



ANTONIN SCALIA LAW SCHOOL

Law 624 – State Attorneys General Seminar Syllabus – Spring 2022

General Information

2 credit course

Dates: Tuesdays, January 18, 2022– April 19, 2022

Time: 4:00 pm – 6:00 pm.

Instructors: Profs. David Blake and Lynne Ross

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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 on national issues today.

Throughout the semester, lectures, reading assignments (to be assigned by weekly email) and class discussion will focus on many current state AG issues, highlight legal authority, and examine emerging legal issues. The course begins with an overview of the culture, legal authority, and optics of the AGO, followed by a survey of the law and related issues pertaining to jurisdiction, powers, duties, staff responsibilities, and AGs role in state government and on the national stage. The focus is on the public practice of law through the viewpoint of the state AG. Particular attention is paid to perspectives on federalism and the ever-changing landscape of state-federal relationships.

Current AGs and top staff are invited to guest lecture, offering their insights on the role and work of AGs. These speakers will engage directly with students, thus 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.

Case studies will focus on an array of topics related to the role of AGs throughout the semester including cybercrime, protection of public health and safety (including COVID-19), medicinal/recreational marijuana, criminal justice reform, multistate investigations in consumer protection, including the tech industry, role of outside counsel, and more partisan actions when Republican and Democratic AGs file litigation. With many mid-year AG elections on the horizon, 2022 promises a continued highlight on the power of AGs, with a big impact on individual lives, the economy, the law, and our nation's standing in the world.

Prof. Blake, former Chief Deputy Attorney General for Colorado, is currently the General Counsel for the Attorney General Alliance (AGA) and Conference of Western Attorneys General (CWAG). His prior experience includes fourteen years with the U.S. Department of Justice as an Assistant U.S. Attorney, civil and national security attorney and he is a former Partner with Squire Patton Boggs. Prof. Blake is a graduate of Scalia Law.

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. Her prior NAAG experience of 27 years includes her role as deputy/legislative director. Later, she was legislative director at U.S. EPA.

Learning Outcomes

- Students will understand and be able to articulate a working knowledge of the role of the state AG, their powers and duties, and position in our state and federal justice systems.
- Students will be able to identify and analyze the legal authorities that AGs rely upon in national multistate litigation and other state-federal legal matters; and use this knowledge to understand the basis of these cases.
- 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. Your professors hope that perhaps, students will be inspired to pursue careers in public service.

Following an Attorney General

At the first class, each student will be assigned an AG to follow (names provided by professors) 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 weekly monitor significant initiatives and developments, presenting a very brief (3-5 minutes) report at the beginning of class, focused on the Powers and Responsibilities chapter assignment and theme for the class that week. Be prepared weekly to present what your AG is doing and why. Beginning with the second class, students will be asked to present their AG, including background, an explanation of their legal authority, key policy initiatives involving multistate lawsuits/investigations your AG is involved in; and heads up on 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.

Each student will be tasked with becoming the "substantive" expert in a substantive area of hot topics/discussion. Further discussion of this in the first class.

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*, 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 web site of the AG they are following, as well as 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 Newsline <https://legalnewsline.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>

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 participate in the class discussions and engage with outside speakers.
- 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, 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 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. 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, 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.

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 if you are going to be absent for a class.

Communication with Students

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 with Prof Blake (or both) via Zoom, office hours scheduled upon request.

Class Participation

It is very important to attend class and participate in the discussions. Note that 10% of your grade will reflect class participation. Records will be maintained as to 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. With six or more students contemplated, 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 citations to support your perspectives.

Grades will be based on the following:

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

Memorandum – Writing Assignment 1

Due February 8 @ 4 pm. Please bring one copy to class and email to both professors.

The topic for the memo will be presented and discussed during the 2nd class. It will be a memorandum not to exceed 5 pages from you to the AG. **Details:** Please put your name on front of the paper. Assignments must be in Times New Roman, 12 pt. font, double-spaced, one-sided and must be submitted via email. Page limits are inclusive of all citations, which should be footnotes 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 articles or opinions), will result in a lowered grade by at least one level or more.

Term Paper Outline

Due March 8 @ 4 pm. Please bring one copy 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. Organization is the key. Instructors will make every effort to return within 10 days. Please put your name on page 1 of the outline.

Final Term Paper – Writing Assignment 2

Due April 20 @ 4 pm Please bring one copy 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 and must be submitted via email. Page limits are inclusive of all citations, which should be footnotes 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 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 whether you are a graduating 3L.

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 will be evaluated.

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Class Schedule

Session #1: January 18

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

Students will introduce themselves and talk about their expectations for the course. 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 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.

In Part 1, Prof. Ross will provide an overview of the role of AGs, citing their powers and duties broadly. Topics will include a brief historical background, methods of selection and 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.

Prof. Blake will assign an AG for students to follow throughout the semester, and to report on briefly at the beginning of each class. Professors will explain the writing assignments (overview of expectations in first class) and more specifics in either the second or third class session.

Session #2: January 25

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

Profs. Ross and Blake will continue the overview begun in the first class with a focus on the key functions/roles of the OAG, including consumer protection, antitrust, environmental protection, civil rights, criminal, among others. Discussion will continue regarding relationships of the OAG to the Governor, legislature, and citizens as well as key cases where the independence and authority of the Office has been reaffirmed by the court.

In Part 2, Prof. Blake will discuss the structure and operation of an AG Office, using the Colorado AG Office as a case study. 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.

Prof. Ross will discuss writing assignment 1 and Prof. Blake will discuss the topic for the Term paper and the related outline.

Students will introduce the AG they will follow during the semester.

Session #3: February 1

Influencers: Political Aspects of AG Life and National AG Organizations

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 also discuss the AG national membership organizations such as the AGA and NAAG. The political organizations are the Republican Attorneys General Association and the Democratic Attorneys General Association.

Session #4: February 8

Relationships with the Governor, Other State Officials & State Agencies

As the chief legal officer of the state, the AG holds a unique position in state government as both legal adviser to the Governor and state agencies and as the people’s lawyer representing the public interest of the citizens. This class will explore these relationships and answer the questions of: can the Governor tell the AG what to do? What happens if the Governor won’t accept the AG’s advice? Are AG opinions binding? How are conflicts in representation generally handled? Who is the Client? What does represent the public interest mean? Discussion will also include how COVID-19 has affected these relationships and how partisan politics may impact the outcomes on state legal policy and on national issues.

Session #5: February 15

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. SGs, who coordinate closely on many matters, are also affected by partisan politics particularly on national issues/cases.

Session #6: February 22

Role of the Attorney General in Consumer Protection/Multistate Investigations

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. This class will focus on understanding the AGs role in consumer protection, with emphasis on multistate actions. How does this process get initiated and when, where, and how does it end? Issues to be discussed include case selection and criteria; structure and oversight of a multistate; differences in legal strategy and state laws; and use of outside counsel among other matters.

Session #7: March 1

Role of the AG in Criminal Law

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 v AGs. Other topics of discussion will include efforts to curb trafficking of women and children; domestic violence; and child abuse.

Session #8: March 8

Role of the AG as Advocate for Change in the Justice System – Social Justice Reform

Recent events of violence across the nation have increased the demands on AGs to investigate crimes, to address calls for police reform, or in some cases, to prosecute those accused of committing these crimes. AGs are responding with multi-faceted approaches and several AGs are very involved with social justice reform, advocating for change in the justice system. The approaches to resolution of these matters vary from state to state, and the AG is the key player in many instances. This class will focus on the multi-faceted role of the AG in such matters, including discussion of legislative and other reforms.

Spring Vacation March 14-18

Session #9: March 22

Representing Clients Before AG Offices: Perspectives of A Former AG

After AGs leave office, many join law firms or set up their own consulting firms and represent clients who have received inquiries of civil investigative demands (CIDs) from AG Offices. Often, these former AGs are called upon to help their former colleagues. This class will focus on this expanding business of AG Practice Groups in big law and consulting firms and their role in resolving client concerns related to AG actions. What is the framework/parameters for these interactions, the political/ legal/ policy implications, and the pros and cons of their potential actions? How are AGs and formers viewed by the Congress and the Administration? Do lobbying rules apply? Please come to class with questions!

Session #10: March 29

The Role of State AGs in our Federalist System – Shifting Sands?

This class will focus on the ever - evolving role of the state AG in our federalist system and the relationships between the states and the federal government. How do AGs make judgment calls as to their appropriate roles and relationships? Will the AG role in setting national legal policy continue to expand or contract and will the business community push restrictions on AG authority or cooperate to bring about change?

The array of legal and policy issues that arise daily is diverse, challenging, and always potentially shifting course, whenever the constitutional framework and legal/policy/political aspects of the ongoing state-federal relationship is redefined by the Administration and Congress. With a new Administration, what will once again shift, bringing with it new potential for state AG actions pro and con? Please think about how the AG you are following fits in to this and be prepared to discuss.

Session #11: April 5

Role of Attorneys General in Shaping Technology Policy

New technology developments are announced every day, and often face scrutiny by AGs from consumer protection and privacy aspects, among others. Whether it is facial recognition technology, artificial intelligence-related, safety or data issues related to electric cars, or Facebook or Google, it's an ever-expanding list. AGs rely upon their existing legal authority to act, absent other clear legislative directives. The new technology area is moving fast, posing challenges in learning how it operates and what the issues are. What are the outcomes and how are AGs initiatives being received? How do AGs respond to data breaches and how is the privacy landscape changing, including CCPA impact? And how is the private sector responding and, in some cases, collaborating with AGs? Case studies will include Facebook-related issues as well as other emerging issues.

Session #12: April 12

Emerging AG Hot Topics

The class will focus on several hot topics of AG interest, including the role of the AG/state in medicinal and recreational marijuana; pandemic response; and state legal developments on cybercrime, among others. Each of these topics (and there are many more that could pop up) demonstrate once again the broad scope of the AG's powers and duties. Prof. Blake will teach, having been at the forefront of the Colorado experience with marijuana and subsequently, implementing the state's regulatory regime.

Session #13: April 19

FINAL WRAP-UP

Pros Blake and Ross will conclude the course with a review of AG roles and responsibilities. Students will discuss their AGs in a 10 minute or less presentation, with the focus on lessons learned this semester, particularly noting wisdom/information offered by guest speakers. 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.