Hatch Act, 5 U.S.C. 7321-7326
Executive Branch Gift Rules, 5 CFR §§ 2635.201 to 2635.205
United Public Workers v. Mitchell, 330 U.S. 75 (1947)
Review the House and Senate Ethics Manuals, located at
http://ethics.house.gov/Media/PDF/2008_House_Ethics_Manual.pdf, and <http://ethics.senate.gov/downloads/pdf/manual.pdf> - focus on sections covering **gifts**, **travel** and **outside employment**.

Week 5, 2/16: Executive Branch Staff & Contractors

Standards of Ethical Conduct for Employees of the Executive Branch, at
http://www.usoge.gov/ethics_docs/publications/reference_publications/rfsoc_02.pdf
Major Brett Egusa, Procurement Fraud, Army Lawyer, Jan. 2008 at 86.
Rockwell Intern. v. U.S., 549 U.S. 457 (2007) (qui tam!)
Additional background to help you with the “qui tam” whistleblower provisions is here:
<http://www.usdoj.gov/usao/pae/Documents/fcaprocess2.pdf>

Week 6, 2/23: Congressional Investigations

Philip Kurland, *The Watergate Inquiry*, 1973, in Schlesinger, et al., *Congress Investigates*, pp. 467-90.

James Hamilton, *Congressional Investigations: Politics and Process*, 44 *Am. Crim. L. Rev.* 1115 (2007)

Recommended: *Final Report* (Thompson Investigation), S. Rep. 105-167 (Vol. 1) Chapters 2 & 3 (1998)

Week 7, 3/2: Tax Consequences

IRS Rules Regarding Politics and Lobbying, Exempt Organizations Technical Instruction Program, at

http://www.irs.gov/pub/irs-tege/final_paci_report.pdf

Regan v. Taxpayers with Representation 461 U.S. 540 (1983)

Revenue Ruling 2007-41,

at <http://www.irs.gov/pub/irs-tege/rr2007-41.pdf>

IRS report on Political Activity Compliance, at

http://www.irs.gov/pub/irs-tege/final_paci_report.pdf

March 9-13 is Spring Recess!

Week 8, 3/16: Corporations

60 Fed. Reg. 64260 (final rule for facilitation and events)

MUR 5390 (Freddie Mac) documents (FLA and Conciliation)

Cort v. Ash, 422 U.S. 66 (1975)

Open Windows (Center for Political Accountability) at

<http://www.politicalaccountability.net/files/OpenWindows03-22-07.pdf>

Bundling Rulemaking, 72 Fed. Reg. 62660 (Nov. 6, 2007)

Week 9, 3/23: Membership Groups (including Unions)

Communication Workers v. Beck, 487 U.S. 735 (1988).

Davenport v. WEA, 127 S. Ct. 2372 (2007)

Find *your own* interesting LM-2 in the DOL database

Club for Growth MUR materials:

FEC GC brief at <http://eqs.nictusa.com/eqsdocs/000061BF.pdf>;

CFG brief at <http://eqs.nictusa.com/eqsdocs/000061BC.pdf>;

settlement at <http://eqs.nictusa.com/eqsdocs/000061CA.pdf>

Week 10,3/30: “Pay to Play” Restrictions: When Legal Contributions Restrict Access to Government Business
MSRB Rule G-37
Blount v. SEC, 61 F.3d 938 (D.C. Cir. 1995)
Kevin Opp, *Ending Pay-to-Play in the Municipal Securities Business: MSRB Rule G-37 Ten Years Later*, 76 U. Colo. L. Rev. 243 (2005)

Week 11, 4/6: International Day!
FARA 22 USC §§ 611-21
Meese v. Keene, 481 U.S. 465
Att’y Gen. v. Irish Northern Aid Comm, 530 F.Supp 241 (D.N.Y. 1981)
US v. Kanchanalak, 192 F.3d 1037 (D.C. Cir 1999)

Week 12,4/13: Foreign Corrupt Practices
Noonan, *Bribes*, Ch. 20 *The Ambassadors of America* (1984)
US v. Kay, 359 F.3d 738 (5th Cir. 2004).
CRS report on FCPA (1999), at
<http://www.fas.org/irp/crs/Crsfcpa.htm>

Recommended: Eric M. Pedersen, *THE FOREIGN CORRUPT PRACTICES ACT AND ITS APPLICATION TO U.S. BUSINESS OPERATIONS IN CHINA*, 7 J. Int’l Bus. & L. 13 (2008)

Week 13, 4/20 & 4/22 (Wednesday is a Monday according to the academic calendar): **Paper Presentations**