The Role of the State Attorney General
Syllabus — Fall 2014
Columbia Law School

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Note: Syllabus is subject to change depending on the schedules of visiting attorneys general

Week #1 — September 4, 2014

The Authority and the Culture of the Role of the Attorney General

This week explores the nature of the authority and the culture that pervades offices of attorney general. The first chapter of Walter Mondale's The Good Fight, which covers Mondale’s time as the Attorney General of Minnesota over 50 years ago, serves as a good introduction to the Role of the Attorney General. Used with the permission (and to the personal delight) of the author, this edited chapter combines almost all aspects of the office of attorney general, e.g., the common law, statutory authority, conflicting legal and policy demands, resource restriction, the role of academics and outside counsel, hard core partisan politics and personal ambition. The chapter is also testimony that for all of the changes in the legal and political world, some things remain remarkably similar.

Also included in this first week are edited sections of Paul Wilson's "A Time to Lose, Representing Kansas in Brown v. Board of Education," which show a very different side of the nature of state attorney general authority that are also covered in the course.

In contrast, and because the culture of offices of attorney general is marked by a "fix it" agenda, the first week also contains readings that describe state "parens patriae" and the duty of state attorneys general to represent all the people of their states and not be limited to representing a specific state agency.


6. Florida ex rel. Shevin v. Exxon Corp., 526 F.2d 266 (5th Cir. 1976) (edited)

7. Collection of Alabama Materials:
   a. Ex parte Weaver, 570 So.2d 675 (Ala. 1990)
   b. Riley v. Cornerstone Community Outreach, Inc., 57 So.3d 704 (Ala. 2010)
   c. Ex parte King, 59 So.3d 21 (Ala. 2010)
   d. Newspaper articles (2010-2012)
Week #2—September 11, 2014

The Structure of the Office of the Attorney General

State attorneys general have never fit easily into the existing framework of state government. This week explores the independence inherent in the office of modern attorney general.

5. Delaware AG Investigates Own Client, Celia Cohen, Grapevine Political Writer, Sept. 15, 2007
9. “Who is the Client?” – A Role Playing Hypothetical
Week #3 — September 18, 2014

Model Rules and the Ethics of Client Representation

The constitutional and statutory duties of attorneys general can be at variance with the Model Rules of Professional Responsibility. This week focuses on core ethical readings as well as concrete ethical dilemmas that are faced by almost every attorney general.


6. Ethics Hypotheticals
Week #4 — September 25, 2014

Consumer Protection

Since the passage of state Unfair and Deceptive Practices Acts (UDAP) in the late 1970’s, all state attorneys general have responsibility in the area of consumer protection. This week discusses the broad nature of that authority as well as its limitations. Future weeks will discuss how state attorneys general cooperate with other attorneys general on multistate matters, and also how UDAP cases interact with the private bar and the federal government.


6. Accretive Readings – 2012-2014:

   http://www.mass.gov/ago/consumer-resources/consumer-assistance/mediation-services/local-consumer-programs.html


10. Minnesota Attorney General v Accretive various articles 2012- 2014
Week #5 — October 2, 2014

Multistate Advocacy

Over the last twenty five years, attorneys general have increasingly worked together in multistate advocacy. This section explores this development in a wide range of different subject matter areas.

This week we will be joined by Nick Gess, Esq. who is Of Counsel in the firm of Bingham, McCutchen and who previously served in several senior capacities in the United States Department of Justice.


2. Early cases:


7. Presentation of Mo AG Chris Koster to the Winter NAAG Meeting, Feb 2014


Protect Military Servicemembers from Predatory Lending Scheme” [Press Release]

11. Multistate Case Hypothetical (2014)
Week #6 — October 9, 1014

AGs and U.S. Supreme Court Practice

Other than the U.S. Solicitor General, state government is by far the most frequent litigant in the U.S. Supreme Court on such issues as the death penalty, climate change, gun control, foreclosure jurisdiction, immigration, voting rights and, of course, the Affordable Care Act.

This class will study states’ practice before the Supreme Court, including the important role played by attorneys general submitting amici curiae briefs.

This week we will be joined by Dan Schweitzer, Esq. who serves at the Supreme Court Counsel for the National Association of Attorneys General (NAAG).

1. Statistics on Amicus Briefs filed by States in the U.S. Supreme Court, NAAG (2012)
2. “Results of Cert Petitions on Filed by States” NAAG (2012)
7. Amicus Brief (Jeffrey Sutton), City Of Chicago v. Morales (1998) (Winner of NAAG Best Brief Award)
8. Respondent’s Brief (Ted Cruz), Medellín v. Dretke Director, Texas Department Of Criminal Justice, Correctional Institutions (2005) (Winner of NAAG Best Brief Award)
AGs and the Issuance of AG Opinions

All state attorneys general have the authority to issue formal opinions. They provide advice on issues large and small to government actors, from municipalities up to the Governor. This section reviews that authority, and the factors that go into when, and when not, to issue an attorney general opinion.

1. Aid for Women v. Foulston, 427 F. Supp. 2d 1093 (D. Kan. 2006), vacated as moot following repeal of statute, 2007 WL 6787808 (10th Cir. 2007)

2. State Attorneys General Powers and Responsibilities, Chapter 5, “Opinions,” Emily Myers, Antitrust Chief Counsel, NAAG; Andy Bennett, Judge, Tennessee Court of Appeals, 2013


5. “Virginia Attorney General Ken Cuccinelli was just doing his job,” Jeff Schapiro, Richmond Times-Dispatch, September 16, 2012
Litigation Control, the Role of the Attorney General and Failure to Defend

Although the office of state attorney general has existed in every state since the signing of the U.S. Constitution, there is still vigorous debate as to the degree state attorneys general control state litigation.

This section explores the common law and statutory rights of attorneys general in the aftermath of Hollingsworth v. Perry, 133 S. Ct. 2652 (2013) including marriage equity related litigation and other hot button topics.

For a comprehensive discussion of the Failure to Defend issue, see: http://web.law.columbia.edu/attorneys-general/ag-101-brief-introduction-world-attorneys-general/state-attorney-general-nondefense


5. Same Sex Marriage Press – Feb. 12, 2014


Week # 9 – October 30, 2014

Relationship of the Attorney General and Private Lawyers

Attorneys general increasingly allow private lawyers to represent state government sometimes on a contingent fee basis and sometimes on hourly fee retention. This section explores the legal and ethical issues that arise from attorneys general allowing state legal work to be done by private counsel.

1. AT&T Mobility LLC v. Concepcion, 131 S. Ct. 1740 (2011)
2. AT&T Mobility LLC v. Concepcion - BNA Report - April 27, 2011
4. Private Attorney Retention Sunshine Act, Model Legislation
8. Attorney General Ellen Rosenblum's 'special' relationship with the Markowitz firm, Duin, Steve, The Oregonian, August 26, 2014
Relationship with Federal Government

State attorneys general have a complex relationship with the federal government, including the Department of Justice, local U.S. Attorneys, and other federal agencies. In most cases, attorneys general cooperate with federal agencies to carry out federal policy. In some cases and in some states, such as on matters arising from health care, immigration, voting rights and the environment, attorneys general attempt to either challenge or prompt federal action. This section analyzes this complex and changing relationship.

This week we will be joined by Perry Zinn-Rowthorn, the Chief Deputy Attorney General of Connecticut.


2. “They Warned Us: The Watchdogs who Saw the Subprime Disaster Coming—and How they were Thwarted by the Banks and Washington,” Robert Berner and Brian Grow. Business Week, October 20, 2010


5. Dannon Settlement 2010:


7. Payday Loans:
   b. Cohen, B. “AG Madigan uses Dodd-Frank Act to sue Chicago-area lender”
Legal Newsline, 2014, March 21


10. Department of Justice Sues Standard & Poor’s press release and news articles

Week # 11 — November 13, 2014

Negotiations Exercise
Attorneys General and Prosecution of Public Corruption

Public corruption cases are often the most challenging, sensitive and complicated criminal matters that state attorneys face. This section focuses on the challenges the criminal jurisdiction of attorneys general with a discussion of the appropriate ways in which state attorneys general respond to allegations of corruption and ethics violations by state and local elected officials. This section also explores public corruption issues that can ensnare the attorney general.

1. State Attorneys General Powers and Responsibilities, Chapter 17, “Attorneys General and Criminal Law” Chris Toth, Deputy Director, NAAG; Adam Eisenstein, AAG Visiting Fellow; Salini Nandipati, NAAG Visiting Fellow

2. New Mexico Attorney General’s parallel proceedings policy. 2011, March 9


4. “Should the next Pennsylvania attorney general be barred from seeking higher office while serving?” Abbey Kinard, Harrisburg Patriot-Ledger, March 29, 2012

5. Nevada AG Indictment of Nevada Lt. Governor case and dismissal - Various articles Dec 2009


8. Mayor - Age 91 - Steals from Alabama Town - NYT - October 12, 2012

9. "Is It Bribery or Politics?” Geo Will Column on former Al Gov Siegleman, Feb 2012


11. SC Attorney General: Speaker Cannot Suspend Himself, Fitsnews.com, September 11, 2014
The Role of State Attorneys General in Non-Profit Governance

State attorneys general have always had some responsibility to review the operations of nonprofit charities and foundations. Particularly as non-profit organizations, such as hospitals, play a larger and larger role in the economy, the attorney general’s increased use of that authority has taken on national significance. The role has taken on new importance with greater scrutiny of non-profit governance of large institutions such as hospitals, health insurers, and universities. This section analyzes the parameters of that authority.

1. By far the most comprehensive treatment of the role of attorneys general and non-profit governance is found at Columbia Law School’s website, “Charities Law Project.”


4. Random Charities Cases—Fall 2004-2013

5. Hypothetical – AG Seminar – Non-Profit Regulation/Medicaid Fraud

6. Readings on Decoster Story (2003-2012)