GEORGE MASON UNIVERSITY SCHOOL OF LAW
Law 624 – State Attorneys General Seminar

General Information
Room: Hazel Hall 412
Dates: Mondays, January 9, 2012 – April 23, 2012
Time: 6:00pm – 7:50pm
Instructors: Profs. Robert Raffety and Lynne Ross
Phone (Raffety): 703-993-4912; E-mail: rraffety@gmu.edu
Office (Raffety): Founders Hall 427; Office hours by appointment

Course Description
The Office of State Attorney General has evolved greatly over time, both within their respective 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: health care reform, financial practices/consumer protection, immigration, and the 1998 landmark tobacco settlement, among others.
Required Texts

Supplemental Materials
The instructors will regularly supplement textbook readings with journal articles, case law, and other materials. In addition, students are encouraged to 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
- Utah Attorney General Office: attorneygeneral.utah.gov
- 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 instructor 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 instructor, 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.
● The instructor will maintain an open-door policy and be available to field any questions, concerns, comments, etc. within a reasonable timeframe.
CLASS SCHEDULE

● Session #1: January 9
Overview of Course / Powers and Duties (Part I)
Prof. Raffety will provide an overview of the course, including: student and professor introductions; subject matter to be covered; expectations as to class attendance and participation; grades, and course materials. Students should be prepared to discuss the week’s assignment (see below). Lynne Ross, former Executive Director of the National Association of Attorneys General, and Prof. Raffety 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. Additionally, the first written memorandum assignment will be made in class (due on January 23).

Assignment:
- Powers and Responsibilities, Chapters 1-4; 5 and 6.
- 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.
- Please come to class prepared to present a current legal issue about the Attorney General in the state in which you were born and to discuss briefly the legal underpinnings of the action you are describing.

● No class on January 16. MLK Holiday.

● Session #2: January 23
Powers and Duties (Part II)
*Memorandum #1 due in class. You must bring two (2) hard copies to class, and send an electronic version to Prof. Raffety.
Profs. Raffety and Ross continue discussion of powers and duties of state Attorneys General, with focus on multiple roles in representation of the state and the citizens, common law authority, and relationship to other branches of state government, particularly the Governor. 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.

Assignment:
- Powers and Responsibilities, Chapters 1-4; 5 and 6.
- State Enforcement of Federal Law, by Margaret H. Lemos, Cardozo School of Law, September 2010.
- AG “Hot Topic” – Be prepared to discuss a current legal issue of the AG you are following.
Session #3: January 30
The Role of State AGs in our Federalist System
Linda Kelly, Senior Counsel for Chief Legal Officer at the Association of Corporate Counsel and former Director of the Attorneys General Education Program at GMU Law and Economics Center, 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.
Assignment:
- Powers & Responsibilities, pp. 244-245 (Section on multistate actions)
- AG “Hot Topic” – Be prepared with an example (from AG you are following) of AG involvement in issues/litigation with national impact and policy.

Session #4: February 6
AG Role in Representation: Who is the Client?
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. Former Virginia Attorney General and Chief Deputy Steve Rosenthal, a member of the Troutman Sanders law firm, will speak.
Assignment:
- Powers and Responsibilities, Chapter 4.
- State of Florida ex rel. Shevin v. Exxon Corp, 526 F.2d 266 (5th Cir. 1976).
- Virginia cases and materials distributed by Professor Raffety, including:
  o Terry v Wilder
  o Brown v. Sielaff
  o Earl Washington
  o Health Care Litigation
  o AG use/abuse of power – CID
  o AG advice to state universities on sexual orientation non-discrimination policy.

Session #5: February 13
AGs and Criminal Law
Although the statutory and constitutional powers of Attorneys General vary greatly from jurisdiction to jurisdiction, the Attorney General is a key player in developing criminal justice policy and playing an investigatory/prosecutorial role. Using his book as the text,
Colorado AG John Suthers will speak (via Skype or in person) about the role of the AG with respect to criminal law enforcement, including the relationships of state, local and federal governments. A member of the GMU AG Advisory Committee, General Suthers is active in NAAG, including service on the NAAG Executive Committee, and its Budget Committee; and as co-chair of the Executive Working Group on Prosecutorial Relations and member of the Recovery Act, Procurement and Grant Fraud Working Group. He is also CWAG Immediate Past Chair 2010-2011.

Assignment:
- Powers and Responsibilities, Chapters 17 and 18.
- No Higher Calling, entire book. Please come with questions for General Suthers
- NOTE: The second written memorandum assignment will be provided in class and is due by the time of the class on Monday, February 27. Please bring hard copies of papers to class and also email to Prof. Raffety. These papers will be read and critiques by Utah AG Mark Shurtleff, who will be the guest professor on Monday, March 5.

● Session #6: February 20
Antitrust Enforcement
This class will focus on the Attorney General’s consumer protection authority in antitrust, including multistate litigation and relationships with the U.S. Department of Justice. Discussion will include perspective on AG multistate action regarding Standard Oil, which led to the creation of the National Association of Attorneys General in 1907. Emily Myers, NAAG Antitrust Counsel and co-editor of the Powers and Duties book, will speak on antitrust as well as on some current powers and duties cases.

Assignment:
- Powers and Duties, Chapter 15.
- Other cases to be assigned

● Session #7: February 27
Private Practitioner Perspectives
*Memorandum #2 due in class. You must bring two (2) hard copies to class, and send an electronic version to Prof. Raffety.
Discussion about the broad scope of the AG’s responsibilities continues. Walter Cohen, former Pennsylvania AG in 1995 and First Deputy from 1989-1995, will discuss an array of substantive legal issues, including the role of the Attorney General in pharmaceutical litigation. Is the role & responsibility of the AG is different in bringing actions against pharmaceutical companies from bringing actions against tobacco or gun manufacturers? Is it appropriate for the AG to hire outside contingency fee counsel and what standards should guide such a selection? Walter now practices law at the firm of Obermayer, Rebmann, Maxwell & Hippel in Harrisburg, Pennsylvania. His practice areas are administrative law, criminal defense, general litigation and health care.

Assignment:
- *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 #8: March 5**

**Making a Difference: Immigration Reform, Health Care Reform, Antitrust/ BCS and Tobacco**

Utah AG Mark Shurtleff will provide an overview of his office and key legislative/legal initiatives. The discussion will focus on the broad scope of AG roles/responsibilities across a spectrum of substantive areas, including immigration reform, health care reform, tobacco control and his own antitrust interest in the BCS. AG Shurtleff co-chairs the NAAG Tobacco Committee and serves on the Substance Abuse Committee. He is a former chair of the Civil Rights Committee. At CWAG General Shurtleff has taken an active role in training Mexican prosecutors to work with their counterparts in drug law enforcement and strengthening state-Mexican enforcement capabilities. Student papers submitted for writing assignment #2 will be discussed and critiqued.

**Assignment:**
- Become familiar with AG Shurtleff's office web page. Read Senator Hatch's statement and letter, as well as press materials etc connected to BCS and immigration issues in Utah.
- Read Kaplan presentation on BCS.
- Additional readings to be provided by General Shurtleff.

**NOTE:** Topics for Final Paper will be provided to the class by March 16. Final papers are due in or before class on April 25.

- **No class on March 12. Spring Break.**

**Session #9: March 19**

**Virginia AG Office and Beyond**

Jerry Kilgore, who served as AG of Virginia from 2002-2005, now focuses on a governmental affairs practice at McGuire Woods. He represents private sector clients who encounter problems/issues with AG offices, often in the area of consumer protection and antitrust. General Kilgore will provide an overview of the present Virginia AG Office, organization and function, including opinions and relationships with client agencies, as well as with the Governor and Legislature. Then, a broader look at AG roles will follow, including perspectives on the role of the AG in setting national policy, with a particular focus on the national health care litigation and mortgage foreclosure multistate; the landmark tobacco settlement; AG authority/issues regarding alcohol and the 21st Amendment; and emerging legal trends. AG Kilgore was in office during the sniper case and will also comment on the role of the AG in this case and relationships with state and federal law enforcement officials.
Assignment

Health Care:
- Review press materials from healthcare lawsuits or amici and AG's goals in matter--just political or real state interests?
- Review PR from the state you are monitoring as well as the AGs from Virginia and Florida and the Democratic AG amicus brief filed in the Sixth Circuit: http://www.oag.state.va.us/ and http://myfloridalegal.com Documents for the Florida led litigation can also be found at http://21statalawsuit.com/documents/. Another site with documents can be found at http://acalitigationblog.blogspot.com/2010/10/thomas-more-law-center-v-obama-quick.html.
- From Va AG web page, please review:
  o 02/16/11 - Attorney General Cuccinelli’s testimony before the U.S. House Judiciary Committee on constitutionality of health insurance mandate
  o 12/13/10 – Health care lawsuit ruling from the U.S. Federal District Court for the Eastern District of Virginia
- From Florida AG web page, please review:
  o 11/23/10 States' Response to DOJ Motion for Summary Judgment
  o 1/31/11 - Judge Vinson's ruling

Home Mortgage Crisis
- Review the mortgage foreclosure press reports and the 50 state multistate examining the issues. Are there solutions? Should state AGs create new mortgage requirements? Also, Arizona, Massachusetts, California, Nevada chose to file their own actions, and other states are investigating. What would 50 separate state actions do to industry or economy? Should AGs be involved at all?
- See http://www.azag.gov/. Foreclosure Resource Center Arizona AG.

● Session #10: March 26

Who is the Client?
Consumer protection is a key function for all Attorneys General. They generally have in a few jurisdictions including Alaska, Delaware and Rhode Island, the AG functions as the sole prosecutorial authority and is responsible for initiating criminal prosecutions. The AG also has responsibility for civil law enforcement. This session will focus on the complex legal issues involved and the issue of “who is the client” when AGs must defend their state agencies while at the same time, the AG becomes entangled in criminal investigations resulting from fires, airplane crashes, and other such disasters occurring in their state. The case study will be the deadly fire in Providence, Rhode Island on Feb. 20, 2003 at the Station, a night club in Warwick, RI. 100 people were killed. Guest speaker to be announced.

Assignment
- TBD
● Session #11: April 2
Torts and Multistate Litigation
The speaker (to be announced) will discuss the role of AGs in mass tort issues and multistate litigation. Some say the AGs regulate through litigation, thus circumventing the role of the state legislatures. Others say that the role of the AG is to enforce the law and address the legal policy issues of the day that don’t have widespread economic impact. Critics say the AGs have overstepped, carving out new roles for public advocacy with big national economic impact. The litigation discussion will include tobacco, guns, and a variety of other examples.
Assignment
- TBD

● Session #12: April 9
Consumer Protection
Consumer protection is a key function for all Attorneys General. They generally have broad authority to act, both individually and collectively on issues that cross state borders. State consumer protection statutes in every state provide a basis for a wide range of enforcement activities. The speaker (to be announced) will discuss these roles and the emerging legal trends that have expanded the scope and impact of state Attorneys General in recent years. The states’ multistate settlement in tobacco will be discussed as well as how state AGs impact the business community, both nationally and state side.
Assignment
- TBD

● No class on April 16. Research paper work period.

● Session #13: April 23
Wrap-up & Course Evaluations
*Research Paper due in class.
**Grades**

During the course of the semester, students will complete a total of three (3) writing assignments - two short memoranda not to exceed five (5) pages, and one (1) research paper not to exceed fifteen (15) pages. All written assignments must be double-spaced, 12 pt. font, with one-sided printing. Page limits are inclusive of all citations.

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 assigned topic pertaining to the State Attorneys General. Regular attendance and active class participation are also as part of your final grade.

Per GMUSL academic policy, the course will be graded on a curve (3.05 – 3.45). Your grade for the course is based on the following criteria:

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<th>Criteria</th>
<th>Due Date</th>
<th>% of Grade</th>
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<tr>
<td>Memorandum #1</td>
<td>January 23, 2012</td>
<td>20</td>
</tr>
<tr>
<td>Memorandum #2</td>
<td>February 27, 2012</td>
<td>20</td>
</tr>
<tr>
<td>Research Paper</td>
<td>April 23, 2012</td>
<td>50</td>
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<tr>
<td>Class Participation</td>
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