GEORGE MASON UNIVERSITY SCHOOL OF LAW
Law 624 – State Attorneys General Seminar (as of January 6, 2014)

General Information
Room: Hazel Hall 432C
Dates: Mondays, January 6, 2014 - April 21, 2014
Time: 4:00 pm – 5:50 pm

Instructors: Profs. Robert Raffety and Lynne Ross
Phone (Raffety): 703-993-4912; E-mail: raffety@gmu.edu
Phone (Ross): 703-220-5544; E-mail: Toswim2@yahoo.com
Office (Raffety): Founders Hall 427; 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: 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 Powers and Duties book: State Attorneys General: Powers and Responsibilities, edited by Emily Myers, National Association of Attorneys General, Third Edition, 2013. 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 book store.
**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](http://www.MasonAGEP.org)
- National Association of Attorneys General:  [www.naag.org](http://www.naag.org)
- AG and Supreme Court News:  [www.legalnewsline.com](http://www.legalnewsline.com)
- Virginia Attorney General Office:  [www.oag.state.va.us](http://www.oag.state.va.us)
- Maryland Attorney General Office:  [www.oag.state.md.us](http://www.oag.state.md.us)
- Conference of Western Attorneys General (CWAG):  [http://www.cwagweb.org](http://www.cwagweb.org)
- Institute for Legal Reform - State AGs:  [http://www.instituteforlegalreform.org](http://www.instituteforlegalreform.org)
- National State AG Program at Columbia Law School:  [www.stateag.org](http://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.
- 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 speaker schedules, some changes in class content may occur. The professors will send out a weekly note to students, with topic and assignments for the next class.

**Grades**

During the course of the semester, students will complete a total of three writing assignments – two short memoranda not to exceed four (4) pages, and one (1) legal research paper not to exceed fifteen (15) pages. All written assignments must be double-spaced, 12 pt. font, with single-sided printing and numbered pages. Page limits are inclusive of all citations, which should be as footnotes in accordance with Blue Book format. The legal research paper may be fewer than 15 pages but may not exceed that number.

The memorandum 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 a component of your final grade.
Grades (CONT.)
Per GMUSL academic policy the course will be graded on a curve (3.05 – 3.45). Your grade for the course will be based on the following criteria:

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Due Date</th>
<th>% of Grade</th>
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<tbody>
<tr>
<td>Memorandum #1</td>
<td>January 27, 2014</td>
<td>20</td>
</tr>
<tr>
<td>Memorandum #2</td>
<td>March 17, 2014</td>
<td>20</td>
</tr>
<tr>
<td>Legal Research Paper</td>
<td>April 21, 2014</td>
<td>55</td>
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<tr>
<td>Class Participation</td>
<td>Tracked throughout the semester</td>
<td>5</td>
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CLASS SCHEDULE
Session #1: January 6
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; grading policies 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, 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.

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.

Session #2: January 13
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. 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.

Note: The first written memorandum assignment will be issued (due January 27) Please note that you must bring two (2) hard copies to class on January 27, and also send an electronic version to Prof. Raffety.

Assignment:
- *Powers and Responsibilities*, Chapters 1-4; 5, 6 and 13;
- AG “Hot Topic” – Be prepared to discuss a current legal issue of the AG you are following, with a brief discussion of the legal underpinnings of the action you are describing.

No class on January 20. Martin Luther King Holiday.
Session #3: January 27

Consumer Protection: AGs and the Consumer Financial Protection Bureau

Guest Speaker: John Pitts, Deputy Assistant Director, Intergovernmental Affairs, Consumer Financial Protection Bureau (CFPB). When the Dodd-Frank Act created a new federal government 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. In this class, we will discuss the legal framework, state AG enforcement of federal rules, and some key cases.

Note: Memorandum #1 assignment is due at the beginning of class. You must bring two (2) hard copies to class on January 27, and also send an electronic version to Prof. Raffety.

Assignment:
- Powers & Responsibilities, Chapter 13, Consumer Protection
- Credit Reform and the States: The Vital Role of Attorneys General after Dodd-Frank by Mark Totten
- Additional Assignments May be Made

Session #4: February 3

Complex Roles: Advocate, Policymaker, Innovator, & Defender – Will the Real AG Please Stand Up?

1999. Guest speaker: Hon. Hubert H. “Skip” Humphrey III, who served as AG of Minnesota for 4 terms from 1983-(invited). His areas of focus included consumer protection, public health and the environment. Skip brought one of the first cases against big tobacco and settled it prior to the 46 state master settlement agreement. He is currently a consultant to the Office of Older Americans at the Consumer Financial Protection Bureau (CFPB). The discussion will focus on the multiple roles of the AG, with special emphasis on the role of advocate i.e. the “people’s lawyer.”

Assignment:
- Powers and Responsibilities, Chapter 21, Tobacco
- Additional assignments anticipated.

Session #5, February 10

AGs and Criminal Law

Guest Speaker (via Skype): Hon. John Suthers, who has served as AG of Colorado since January 2005. 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 discuss 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 and CWAG. General Suthers, who was also lead negotiator in the mortgage settlement with the states and the Consumer Financial Practices Bureau (CFPB), will also offer his insights on the relationship of the AGs and CFPB as co-regulators.

Note: The second written memorandum assignment will be provided in class and is due at the start of class on Monday, March 17. Please bring hard copies of papers to class and also email to Prof. Raffety.

Assignment:
- Powers and Responsibilities, Chapters 17 and 18.
- No Higher Calling, entire book. Please come with questions for General Suthers.

Session #5: February 17

AG Role in Representation: Who is the Client?

Guest Speaker: Hon. Steve Rosenthal, Virginia Attorney General in 1993-1994 and former Chief Deputy, currently a member of Troutman Sanders LLP. 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.

Note: The second written memorandum assignment will be provided in class and is due by the time of the class on Monday, February 25. Please bring two (2) hard copies of your memo to class and also email to Prof. Raffety.

Assignment:
- Virginia cases and materials distributed by Professor Raffety, including:
  - *Terry v Wilder*
  - *Brown v. Sielaff*
  - *Earl Washington*
  - *Health Care Litigation*
  - *AG use/abuse of power – CID*
  - *AG advice to state universities on sexual orientation non-discrimination policy*

Session #7: February 24
Perspectives
Continued class discussion of powers and duties of state AGs, using as examples some key cases and decisions that reflect and support the autonomy and independence of state AGs. Discussion will include the role of the AG in defending the state.

Assignment to be announced

Session #8: March 3
Private Practitioner Perspectives – Part 1
Guest Speaker: Hon. Walter Cohen, former Pennsylvania AG in 1995 and First Deputy from 1989-1995. (invited). We will discuss the broad scope of the AG’s responsibilities - an array of substantive legal issues, including the role of the AG in pharmaceutical litigation. 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? Does the AG have a duty to defend state laws? Discussion of AG roles and responsibilities re recent Penn State developments is included. General Cohen now practices law at the Harrisburg, PA office of Obermayer, Rebmann, Maxwell & Hippel, LLP. 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.*
- Topics for Memorandum #2 will be distributed in class.

Session #9: March 17
Private Practitioner Perspectives – Part 2
Guest Speaker: Hon. Jerry Kilgore, who served as AG of Virginia from 2002-2005, and now focuses on a governmental affairs practice at McGuire Woods LLP. General Kilgore 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 powers and duties of the Virginia AG Office. 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, mortgage foreclosure multistate, the landmark tobacco settlement, AG authority/issues regarding alcohol, and emerging legal trends. Note: Memorandum #2 due in class. You must bring two (2) hard copies to class, and send an electronic version to Prof. Raffety. Also, your Legal Research Paper topic must be determined by this class. The paper is due on April 21.

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://21statelawsuit.com/documents. Another site with documents can be found is 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://ag.state.nv.us/main.htm. Foreclosure Info (note NAAG Statement)
- Nevada AG - Read Bank of America complaint.

Session #10: March 24
State Attorneys General: Myths and Facts
Guest Speaker: Hon. Tony Troy, former AG of Virginia, a partner at Eckert Seamans in Richmond, Va. where his practice includes litigation, State AG issues, federal white collar crime and constitutional law, among other areas.
Assignment: To be announced.

Session #11: March 31
Guest speaker to be announced. Topic will include role of the AG in environment and perspectives on federalism re AG actions and decision making.

Session #12: April 7
Consumer Protection
Who is the Client?
Guest Speaker: Hon. Peg Lautenschlager, who served as Attorney General of Wisconsin from 2003-2006, and also has experience as a US Attorney, as a district attorney, and in private practice. State Attorneys General operate in the crossroads of law, public policy, and politics, dealing often with the question of "who is the client?" As has been discussed by previous speakers, the array of legal and policy issues that arise daily is diverse and challenging. General Lautenschlager will provide an overview of the powers and duties of the Wisconsin AG and will discuss the constitutional framework and legal/policy/political aspects of some key
cases she handled as AG.

**Assignment:**

**Public Nuisance Materials:**
http://www.wisbar.org/AM/Template.cfm?Section=Home

**No Child Left Behind**

**Securities Matters**
http://www.jsonline.com/business/29273379.html

**Session #13: April 14**
**Work Session for Legal Research Paper**

**Session #14 April 21**
**Wrap-up & Course Evaluations**
Legal Research Paper due in class. Please bring two (2) copies to class and send paper via email to Prof. Raffety. We will conclude the course and students will complete formal class evaluations.