



ANTONIN SCALIA LAW SCHOOL

Law 624 – State Attorneys General Seminar Syllabus – Spring 2024

General Information

2 credit course

Dates: Tuesdays, January 16, 2024- April 16, 2024

Time: 4:00 pm – 5:55pm.

Instructors: Prof. Lynne Ross and Prof. Divonne Smoyer

Lynne Ross lross3@gmu.edu office hours by appointment

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Course Description

The Office of State Attorney General (AGO) has evolved greatly over time and has gained importance in recent decades. This is true within the states/territories in which they function, but more so in relation to other legal and policy actors nationally and even internationally. Virtually every public policy issue today has a legal component that falls within the purview of the state Attorneys General (AGs). This seminar, which focuses on the public practice of law, addresses the unique role of the Attorney General (AG) in our legal system; the powers and duties of the AGO; the complexities of the role as the state's chief legal officer, including the political dynamics that have made AGs into the political force they are today; the oft-competing perspectives of AG work within the broader context of law and policy; and the role of AGs in shaping national issues. The class focus is the public practice of law through the viewpoint of the Attorney General, the chief legal officer of the state. Particular attention is paid to perspectives on federalism, the ever-changing landscape of state-federal relationships, and the relationship with other state and local officials.

Law 624 will focus on core areas of the Office of AG, including understanding office organization, roles of key staff positions, and substantive work in the office, as well as following AGs (to be assigned via email in advance of first class). Throughout the semester, lectures, reading assignments (to be assigned by weekly email), and class discussion will focus on many current state AG issues, highlighting legal authority, and examining emerging legal issues. The course begins with an overview of the culture, legal authority, and optics surrounding the AGO, followed by the fundamentals of state AG work, including a survey of the law and related issues pertaining to jurisdiction, powers, duties, staff responsibilities, the AG role in state government and on the national stage.

Current and former AGs, key AGO staff, and other experts in substantive AG matters are invited to guest lecture, offering their insights on the role and work of AGs. These speakers will engage directly with students, affording an opportunity to become acquainted, to dialogue about legal issues of concern, and often, to provide some advice about public service careers and choices made along the way. Students are expected to be prepared to engage with the speakers on a meaningful give and take basis.

Prof. Ross, former Executive Director of the National Association of Attorneys General (NAAG), is a consultant to a Richmond law firm and has her own consulting practice specializing in state /intergovernmental matters with a focus on state Attorneys General. Her prior NAAG experience of 27 years includes her role as deputy/legislative director. She also served for four years as head of Congressional relations/legislative director at U.S. EPA. As NAAG Executive Director, she managed a 50 person staff working to assist AGs in their substantive work ranging from tobacco, consumer protection, antitrust, criminal law, environment, and federal legislation, among other areas, and was eyes and ears for AGs regarding federal agency activities and outreach with state and other associations.

Prof. Smoyer, an experienced legal advocate, is principal at Albermarle Law & Policy, PLLC, where she advises clients on a wide range of matters, with a focus on legal/policy matters involving state Attorneys General. For two decades she has worked with clients to avoid becoming the target of state investigations and to resolve issues before they become litigation.

Learning Outcomes

- Students will be able to apply information learned in this course and skills to real world situations in public or private practice connected to the roles of state Attorneys General.
- Students will gain an understanding of the status of the AGs in state government, including relationships with their Governor, the legislature, and the state and federal judicial system; and perspectives on the inevitable conflicts that arise regarding agency representation.
- Students will understand the AG state-federal relationship and how federalism issues emerge and get resolved in an ever-changing environment.
- Students will understand the role of the prosecutor in the justice system (state and local) and the pros and cons of decisions based on prosecutorial discretion.
- Students will meet and interact with AGs and other guest speakers..

Student Information (to be provided in advance of first class)

Prof. Ross will send students an email requesting information about individual interests by January 8, with a response back to both professors due by January 10. We want to get to know our students in advance, so if you have any specific interests/goals, we can address in class and plan accordingly. Please watch for this email.

Following an Attorney General

Students will be assigned an AG to follow prior to the first class. Beginning with the 2nd hour of the January 16 class, students should be prepared to report on their AG with 5-minute presentations. Time will be set aside at subsequent classes for these reports. For these initial reports, students should research AG bios, term in office, political affiliation, scope of office responsibilities (Powers & Duties book, State Constitution authorizing the Office, and AG websites and two current legal issues your AG is involved in, whether state-wide litigation, pending multistate litigation, or litigation involving a national or federalism issue.

Throughout the semester, it is expected that students will research and understand the powers and duties of their AG; and weekly monitor significant initiatives and developments, focused on the Powers and Responsibilities book chapter assignment and theme for the class that week. Be prepared weekly to keep track of what your AG is doing and why, noting brewing conflicts, especially with other state or federal officials. The goal is to step

into the AG's shoes and understand and be able to explain why significant actions are taken and on what legal basis.

Text

State Attorneys General: Powers and Responsibilities, Emily Myers, editor, 4th edition, National Association of Attorneys General, 2018*

Note this book has useful state- by state- information at the end of the book, including Authority for the Office of Attorney General, key cases, and States and Other Jurisdiction. Chapters will be assigned weekly.

*Note: We prefer you use the fourth edition of the *Powers and Responsibilities* book, which contains the most up-to-date cases and issues. The book will be available in the bookstore. Students may cite prior versions, *State Attorneys General: Powers and Responsibilities*, Lynne M. Ross, Editor, The Bureau of National Affairs, 1990; *State Attorneys General: Powers and Responsibilities**, second edition, Myers and Ross, co-editors, National Association of Attorneys General (2007); and *State Attorneys General: Powers and Responsibilities*, Emily Myers, editor, third edition, 2013.

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 website of the AG they are following, as well as to visit, review, and utilize the following web resources throughout the semester:

- AG Alliance Partnership <https://www.agalliance.org/ap/>
- National Association of Attorneys General: www.naag.org
- NAAG Multistate Litigation and Database <https://www.naag.org/news-resources/research-data/multistate-settlements-database/>
- District of Columbia AG: <http://oag.dc.gov>
- Virginia Attorney General Office: www.oag.state.va.us
- Maryland Attorney General Office: www.oag.state.md.us
- GMU Law and Economics Center's AG Program: <https://masonlec.org/divisions/mason-attorneys-general-education-program/>
- The Federalist Society: <https://fedsoc.org/>
- Institute for Legal Reform - State AGs: <http://www.instituteforlegalreform.org>
- Legal Newline <https://legalnewline.com>
- U.S. Department of Justice (DOJ): <https://www.justice.gov/>
- Federal Trade Commission (FTC): <https://www.ftc.gov/>
- Consumer Financial Protection Bureau (CFPB): <https://www.consumerfinance.gov>
- Bookmark the AG website of the AG you are following
- Sign up to receive the press releases of the AG you are following

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. This means reading as assigned, participating in the class discussions, engaging with outside speakers, and asking questions.
- Students will complete all 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 class must 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.
- Unless otherwise agreed upon by the instructors in advance, students will submit all their assignments on time. With rare exception, **any** late assignments will be marked down a minimum of one full letter grade. This means A to B, B to C etc. 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 directions for any assignment will result in a lower grade. Grading is based on a curve in accordance with school policy.
- The instructors will maintain an open-door policy and be available to field any questions, concerns, comments, etc. within a reasonable timeframe.
- Use of Generative Artificial Intelligence is prohibited.

Attendance

Attendance will be taken at the beginning of every class and tracked throughout the semester. Reminder: a student who is not present for at least 75 percent of a session is considered absent for that session. Your instructors would appreciate a heads up via email if you are going to be absent for a class. Please email both professors.

Communication with Students

An updated syllabus #2 will be sent to all registered students prior to the first class. This syllabus will list assignments for the January 16 and 23 classes.

Prof. Ross will send weekly emails with information about the upcoming class, including topic and assignments. The weekly topics noted in the syllabus may need to change to accommodate outside speakers or current events. So please be sure to rely upon the weekly class updates, especially for reading assignments. If you do not receive the email by cob Thursday evening, please email Prof. Ross. Virginia law requires that we assure confidentiality of all student address information so group messages will be sent as "bcc" to all recipients. Individual emails will be addressed to a student's GMU email. Both instructors will respond to emails in a reasonable amount of time. If you need to meet, either in person with Prof. Ross or Prof. Smoyer (or both), office hours can be scheduled upon request, in person or on-line conference.

Class Participation

It is very important to attend class and to participate in the discussions. Note that 10% of your grade will reflect class participation. Records will be maintained on participation and attendance, in accordance with law school regulations.

Grades

Grades in the course will be completed reflecting 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 as will papers with typos and grammatical issues. Grading will be based on a curve in accordance with school policy. An A paper will be well-written and researched; respond to all questions presented in the assignment; have no typos or grammatical errors; and have excellent rationale and analysis well-documented by primarily legal sources. Grades will be lowered for reasons including typos, run-on sentences, no punctuation, grammatical errors, no analysis, and no

legal citations to support your perspectives. The law school's academic regulations allow using class participation to increase or reduce a final course grade to the next higher or lower half grade (*e.g.*, from a B to a B+ or from an A- to a B+).

Grades will be based on the following:

Class Participation	10%
Know Your AG	10%
Memorandum	25%
Outline of Term Paper	5%
Term Paper	50%

Memorandum – Writing Assignment 1

Due February 6 at 4 pm. Please bring two copies to class and email both professors.

The topic for the memo will be presented and discussed during the 2nd class (Jan. 24). It will be a memorandum not to exceed 4 pages (please number) from you to the AG. **Details:** Please put your name on the front of the paper. Assignments must be in Times New Roman, 12 pt. font, double-spaced, and one-sided. Page limits are inclusive of all citations, which should be footnotes (10-point type please) in accordance with Blue Book format. Failure to follow instructions as to format; or to respond to issues presented; or a lack of legal citations to substantive legal authorities (writing assignments CANNOT be based solely on newspaper or other articles or opinions) will result in a lowered grade by at least one level or more (A to B). More details to be explained in class.

Term Paper Outline (more details on the term paper are immediately below)

Due March 13 at 4 pm. Please bring two copies to class and email to both professors.

The outlines should demonstrate serious thought and summary of your term paper. It need not be extremely detailed, but it should indicate an outline of how you plan to address the topic and demonstrate knowledge of legal sources and material learned in class and through speakers. Organization is key. Instructors will make every effort to return within 8 days. Please put your name on page 1 of the outline. If more direction is needed, professors will reach out to students individually. We want to make sure you are on track.

Final Term Paper - Writing Assignment 2

Due April 16 at 4 pm Please bring two copies to class and email to both professors.

The primary assignment for this class will be a paper not to exceed 15 pages. Professors will discuss the topic and expectations in the second or third class. **Details:** Please put your name on page 1 of the paper. Assignments must be in Times New Roman, 12 pt. font, double-spaced, one-sided, with page numbers. Page limits are inclusive of all citations, which should be footnotes in accordance with Blue Book format (10-point type please). Failure to follow instructions as to format or to respond to issues presented or a lack of legal citations to 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. Please put your name at the right-hand corner of first page and indicate whether you are a graduating 3L, so indicate on page 1.

Instructor Evaluations

Towards the end of the semester, course evaluations will be conducted online. Notices of the 10-day period in which online student evaluations can be completed will be sent to your Mason email accounts. Both Professors should be evaluated. We want your feedback as it helps us make changes/improvements.

Class Schedule

Session #1: January 16

Overview of the Course / Powers and Duties (Part I) and Rules of the Road – AG 101

Professors will review the syllabus, and discuss administrative aspects of attendance, class participation, grading, writing assignments and course materials and our expectations of students and learning outcomes. In this first class, Professors will introduce you to the Attorney General Office (AGO) and AGs and their staff, the culture, the relevant acronyms, legal framework, and individual and collective actions of AGs in their states and beyond. An overview of the role of Attorneys General (AGs) will be provided, citing their powers and duties broadly. Topics will include a brief historical background, methods of selection, qualifications to run for office, and the varied backgrounds of AGs in office today. During the semester, there will be discussion of the common law authority of AGs, the complexities involved in potential conflicts in representation defining who is the client, the role of the AG in defending the states, the tools that AGs use to express their views, and the “people’s lawyer” role that many AGs reference in their advocacy, legislative, and public policy initiatives.

Students should be prepared to report/introduce the AG that has been assigned to follow throughout the semester. See page 2-3 of this syllabus for details.

Session #2: January 23

Overview of the Course / Powers and Duties (Part II)

The AG 101 overview continues with the basics, including structure of the office, staff roles and functions, substantive areas of AGOs, e.g. consumer protection, antitrust, environmental protection, civil rights, and criminal enforcement, among others. An overview of civil and criminal authority and differences and similarities among AGOs will be provided. Discussion will continue regarding relationships of the AG to the Governor, legislature, and citizens; opinions and their impact; role of the press; and key cases where the independence and authority of the office has been reaffirmed by courts. Gaining an understanding of the culture of the office, as well as the authority of each position/section/division adds to an understanding of how AGs accomplish their goals, meet public expectations, and perform their roles as the states’ chief legal officers.

Writing assignments will be discussed, along with grading expectations.

Student presentations on the AG followed will continue.

Session #3: January 30

Introduction to Political Aspects of AG Life, AG Ethics, and National AG Organizations

Attorneys General (AGs) have been highly visible on many partisan issues, including elections. This class will focus both on partisan political activity and how (or not) it impacts the role, profile, and cooperation of state AGs; and discuss the AG national membership organizations such as the Attorney General Alliance (AGA) and the National Association of Attorneys General (NAAG). The political organizations are the Republican Attorneys General Association (RAGA) and the Democratic Attorneys General Association (DAGA).

Session #4: February 6

Fundamentals: Consumer Protection- Privacy /Multistate Investigations 101

AGs are key advocates for consumer protection, and their enforcement authority derives from consumer protection statutes that give them enormous power. Often AGs are at odds with the business community, both large and small. Prof. Smoyer will focus on the AG role in consumer protection, with emphasis on multistate actions. How does this process get initiated and when, where, and how does it end? Discussion will include case selection and criteria; structure and oversight of a multistate; differences in legal strategy and state laws; use of outside counsel, role of plaintiffs' lawyers, privacy and AG action in this space.

Session #5: February 13

Role of the State Solicitor General

An increasingly important role in the determination of the state's legal policy has been the creation of the position of Solicitor General (SG) in AG offices. Most AG Offices now have a dedicated position, the Solicitor General, who oversees and manages the civil appellate work of the office. In other offices, the person responsible for this function may be called the Appellate Chief. The SG also plays a significant role on national issues and in turn, on national politics to the extent high-profile cases are moving through the courts towards the Supreme Court and having policy impacts, such as the Affordable Care Act and immigration, among many other areas. The Solicitor General represents the state in matters before the U.S. Supreme Court and in other appellate courts. SGs, who coordinate closely on many matters, are also affected by partisan politics particularly on national issues/cases.

Session #6: February 20

Role of the Chief Deputy, Chief of Staff, and Communications

Supporting the Attorney General in most offices are 3 key positions including the Chief Deputy, Chief of Staff, and Communications lead (different titles in AGOs). How do these positions function and what are their responsibilities? Case studies will include legal authority, real life situations, and more.

Session #7: February 27

Private Sector Perspective on State AGs

Given the power and authority of AGs both at the state and federal levels, and their significant powers -- particularly in consumer protection -- the private sector has deployed partnership and engagement strategies with the AGs. Often, this is welcomed by the AG and his or her staff who may benefit from the legislative, policy and/or legal expertise of those in the private sector. This panel moderated by Prof Smoyer consists of legal and government affairs professionals on their approaches to working with AGs on matters that may impact the business community.

SPRING VACATION MARCH 4-8 – No class Tuesday, March 5

Session #8: March 12

Meet the Attorney General - AG as Prosecutor TBA

The criminal law jurisdiction of AGs varies from state to state with only a few offices having full original criminal jurisdiction where the AG functions as the main local/state prosecutor. In many states the AGO has concurrent and/or supplemental jurisdiction and primarily prosecutes murders and other such high-profile cases. This session will explore these roles, with discussion including the legal authority of the AG; relationships with the U.S. DOJ /state-federal roles and coordination where appropriate; and role of local prosecutors vs. AGs.

Know your AG class updates continue as well as discussion of key legal issues and “hot” AG topics.

Session#9: March 19

Meet the Attorney General – AGs As State Chief Legal Officers and On Federalism Issues TBA

As the chief legal officers, of their states, AGs confront a range of issues that are sometimes divisive with colleagues around the country. These issues range from conflicts with a neighboring state to pro and con defense of the current Administration. This session will explore these roles and relationship to the state and national government.

Know your AG class updates continue as well as discussion of key legal issues and “hot” AG topics

Session #10: March 26

Meet the Attorney General - AGs as Change Agents TBA

AGs can bring great changes to their states through their policy advocacy (including legislative) as well as through litigation and power of the bully pulpit. This session will explore how AGs use their authority to implement change in their states.

Know your AG class student updates will continue as well as discussion of key legal issues and “hot” AG topics.

Session #11: April 2

General discussion of issues/feedback/legal trends to the Meet the Attorney General sessions.

Know your AG class student updates continue as well as discussion of key legal issues and “hot” AG topics.

Session #12: April 9

Scalia Law Graduates Panel – What They Wish They Had Learned in This Class (aka what we did not teach them that would have been relevant to their career positions now)

A panel discussion with former students in Law 624 now working in areas discussed in this State AG Seminar.

Know your AG class student updates continue as well as discussion of key legal issues and “hot” topics.

Session #13: April 16

FINAL WRAP-UP

Complete Know your AG student presentations. Time set aside for students to complete evaluations of both profs.

The class will conclude the course with a review of AG roles and responsibilities. What's your own perspective? Are AGs doing their jobs? Should they be re-elected? Should their authority be enhanced or 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? Your professors invite your feedback.