GEORGE MASON UNIVERSITY SCHOOL OF LAW
Law 624 – State Attorneys General Seminar – Spring 2015

General Information
Dates: Mondays, January 5, 2015 - April 20, 2015
Time: 4:00 pm – 5:50 pm

Instructors: Profs. Chris Koopman and Lynne Ross
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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 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, 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.
- 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 and adjustments in class content will likely occur. 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 on 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. Paper Outline (Due March 30): 10%
2. Final Term Paper (Due April 20): 45%
3. Memorandum 1 (Due Jan. 26): 20%
4. Memorandum 2 (Due March 23): 20%
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 on March 2. You should plan to have your paper topic chosen and approved no later than Session 8 of the semester and you should plan to have an outline submitted by Session 11.

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 26, and the second will be due March 23.

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 5
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.

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 12
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.

Note: The first written memorandum assignment will be issued (due January 26) Please note that you must bring two (2) hard copies to class on January 26, and also send an electronic version to Prof. Koopman.

Assignment:
- Powers and Responsibilities, Chapters 1-4; 5, 6 and 13
No class on January 19. Martin Luther King Holiday.

Session #3: January 26
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. 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, and must be submitted via TWEN. You must also bring two (2) hard copies to class on January 26.

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

Session #4: February 2
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
Please come prepared to speak to the class for 5-6 minutes about the AG you are following and summarize a key case of personal interest, with focus on the underlying statute.
Time will be set aside to discuss Assignment 1 and to provide feedback.
Additional assignments anticipated

Session #5: February 9
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.
Note: The second written memorandum assignment will be issued in class and is due by the end of class on Monday, February 23. Please bring two (2) hard copies of your memo to class and also email to Prof Koopman.

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 16
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?

Session #7: February 23
Guest Speaker: Perspectives on Duty to Defend and Emerging Trends in the Federal-State Relationship
The discussion will focus on emerging legal trends as state-federal roles and responsibilities are shifting, contracting and expanding in areas such as health care, immigration, public lands, water resources, environment and energy. What roles do AGs play from a legal and public policy perspective? Are these roles appropriate? Note: The second written memorandum assignment is due by the end of class on Monday, February 23. Please bring two (2) hard copies of your memo to class and also email to Prof Koopman.

Assignments
To be announced.

Session #8: March 2
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: Topics for the Term Paper will be distributed in class. Students may propose another topic to be approved by professors by March 16. The Term Paper is due April 21.

Note: Students must confirm in class or via email their legal research paper topic. If students do not select a topic from the suggested list, students must present one page proposal in the March 16 class or via email, and professors will review for approval by March 20.

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 #9: March 16  
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?

Assignment:

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?


• Colombia Law (National State Attorneys General Program): http://web.law.columbia.edu/sites/default/files/microsites/attorneys-general/AGs%20and%20Public%20Health%20Doc..doc


1. 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?

• Huffington Post: http://www.huffingtonpost.com/davidhalperin/state-attorneys-general-o_b_4677145.html


2. 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?

- Kentucky AG: [http://ag.ky.gov/forprofit/Pages/default.aspx](http://ag.ky.gov/forprofit/Pages/default.aspx)

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 23**

**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.

**Note:** Memorandum #3 assignment is due at the beginning of class, and must be submitted via TWEN. You must also bring two (2) hard copies to class on March 23.

**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: March 30
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.

NOTE: Students must submit a detailed outline of this final paper via TWEN. Please come prepared with any questions you may have as to your final research papers. We will reiterate our expectations and the grading process.

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 6
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.
Assignment: To Be Announced

Session #13: April 13
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.

Session # 14: April 20 – FINAL CLASS
Wrap-up
We will conclude the course with a review of AG roles and responsibilities. Please come with an action taken by your AG which you believe exemplifies the importance of the Office of AG and has a significant positive
impact on behalf of the citizens of the state.

**Note:** The Research Paper is due in class. Please bring two (2) copies to class and send via TWEN.