GEORGE MASON UNIVERSITY SCHOOL OF LAW


**General Information**
Dates: Mondays, January 11, 2016 - April 18, 2016
Time: 4:00 pm – 5:50 pm. **Instructors:** Profs. Chris Koopman and Lynne Ross
Phone (Koopman): 703-993-8941; E-mail: ckoopman@mercatus.gmu.edu
Phone (Ross): 703-220-5544; E-mail: Toswim2@yahoo.com; Office hours by appointment
Office (Koopman): Foundation Building 4104; Office hours by appointment

**Course Description**
The Office of State Attorney General has evolved greatly over time, both within the states/territories and in relation to other legal and policy actors in the national arena. Virtually every public policy issue today has a legal component that falls within the purview of the State Attorneys General. This seminar focuses on the powers and duties of the State Attorneys General, and considers competing perspectives about the role of the office within the broader context of law and policy. The course will begin with an overview of the history of the Office of Attorneys General, followed by a survey of the law and related issues pertaining to its jurisdiction, powers, duties, and role in state government. Over the course of the semester, a number of contemporary issues will be discussed, with emphasis on AG enforcement authority. Particular attention will be paid to perspectives on federalism and the ever-changing legal landscape of state-federal relationships. Distinguished guest lecturers, including sitting Attorneys General, former Attorneys General, and other members of the legal community, will offer insight on various high profile topics, including: multistate litigation filed by AGs, such as health care reform, financial practices/consumer protection, immigration, and the 1998 landmark tobacco settlement, among others.

**Required Texts**

*Note: We prefer you use the most recent edition of the book, students may also use Meyer and Ross, State Attorneys General: Powers and Responsibilities*, National Association of Attorneys General (2007). (Powers and Responsibilities). While the 2007 edition edited by Meyer and Ross is also acceptable to cite, the third edition contains the most-recently updated cases and discussion. The book should be available in the GMU bookstore.*
Supplemental Materials

The instructors will regularly supplement textbook readings with journal articles, case law, and other materials. In addition, students are encouraged to visit the web site of the AG they are following, as well as visit, review, and utilize the following web resources throughout the semester:

- GMU Law and Economics Center’s AG Program: www.MasonAGEP.org
- National Association of Attorneys General: www.naag.org
- AG and Supreme Court News: www.legalnewsline.com
- Virginia Attorney General Office: www.oag.state.va.us
- Maryland Attorney General Office: www.oag.state.md.us
- Conference of Western Attorneys General (CWAG): http://www.cwagweb.org
- AEI Federalism Project AG Watch: http://www.federalismproject.org/
- Institute for Legal Reform - State AGs: http://www.instituteforlegalreform.org
- National State AG Program at Columbia Law School: www.stateag.org

Expectations

- The instructors and students will act with the highest level of professional ethics, demonstrate a genuine interest in the subject matter at hand, and come to every class fully prepared to engage in the learning process.
- Students will complete all of the readings in advance of each class, and come to class ready to discuss their own experiences and insights regarding the lessons at hand.
- Students will adhere to the George Mason University Honor Code. Copying, cheating, or plagiarism will not be tolerated.
- Students will attend all class sessions and participate in class discussions. Students who are unable to attend any particular class must, to the fullest extent practicable, inform the instructors of their pending absence in advance. The instructors will work to accommodate every student’s situation, where appropriate, including unexpected family or personal challenges and unanticipated events (e.g. a death in the family, severe illness, etc.).
- Unless otherwise agreed upon by the instructors, students will submit all their assignments on time. With rare exception, late assignments will be marked down a minimum of one full letter grade. Students are expected to proofread their written products for typos and grammatical errors, which if left unchecked, will result in a lower grade. Failure to fully follow the assignment will, of course, result in a lower grade.
- The instructors will maintain an open-door policy and be available to field any questions, concerns, comments, etc. within a reasonable timeframe.
- Please note that in order to accommodate visiting speaker schedules, some changes and adjustments in class content will be made. Using TWEN, the professors will post a weekly note to students, with topic and guest speaker (if any) and assignments for the next class. Please watch for a revised syllabus with speakers confirmed in January.

GRADES

Overview

Grades in the course will be completed based GMUSL academic policy based on the following elements, as explained in more detail below. All grades shall be based on timely submission of each assignment—failure to submit each assignment in a timely manner will result in a reduction in grade:

1. Professors will provide Final Term Paper Topics to students by Feb. 22, 2016.
2. Professors will approve paper topics by February 29.
3. Paper Outline (Due March 14): 10%
4. Final Term Paper (Due April 18): 45%
5. Memorandum 1 (Provided Jan. 11 and Due Jan. 25): 20%
6. Memorandum 2 (Provided February 1 and Due 5pm Thursday, February 18): 20% Class participation and attendance: 5%
**Following an Attorney General**

At the first class, each student will be asked to select an AG to follow during the semester. Please read the state Constitution, statute(s), and other legal instruments creating/authorizing that office. It is expected that students will research and understand the powers and duties of their AG; and that actions and significant initiatives will be monitored weekly. Students will be asked to present their AG, including background, an explanation of their legal authority and key initiatives during a class presentation and discussion session.

**Term Paper**

The primary assignment for this class will be a research paper not to exceed fifteen (15) pages. The final paper must be in Times New Roman, 12 pt. font, double-spaced, one-sided, and must be submitted through TWEN. Page limits are inclusive of all citations, which should be footnoted in accordance with Blue Book format. A list of available topics and a grading rubric will be distributed by February 22. You should plan to have your paper topic chosen and approved no later than Session 8, March of the semester and you should plan to have an outline submitted by Session 11, March 21.

Failure to follow instructions as to format and response to issues presented as, well as a lack of legal citations substantive legal authorities (writing assignments CANNOT be based solely on newspaper articles or opinions), will result in a lowered grade by at least one level or more.

**Memoranda**

During the course of the semester, students will also complete two short memoranda not to exceed four (4) pages. The first memorandum will be due January 25, and the second will be due February 18.

These assignments must be in Times New Roman, 12 pt. font, double-spaced, and must be submitted through TWEN. Page limits are inclusive of all citations, which should be footnotes in accordance with Blue Book format. The memoranda will be written in response to specific questions presented through in-class exercises.

Failure to follow instructions as to format and response to issues presented as, well as a lack of legal citations substantive legal authorities (writing assignments CANNOT be based solely on newspaper articles or opinions), will result in a lowered grade by at least one level or more.

**CLASS SCHEDULE**

**Session #1: January 11**

**Overview of Course / Powers and Duties (Part I)**

Prof. Ross will provide an overview of the course, including: student and professor introductions; subject matter to be covered; expectations as to class attendance and participation; and course materials. Prof. Koopman will discuss the grading policies and expectations. Students should be prepared to discuss the week’s assignment (see below). Lynne Ross, former Executive Director of the National Association of Attorneys General, will begin with a discussion of the origin, development, and overview of the history of the Office, including qualifications, selection and term and function within state government. The underlying legal authorities of the Offices will also be discussed, including common law authority and conflicts in representation. Emphasis will be on understanding legal authority and the AG culture.

Note: Topics for Memorandum #1 will be provided in class and these will be due by 4 pm. Monday, Jan. 25.

**Assignment:**

- Powers and Responsibilities, Chapters 1-4;
- Be prepared to select a State AG to follow. Over the course of the semester, you will familiarize yourself with the powers and duties of the AG of the selected state, and stay abreast of emerging issues related to your AG. Read the state Constitution, statute(s), and other legal instruments creating/authorizing that office.
- Come prepared to discuss why you signed up for this course and your expectations.

**NO CLASS on Monday, January 18 – Martin Luther King Birthday observed**
Session #2: January 25
Overview of Course / Powers and Duties (Part II)

Prof. Ross will continue the discussion on the powers and duties of state Attorneys General, with a focus on the multiple roles in representation of the state and the citizens, common law authority, and relationship to other branches of state government, particularly the Governor and the Legislature. There will also be an overview of the key functions/roles of the AG, including both the affirmative/advocacy role and the role of defending the state and its various agencies. The structure of AG Offices will be discussed as well as key cases where the independence and authority of the Office has been reaffirmed by the courts.

Note: The first written memorandum assignment is due. Please note that you must bring one (1) hard copy to class, and also send Professor Koopman an electronic version via TWEN.

Assignment:
- Powers and Responsibilities, Chapters 1-4; 5, 6 and 13
- State Enforcement of Federal Law, by Margaret H. Lemos, Cardozo School of Law, September 2010.
- Fifty States, Fifty Attorneys General, and 50 Approaches to Duty to Defend by Neal Devine & Saikrishna Bangalore Prakash, Yale Law Journal
- Presentation of key cases by students with class discussion of the outcomes and their significance.

No class on January 18. Martin Luther King Holiday.

Session #3: February 1
KNOW YOUR AG

Each student will present their AG, including underlying legal authority, election date, interests and significant action. The presentations should be approximately 10 minutes. Information should provide background on the AG, legal authority, culture, and key initiatives, including at least one example of their multistate litigation participation and one action involving the defending the state role. Where feasible discuss at least one “relationship” issue with the Governor, Legislature, law enforcement etc, describing the relevant legal authority. Prof. Ross and Prof. Koopman will respond with questions.

Prof. Ross will continue with discussion of powers and duties of AGs, with review of Chapters read in Powers and Duties book, and discussion of law review articles. The role of AGs in issuing opinions will be discussed, as well as the AG relationship to private lawyers. Time for feedback and discussion of Memorandum 1 will be provided.

NOTE: Memorandum 2 topics will be provided. The due date will be 5 pm Thursday, February 18 in order to give our visiting AG professor time to review.

Session #4: February 8
AGs: Complex Roles: Advocate, Policymaker, Innovator, & Defender – Will the Real AG Please Stand Up?
The discussion will focus on the multiple roles of the AG, with special emphasis on the role of advocate and as the “people’s lawyer”. Is the AG’s role in defending the state at odds with their role as an advocate?

Assignment
Powers and Responsibilities, Chapter 21, Tobacco
Additional assignments anticipated

Session #5: February 15
AG Role in Representation: Who is the Client?

Guest Speaker: A general discussion will take place concerning the legal authority and role of Attorneys General from the dual perspective as the chief legal officer representing the state and as the representative of the
public interest. Discussion will focus on the uniqueness of this dual role of the Attorney General, the recognition of this unique role in the ABA Model Code of Professional Conduct, potential conflicts in representation, and some case studies in which the authority of the Attorney General was challenged. Does the AG have the option to refuse to defend a state law? Come to class prepared to discuss.

Assignment:
Powers and Responsibilities, Chapter 4
Virginia cases and materials to be distributed by, including:
- Terry v Wilder (1-5)
- Earl Washington
- AG advice to state universities on sexual orientation non-discrimination policy

Session #6, February 22
Guest speaker: AG Duty to Defend: Does the Attorney General have an obligation to defend a state law or is it discretionary on a case by case basis? Discussion of “who is the client” continues. When state Attorneys General are sworn into office, they take an oath, which varies from state to state. In some jurisdictions, they promise to uphold the State Constitution while in others the oath may include the Constitution of the United States. What does this mean in practical and legal terms and how can this power and duty affect public policy? Issues to be addressed will include:
• Can or should Attorneys General refuse to defend a state law and if so, under what criteria and legal authority?
• Do they get to pick and choose which statutes to defend?
• Does this depend on the circumstances or is the rule absolute?
• What is the impact of each choice on the Office of Attorney General?
• Does it make a difference in deciding whether to defend or not, whether the Attorney General is appointed or elected? Do politics play a role in the decision?

Our visiting AG professor will discuss Memorandum 2 papers in class, interacting with individual students.

Note: Term paper research topics will be provided. Students must confirm in class or via email by February 29 their legal research paper topic. If students do not select a topic from the suggested list, students must present one page proposal for another topic in the February 29 class or via email, and professors will approve by March 7, the first day of spring recess.

Session #7: February 29
Consumer Protection: AGs and the Consumer Financial Protection Bureau (CFPB)
Guest Speaker: When the Dodd-Frank Act created a new federal agency known as the Consumer Financial Protection Bureau (CFPB), a new relationship began between federal regulators and state AGs. Among other enforcement relationships, the law granted dual enforcement authority to state AGs and federal regulators, posing an array of new legal issues and challenges. Opponents of the agency’s overreach have become more vocal and some members of Congress have expressed interest in tightening the mission and scope of the Agency. In this class, we will discuss the legal framework, state AG enforcement of federal rules, and some key cases. As well as what this might portend for the future.

Assignment
- Read Chapter 13, Consumer Protection, State AGs: Powers and Duties
- Credit Reform and the States: The Vital Role of Attorneys General After Dodd-Frank by Mark Totten
- Hood v AU Optronics - Supreme Court ruling
- CFPB Press Release
Note: Professors will approve paper topics for research papers.

**NO CLASS on March 7 - Spring Break: March 7-13**

**Session #8: March 14**

**Private Practitioner Perspectives – Part 1**

Guest Speaker: We will discuss the broad scope of the AG’s responsibilities - an array of substantive legal issues, including the AG's role in the case against Jerry Sandusky and the Penn State administrators and President Graham Spanier; and the role of the AG in pharmaceutical litigation. Questions discussed will be how is the role & responsibility of the AG different in bringing actions against pharmaceutical companies than from bringing actions against tobacco or gun manufacturers? Is it appropriate for the AG to hire outside contingency fee counsel for specialized matters, and what standards should guide such a selection. **Note:** Outlines of Final Term Paper are due by 4 pm. Please submit via TWEN to Professor Koopman and bring 1 hard copy to class.

**Assignment**

- Commonwealth v. Janssen Pharmaceuticals, 8 A.3d 267 (Pa. 2010) -


- Practical Considerations for Approaching Key Issues in the Office of Attorney General - Beyond Due Process

- A Litigation Primer: Challenging Attorney General and Other Government Contingency Fee Arrangements

**Session #9: March 21**

**Private Practitioner’s Perspective – Part 2**

Guest Speaker: The speaker will present some perspectives on emerging areas of interest for some AGs and discuss the legal framework, and the pros and cons of potential actions. These areas will include:

1. The growing attack by State AGs on Big Food. We will discuss the State AG and their growing interest in food labeling issues, GMOs, energy drinks, etc. Do the AGs have authority? Are the AGs the right “agency” to push for these changes?

2. AGs increasingly express concern over Private “For Profit” Colleges and Universities. Why should the AGs go down this path when the U.S. Department of Education has authority? What are the AG claims here? What gives them the authority?

3. Almost every state has a data breach law. Almost every State AG has authority to enforce the data breach laws. Yet, when a national company like Target does have a breach, they must comply with all these state laws. Isn’t there an argument for uniformity and (wow!) federal preemption?

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3. Recently several State AGs decided not to defend State laws or constitutional provisions relating to their particular state’s ban on same sex marriage. Regardless of your individual view on same sex marriage, doesn’t the State AG have to defend the State laws and constitution against attack?
Session #10: March 28

State Attorneys General: Powers and Duties
Guest Speaker: Discussion will focus on the Virginia Attorney General office and its powers and duties including duty to defend, approaches to addressing conflicts that inevitably arise, the importance of independence of the Office, and relationship of the AG to the Governor and Legislature. Case studies will be used as a basis for discussion of the AG role in application of the First Amendment to commercial speech; in the chef embezzlement and other cases involving the Governor; and in the gay marriage issue, among others.

Assignment
- Sept. 18, 2013 AP article by Steve Szkotak “Bob McDonnell’s Ex-Chef Reaches Deal in Embezzlement Case
- Tony Troy’s April 9, 2013 letter to Committee on the Judiciary and Public Safety D.C. Council
- Gwaltney v Chesapeake Bay Foundation 484 U.S. 49 (1987)
- Troy Letter to DC Council Committee.docx
- The Chef Case.docx
- 425_U.S._748.pdf
- 484_U.S._49.pdf>

Session #11: April 4

AG: Defending the State: Saving Tax Dollars
During previous classes, we have focused on the AG's diverse role and authority in areas including as an advocate in consumer protection, as the statewide chief legal officer, as a legal policy-maker, and as the governor's counsel. During this class, Prof. Ross will discuss the role of the AG as defender of the state, as a protector of the state treasury, and other functions that are the day-to-day work of the AG's office. While perhaps viewed as less "glamorous" in their press appeal, the issues that AGs deal with in the "defending the state" mode are critically important to state everyday function and to ensuring that tax dollars are well-spent. There will be class discussion of these issues, with emphasis on the AGs you are following, the legal authority underlying these actions, and the outcomes for the citizens and taxpayers. Please come prepared to discuss litigation or an issue your AG has undertaken in his/her defending the state role.

Assignment:
- Powers and Duties book, 3rd edition, Chapter 20, Collection, Enforcement and Bankruptcy;
- Chapter 24 from Powers and Duties (1st Ed.), c1990, Bureau of National Affairs, Inc. (see attached);
- Please identify 2 examples of “defending the state” issues brought by the AG you are following and be prepared to explain and analyze the action, legal authority, and desired outcome.

Session #12: April 11

The Role of State AGs in our Federalist System – Shifting Sands?
The speaker will discuss the evolving role of the state AG in our federalist system and perspectives of the business community re role of state AGs. Through an examination of investigations and litigation with national impact, the class will explore and discuss the role of the AGs in setting national policy. In addition, we will discuss the implications of the recent trend in Congress to grant dual enforcement authority to federal regulators and state AGs. State Attorneys General, as we have discussed, operate in the crossroads of law, public policy and politics, dealing constantly with the question of “who is the client”. The array of legal and policy issues that arise daily is diverse and challenging. The speaker will discuss the constitutional framework and legal/policy/political aspects of some key including public nuisance and No Child Left Behind.

Assignment: To Be Announced

Session #13: April 18 - FINAL WRAP-UP
We will conclude the course with a review of AG roles and responsibilities. Please be prepared for general discussion of lessons learned throughout the semester. What’s your own perspective? Are AGs doing their jobs> Should their authority be curtailed? Has state authority expanded or contracted in recent years? And for you, which job do you believe you would like to have in an AG Office and why?

Note: The final term paper is due by 4pm. Please bring one (1) copy to class and send to Professor Koopman via TWEN.