

The Role of the State Attorney General – Curriculum and Model Syllabus

Professor Heidi Li Feldman, Georgetown University Law Center

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Note from Heidi Li Feldman: In 2017, I introduced to the Georgetown University Law Center this course on the state attorney general. I created and designed the course with the following objectives.

- *To examine the unique junction of law, policy, and politics at which the state attorney general operates and to consider whether and when each of these does or should feature in a state attorney general’s deliberations and decisions*
- *To explore issues of law and governance, especially to consider the role of the executive branch in tripartite democratic republics*
- *To consider how the state attorneys general figure in the current iteration of American federalism*
- *To showcase in concrete terms the actual workings and work of state attorneys general*

I teach the course in two formats, depending on institutional need, offering it either as a two-credit course with a brief writing assignment and a final exam or as a three-credit seminar with an in-depth paper requirement. I update the syllabus annually, varying it according to my own scholarly and pedagogical research into the office of the state attorney general, student interest in particular topics, and current events. This model syllabus includes segments from the 2019-2020 and 2020-2021 versions of the course. The model includes more topics than would be covered in any one course offering. I have indicated topics that I have rotated through different times I have taught the course. Additionally, I generally devote one week to a guest speaker, such as a current state attorney general or current state solicitor general. It would also be appropriate to have as a guest a lawyer who specializes in representing clients subject to state attorney general investigations.

Week 1 – Introduction and A Brief Look at Some 20th Century State Attorneys General

1. Mondale, Walter. 2010. “A Progressive Takes Root [Excerpt].” In *The Good Fight*. Simon and Schuster.
2. Brief Bio – Anne X. Alpern
3. Commonwealth v. Barnes, 398 Pa. 458 (1960)
4. Brief Bio – Jim Jeffords
5. Jeffords, Jim. 2007 Excerpts from *An Independent Man: Adventures of a Public Servant*. Simon and Schuster.

Week 2 – Sources and Scope of the Authority of the State Attorney Generals

1. Cornell W. Clayton, *Law, Politics, and the New Federalism, State Attorneys General as National Policymakers* [excerpt]
2. State of Florida ex rel. Shevrin, 526 F.2d 266 (1976) [edited by HLF]
3. Memorandum of Former Members of the Office of the Attorney General of New Hampshire (on the state constitutionality of legislature's effort to direct AG to litigate)
4. Paul Nolette, *Litigating the 'Public Interest' in the Gilded Age: Common Law Business Regulation by Nineteenth-Century State Attorneys General*. *Polity* 44 (3): 373–99. [excerpts]
5. (suggested) Cooley, Rita W. 1958. "Predecessors of the Federal Attorney General: The Attorney General in England and the American Colonies." *The American Journal of Legal History* 2 (4): 304–12.
6. (suggested) Pole, J.R. 2010. "Some Problems of a Colonial Attorney General in a Multicultural Society." In *Contract and Consent*. University of Virginia Press

Week 3 – The State Attorney General's Position in State Government

1. Marshall, William P. 2006. "Break Up the Presidency? Governors, State Attorneys General, Ad Lessons from the Divided Executive." *Yale L.J.* 115: 2446. [excerpts]
2. Feeny v. Commonwealth, 373 Mass. 359 (1977).
3. Com ex rel Hancock v. Paxton [edited] 512 S.W.2d 856 (Ky. Ct. App. 1974)
4. People ex rel Deukmejian v. Brown, 624 P. 2d 1206 (Cal. 1981). [edited]
5. Generic AG Organization Chart (prepared by former Maine AG James Tierney)
6. (suggested) Riley v. Cornerstone [edited] 7 So.3d 704 (Ala. 2010). [edited]
7. (suggested) News story and press release re Delaware Attorney General and investigation of state psychiatric hospital

Week 4 – The State Attorney General in Federal Court: Protecting the state's (and the states's) interests

Parens Patrie and States' Sovereign, Quasi-Sovereign, and Proprietary Interests

1. Donald G. Gifford, *The Government as Plaintiff: Parens Patrie Actions Against Tobacco and Gun Manufacturers* [excerpts]
2. Richard P. Iyoub and Theodore Eisenberg, *State Attorney General Actions, The Tobacco Litigation and the Doctrine of Parens Patriae* [excerpts]
3. NAAG update on Tobacco Master Settlement Agreement
4. Excerpts from Massachusetts v. EPA
5. Short comment from SAGs Racine (DC) and Frosh (MD) on conclusion of Emoluments litigation against Donald J. Trump
6. District of Columbia v. Trump, 291 F. Supp.3d 725 (2018) (Court's opinion on standing)

Week 5 [sometimes combined with Week 4] – A brief look at the rise and influence of the state solicitor general

1. Excerpts from Ryan J. Owens and Patrick C. Wohlfarth, State Solicitors General, Appellate Expertise, and State Success Before the U.S. Supreme Court (ten to eleven pages of substance)
2. Jenny Deam, The journey from Wisconsin to Texas and the ruling that struck down the ACA (newspaper article, five pages of substance)
3. Suggested: Kevin Newsom, The State Solicitor General Boom (one page at most)
4. Suggested: Former SSGs and Other SAG Office Attorneys now serving as judges – Table
5. Suggested: “Acting AG Barbara Underwood first woman to hold post, officials say,” Newsday, May 18, 2018
6. Suggested: “How New York Attorney General Barbara Underwood Is Standing Up to Trump,” Rolling Stone, October 26, 2018.
7. Suggested: “Public Lives; Smart Lawyer for Rich, Querulous Uncle,” New York Times, April 9, 1998

Week 6 – Environmental Protection

- History of state attorney general involvement in modern environmental protection
 - 1. excerpt, New York State Attorney General Sets the Pace
 - 2. excerpt, Mass. v. EPA
- Federalism, state attorneys general, and environmental protection
 - 3. The Trump EPA Strategy to Undo the Clean Power Plan
 - 4. California auto emissions lawsuit targets Trump over environmental rollbacks
 - 5. California sues Trump again for revoking auto emission limits
 - 6. Trump to Revoke California's Authority to Set Stricter Auto Emissions Rules
 - 7. A 'Chilling Message': Trump Critics See a Deeper Agenda in California Feud)
- State attorneys general and private polluters
 - 8. State files lawsuit against companies who allegedly allowed toxic PFAS chemicals in water
 - 9. Michigan Attorney General PFAS initiative webpage
 - 10. Michigan files lawsuit against 17 defendants for PFAS contamination
 - 11. How Green Is Your Attorney General? (online tool by Michigan League of Conservation Voters)

Week 7 – Consumer Protection, Part 1: For Profit-Higher Education

1. Butler, Henry N., and Joshua D. Wright. 2011. "Are State Consumer Protection Acts Really Little-FTC Acts?" *Florida Law Review* 63: 163.
2. "PHEAA, explained. How an obscure Pa. state agency became one of the nation's biggest student loan servicers," *The Philadelphia Tribune*, December, 13, 2019; and "It's AG Josh Shapiro's job to defend state agencies in court. Here's why PHEAA is an exception," *Pennsylvania Capital-Star*, February 7, 2020 **OR** "As Feds Pull Back, States Step in to Regulate For-Profit Colleges and Universities." 2018. *The Hechinger Report*, July 7, 2018
3. Complaint in *New York v. Pennsylvania Higher Education Assistance Agency* **OR** Complaint, *California v. Ashford LLC*. 2017
4. Bob Fernandez, "The Largest Pa. for-Profit School's Closure Left 1,510 Students without Diplomas. Now the AG Wants Answers. | Debt Valley." *The Philadelphia Inquirer*. December 13, 2018.
5. Ivory, Danielle. "A State Attorney General Calls Out Betsy DeVos on For-Profit Colleges." *The New York Times*, June 9, 2018, sec. Business.
6. Materials for in-class exercise
 - a. NY Gen. Bus. Section 349 (state deceptive trade practices statute)
 - b. NY EXEC Section 63 (general duties of the state attorney general)
 - c. 12 U.S.C.A. Section 5531 (Dodd-Frank provisions on deceptive and unfair practices by financial industry)
 - d. 12 U.S.C.A. Section 5565 (Bureau of Consumer Financial Protection enforcement powers)

Week 8– Consumer Protection, Part 2: Privacy [can be cut to make room for another topic]

1. Citron, Danielle Keats. 2016. "The Privacy Policymaking of State Attorneys General." *Notre Dame Law Review* 92: 747.
2. "Q&A: DC Attorney General Karl Racine Talks Consumer Privacy." 2016. *The Privacy Advisor* (blog). April 26, 2016.

Week 9 – Charities, Part 1: Overview

1. "NAAG | Enforcement of Charitable Organizations." NAAG Gazette, Vol. 2, No. 1
2. Bob Carlson, *Protection and Regulation of Nonprofits and Charitable Assets in State Attorneys General Powers and Responsibilities*, 3rd. ed. (2013).
3. Findings of Fact, Rulings of Law and Order for Judgment, *Commonwealth v. O'Donnell*. (2015)
4. "Attorney General Horne Obtains Consent Judgment Against Two Local Companies for Fraudulent Telemarketing Schemes | Arizona Attorney General."
5. Stipulated Consent Judgment, *Arizona ex rel. Thomas C. Horne v. Namaste Group* (2014)

6. For in-class exercise: Colorado Attorney General Nonprofit Board Member Training website

Week 10 - Charities, Part 2: The Trump Foundation **AND/OR** the National Rifle Association [can be cut to make room for another topic]

Trump Foundation materials

1. "Attorney General Underwood Announces Lawsuit Against Donald J. Trump Foundation and Its Board of Directors for Extensive and Persistent Violations of State and Federal Law | New York State Attorney General." June 14, 2018
2. Goldmacher, Shane. "Trump Foundation Will Dissolve, Accused of 'Shocking Pattern of Illegality' - The New York Times." December 12, 2018
3. Petition, New York v. Trump Foundation et al, June 14, 2018.
4. "The Woes of the Trump Foundation Are Pervasive Among Big Donors (Opinion) - The Chronicle of Philanthropy." January 2, 2019.

NRA materials

1. "Enforcement of Charitable Organizations" – Excerpt from NAAG publication
2. Summons and Complaint, New York v. NRA (August 6, 2020)
3. (suggested) Bob Carlson, Protection and Regulation of Nonprofits and Charitable Assets in State Attorneys General Powers and Responsibilities, 3rd ed.

Week 11– Background to state litigation resulting in the Tobacco Master Settlement [one of two weeks examining state ags and tobacco regulation and litigation; both can be cut and replaced with another topic]

1. Sarah Milov, The Cigarette: A Political History (2019)
2. Bill Tasman public service anti-smoking ad

Week 12 – A closer look at the state attorney general tobacco suits and the MSA [one of two weeks examining state ags and tobacco regulation and litigation; both can be cut and replaced with another topic]

1. The Cigarette: A Political History, continued
2. Ieyoub and Theodore Eisenberg, State Attorney General Action, The Tobacco Litigation, and the Doctrine of Parens Patrie
3. Oklahoma TSET: Keeping the Promise for Health (video)
4. D. Robert McCaffree, Tracey Strader, and Julie Bisbee, A Brief History of the Tobacco Settlement in Oklahoma

5. Framework of Tobacco Industry Tactics (chart), in Reducing Tobacco Use: A Report of the Surgeon General (2000)
6. Executive Summary, The Health Consequences of Smoking – 50 Years of Progress, A Report of the Surgeon General (2014)

Week 13 – Opioids crisis [because state attorney general involvement in this issue is ongoing, materials are updated close to class session] [can be cut to make room for another topic]

1. Topical readings from current news coverage
2. In-depth reporting on the opioid litigation
3. Recent litigation documents, if available

Week 14 – Criminal justice and law enforcement [can be cut to make room for another topic]

1. In-depth examination of New Jersey AG Gurbir Grewal’s “Excellence in Policing” initiative
2. The Role of State Attorneys General in Criminal Justice Reform, American Constitution Society white paper (especially useful regarding bail reform/pre-trial justice)
3. Jason Mazzone and Stephen Rushin, State Attorneys General as Agents of Police Reform, 69 Duke L.J. 999 (2020)
4. Re-Envisioning the Roles of Prosecutors and Attorneys General to Make the Justice System Work for Everyone, Stanford Social Innovation Review, Winter 2020 (good, though brief discussion of SAGs and enforcing workers’ rights)
5. Assorted shorter readings such as:
 - How the States Transformed Criminal Justice in 2020, in The Appeal
 - From Marijuana to the Death Penalty, States Led the Way in 2019, in The Appeal
 - Criminal Justice Reform at the State Level, Brennan Center for Justice
 - Minnesota OAG web site “Public Protection”
 - New Jersey AG website, Division of Criminal Justice, Overview
 - MN AG Ellison working group on police reform – press release
 - NJ AG Grewal Announces “Excellence in Policing” Initiative – press release
 - NJ AG Grewal Overhauls Statewide Police Use of Force Policies – press release
 - DE AG website, Criminal Division of Department of Justice, overview
 - DE AG Kathy Jennings, bio, from DE Department of Justice website
 - DE AG Jennings, Fairness and Equality in the Criminal Justice System: Internal Policies, Internal Memo
 - Far-reaching changes proposed for Del. Criminal justice system, WHYY
 - [DE] Legislators introduce new policing, social justice reforms, TownSquareDelaware, June 2020

Week 15 – Crisis in State Government: an exercise in an emergency consult to Virginia A.G. Mark Herring [can be cut to make room for another topic]

- News coverage; columns: “Virginia’s three leaders engulfed in turmoil, with Herring disclosure from college,” “Attorney General Mark Herring’s statement: ‘I had a callous and inexperienced lack of awareness,’” “Virginia Sen. Tommy Norment was an editor for a VMI yearbook filled with racist photos and slurs,” “It’s a sickness: How our culture recognizes blackface is racist – but won’t stop doing it”
- Behind the Blackface, American Heritage website
- Virginia state constitutional provisions relating to gubernatorial succession
- Divisions of the Virginia Attorney General Office, website