

Law 624
The Office of the State Attorney General:
History, Powers and Responsibilities

Hal Stratton, Lynne Ross, & Rob Raffety
George Mason University School of Law
Spring Semester 2009
Mondays, 6:00 PM-7:50 PM, Hazel Hall 412

Course Description

This seminar course will cover the history, powers and duties, and initiatives of the state attorneys general around the country. The course will begin with a history of the Office of Attorney General, followed by a survey of the law and issues as they pertain to the jurisdiction, responsibilities and powers of the office and its role in state government. Over the course of the semester, a number of contemporary issues regarding the state attorneys general and their enforcement authority in antitrust, consumer protection, criminal law and environment will be discussed. Distinguished guest lecturers, who will offer insight on various high profile topics of interest, have been invited, including Attorneys General and other members of the legal community. Note: Session topics may be rescheduled based upon the needs and availability of distinguished lecturers.

Grades

During the course of the semester, students will complete a total of three (3) writing assignments - two short memoranda of 5 pages or less, and one 10-15 page research paper. The memoranda will be written in response to specific questions presented through in-class exercises. The research paper will be a self-directed project on an approved topic pertaining to the state attorneys general. Toward the end of the semester, students will make brief oral presentations regarding their research papers.

Grades will be determined as follows: 50% on the research paper, 15% on each memorandum, 10% on the oral presentation, and 10% on class attendance and participation.

Course Materials, Sources, and References

The following list of texts and websites will be used and reviewed in conjunction with the course. The primary text for the course will be the NAAG book. The Stratton text will be distributed to the class on PDF.

Texts

- *State Attorneys General: Powers and Responsibilities*, National Association of Attorneys General (2007).
- *No Higher Calling, No Greater Responsibility*, John Suthers & Bill Ritter (2008).
- *Office of the Attorney General*, State of New Mexico, Hon. Hal Stratton (2000).

Websites

- www.naag.org (National Association of Attorneys General)
- www.legalnewsline.com (AG and Supreme Court News)
- www.oag.state.va.us (Virginia Attorney General Office)
- www.ago.state.nm.us (New Mexico Attorney General Office)
- www.oag.state.md.us (Maryland Attorney General Office)
- attorneygeneral.utah.gov (Utah Attorney General Office)
- <http://www.cwagweb.org/> (Conference of Western Attorneys General (CWAG))
- <http://www.federalismproject.org/> (American Enterprise Institute - Federalism Project AG Watch)
- <http://www.instituteforlegalreform.org> (Institute for Legal Reform - State Attorneys General)
- <http://www.fed-soc.org/publications/id.463/default.asp> (The Federalist Society State AG Tracker)
- www.stateag.org (National State Attorneys General Program at Columbia Law School)

Week 1--January 12: Overview of and Orientation of Course; Survey of State Attorneys General Powers and Responsibilities.

An overview of the course, including: student introductions; subject matter to be covered; expectations as to class attendance and participation; grades and how grading will be assigned; course materials and access thereto; topics for student papers and presentations. Instructors will discuss the origin and development of the Office, including qualifications, selection and term and function within state government. Additionally, the first written memorandum assignment will be made in class and due on January 26.

Week 2--January 19: NO CLASS – MLK HOLIDAY

Week 3-January 26: Common Law Powers; Status in State Government; Opinions; Consumer Protection.

A general discussion of the powers and responsibilities of the attorney general as listed. Professor Stratton, former AG for New Mexico and former Chairman of the Consumer Product Safety Commission (CPSC), will facilitate class dialogue on recent developments in consumer product safety with respect to state attorneys general.

Reading Assignment:

- State Attorneys General Powers and Responsibilities, National Association of Attorneys General, 2007, Chap. 1-5.
- Stratton AG Powers at 211-214.
- Analysis & Perspective, CPSIA of 2008 [handout].

Other References:

- Origin and Development:
 - Edwards, *The Law Officers of the Crown* (1964)
 - Cooley, *Predecessors of the Federal Attorney General: The Attorney General in England and the American Colonies*, 2 Am. J. Legal Hist. 304 (1958)
 - Hammonds, *The Attorney General in the American Colonies* 6 (1 Anglo-American Legal History Series no. 2 1939)
- Common Law Powers
 - *People v. Miner*, 2 Lans. 396 (N.Y. App. Div. 1868)
- Opinions
 - First Thrift & Loan Ass'n v. State of New Mexico ex rel. Robinson*, 304 P.2d 582, 588 (N.M. 1956).
 - Grand River Dam Authority v. State*, 645 P.2d 1011, 1016 (Okla.1982)
 - Cummings v. Beeler*, 223 S.W.2d 913 (Tenn. 1949)

Week 4—February 2: Antitrust Enforcement.

A discussion of the powers and responsibilities of the attorney general as they relate to issues of antitrust, including multistate litigation and relationships with the U.S. Department of Justice.

Reading Assignment:

- Stratton AG Powers at 245-326.

Other References:

- Antitrust Enforcement:
 - Sherman Act of 1890, 15 U.S.C. §§ 1-7 (2005)
 - Clayton Act of 1914, 15 U.S.C. §§ 12, 13, 14-19, 20, 21, 22-27 (2005)
 - Federal Trade Commission Act of 1914, 15 U.S.C. §§ 41-51 (2005)
 - Hart-Scott-Rodino Antitrust Act of 1976, 15 U.S.C. §§ 15c-h
 - U.S. v. Microsoft*, 231 F.Supp.2d 144 (D.D.C. 1998)
 - NAAG Vertical Restraints Guidelines, 4 Trade Reg. Rep. (CCH) ¶ 13,400
 - NAAG Horizontal Merger Guidelines, 4 Trade Reg. Rep. (CCH) ¶ 13,406
 - U.S. Dep't of Justice & Federal Trade Comm'n, *Horizontal Merger Guidelines* (1992), *reprinted in* 4 Trade Reg. Rep. (CCH) ¶ 13,103.
 - Illinois Brick v. Illinois*, 431 U.S. 720 (1977)
 - California v. ARC America Corp.*, 490 U.S. 93, 101 (1989)

Week 5—February 9: Lessons from Defeat.

A continuation of a general discussion of the powers and responsibilities of the attorney general as listed, presented by Hal Stratton, with an emphasis on cases argued and lost during his tenure as AG of the State of New Mexico.

Reading Assignment:

- State Attorneys General Powers and Responsibilities, National Association of Attorneys General, 2007, Chap.6, 9-13.
- Multiple Cases (TBD).

Week 6--February 16: Criminal Law.

Discussion of the role of the AG with respect to criminal law enforcement, including the relationships of state, local and federal governments. The second written memorandum assignment will be issued in class and due on March 2

Reading Assignment:

- *No Higher Calling, No Greater Responsibility*, John Suthers & Bill Ritter (2008).
- State Attorneys General Powers and Responsibilities, National Association of Attorneys General, 2007, Chap. 13-18, 21.
- Stratton, AG Powers at 245-326.

Week 7--February 23: Environmental Law.

Attorney General Douglas Gansler of Maryland will discuss the role of the AG with respect to environmental protection, preservation, and law enforcement. General Gansler co-chairs the Environment Committee of the National Association of Attorneys General.

Reading Assignment: TBD.

Week 8--March 2: Emerging Legal Frontiers.

Attorney General Mark Shurtleff of Utah will discuss emerging legal frontiers, in areas such as child abuse, internet safety/protection of children, hate crimes, and antitrust. General Shurtleff co-chairs the Environment Committee of the National Association of Attorneys General.

Reading Assignment: TBD.

Week 9--March 9: NO CLASS—SPRING BREAK

Week 10--March 16: Federalism / Preemption Debate.

GMUSL will host a debate on issues of federalism and preemption. Details TBD. In anticipation of the debate, please review the following materials:

- Cartel Federalism? Antitrust Enforcement by State Attorneys General, 72 U. CHI. L. REV. 99 (2005).
- Attorneys General and Their False Federalism, By Michael S. Greve, Wednesday, May 25, 2005

- Competition Laws in Conflict: Antitrust Jurisdiction in the Global Economy, Richard A. Epstein and Michael S. Greve, eds. (May 2004)

Week 11--March 23: AGs and their relationship with the Business Community/Private Sector.

A panel discussion about the impact of state AG enforcement actions and other related issues on businesses. Lisa Rickard, President of the Institute for Legal Reform (ILR) has been invited.

Reading Assignment:

- <http://www.instituteforlegalreform.com/issues/issue.cfm?issue=AAG>
- Bounty Hunters on the Prowl: The Troubling Alliance of State Attorneys General and Plaintiff's Lawyers, John Beisner, Jessica Davidson Miller and Terrell McSweeney (ILR, May 26, 2005)
<http://www.instituteforlegalreform.com/issues/docload.cfm?docId=939>
- The National Association of Attorneys General: An Overview (ILR May 26, 2005) <http://www.instituteforlegalreform.com/issues/docload.cfm?docId=941>
- Government by Indictment: The State Attorneys General and Their False Federalism, Michael Greve, (American Enterprise Institute, May 26, 2005)
<http://www.instituteforlegalreform.com/issues/docload.cfm?docId=940>
- Cash In, Contracts Out: The Relationship Between State Attorneys General and the Plaintiffs' Bar, John Fund (ILR October 14, 2004)
<http://www.instituteforlegalreform.com/issues/docload.cfm?docId=942>

Week 12--March 30: AG Office Management Issues.

There are many administrative, as well as substantive legal challenges in running an AG office. A Chief Deputy, the number 2 position in an AG office, will speak about office organization and the many challenges that are encountered on a daily basis in managing a public law office.

Reading Assignment: TBD.

Week 13—April 6: More Emerging Issues.

The scope of the AG's responsibilities is very broad. Discussion will focus on an array of substantive legal issues regarding potential roles of the Attorney General in areas such as public corruption, homeland security, terrorism, securities, corrections, and Internet-related matters.

Reading Assignment: TBD.

Week 14—April 13: Class Presentations [Part I].

Students will make class presentations regarding their research projects.

Week 15--April 20: Class Presentations [Part II].

Students will make class presentations regarding their research projects.