**Peter J. Brann**
Lecturer in Law, Harvard Law School  
Former Lecturer in Law, Yale Law School  
Former Lecturer in Law, Columbia Law School  

**James E. Tierney**
Lecturer in Law, Harvard Law School  
Former Lecturer in Law, Yale Law School  
Former Director of the National State Attorney General Program at Columbia Law School  

*Note: Syllabus is subject to change depending on developing issues and the schedules of visiting speakers*

**Introduction**

The roots of the Office of State Attorney General run deep in American jurisprudence. All 13 American colonies had an Attorney General and today all 50 States and the District of Columbia have opted to provide legal services through an Office of State Attorney General. Each office possesses broad jurisdiction and to varying degrees is independent from the executive branch of state government. Attorneys General in 43 states are elected statewide on a partisan basis. The combination of sweeping jurisdiction and constitutional independence has given rise to a unique American legal institution of growing importance.

The course will cover the day-to-day challenges faced by Attorneys General and their staffs in delivering the legal advice that will guide state government in a constitutional and ethical manner. The course will also cover the relationship of Attorneys General with the federal government, the private bar, and a myriad of advocacy organizations. It will focus on some
of the most controversial legal issues affecting society today because Attorneys General operate at the intersection of law and public policy.

Although each State is unique, the course will demonstrate the remarkable congruence that exists among State Attorneys General when addressing similar challenges and issues. Unlike private and other government lawyers, who work subject to ethical rules that defer decision-making to agency “clients,” the 13,000 men and women who serve in Attorneys General offices have discretion in how they represent the “public interest.”

This Syllabus contains federal and state statutes and case law, law review and descriptive articles from a variety of sources, and hypotheticals that describe the nature and function of the Office of State Attorney General. The numerous hypotheticals are drawn from actual cases which, because of their nature, have not been studied or, in most cases, ever made public. The materials have been collected from over 40 years of studying and participating in the decision making of Attorneys General and their staffs.

Students are evaluated based upon either a final take-home examination or, if approved by the instructors, a paper. For the readings that are marked “supplemental reading,” these are optional readings to enable you to take a deeper dive into that week's topic.

Class attendance each week is required. Additionally, students can improve their grades based upon class participation and each student is expected to participate in some fashion each week in class. Because many, if not most, of the decisions of Attorneys General and their staff are based upon judgment, and thus are not obviously right nor wrong, we work to create an atmosphere in which both extroverts and introverts, and students of differing political perspectives, feel comfortable contributing diverse viewpoints to the class discussion.

In anticipation of the first class, we urge students to watch this video (Links to an external site).

Prof. Brann and I enjoy meeting with students and encourage you to arrange a virtual meeting with us at your convenience but not later than mid-February. We are anxious to discuss the class, your interests and aspirations, or the world in general. The Syllabus will be posted on Canvas in the days ahead.

Harvard Law School is dedicated to facilitating equal access for students with disabilities and to cultivating a campus culture that is sensitive and responsive to the needs of students. To request an accommodation for a disability during the course, students should reach out to Student Support Services in the Dean of Students Office at studentsupport@law.harvard.edu or at 617-495-1880, or visit the office in WCC 3039. Additional information, including how to register for accommodations can be found at https://hls.harvard.edu/dept/dos/student-support/accessibility-services-resources/Links to an external site.
Week #1

The Authority and the Culture of the Attorney General

This first chapter explores the both the legal authority and the culture that pervades offices of Attorneys General. The first assignment is to watch “AG 101 Video” that verbally explains the entire scope what is attorneys general do and how their offices are organized.

2. Attorney General Ellison asks court to remove trustees of Otto Bremer Trust, Statement, August 12, 2020 (Supplemental Reading)
3. Judge orders three trustees of Otto Bremer Trust back to school, but does not remove them, Twin Cities Pioneer Press, November 16, 2020 (Supplemental Reading)
4. Wilson, Paul E., A Time to Lose, Representing Kansas in Brown v. Board

Week #2

The Structure of the Office of the Attorney General

4. Generic State Attorney General’s Office Organization Chart
6. For Democratic governors, it pays to have a Democratic attorney general. Republicans, not so much, Nicholas Miras, Washington Post, Aug. 3, 2020


8. "High Court to Hickenlooper: We’re not getting involved”. Colorado Independent, Corey Hutchins (December 03, 2015).


11. “Who is the Client?” – A Role Playing Hypothetical

Supplemental Readings:


3. Opinion of the Justices, Maine Supreme Judicial Court, March 10. 2015 (Edited)

4. Opinion of the Justices, Maine Supreme Judicial Court, Amicus Brief of Peter Brann, February 6, 2015 (Edited)

Week #3

The Ethics of Client Representation for State Attorneys General


   1. Pryor offenses: Bill Pryor has led a religious right crusade against church-state separation in Alabama, Americans United for Separation of Church and State (2003)
2. **State Court Orders Commandments' Removal All Eight Colleagues Of Ala. Chief Justice Vote to Overrule Him, Birmingham News, Aug 22, 2003**

3. **Pryor Calls for Removal of Moore Says Expulsion Needed to Protect The Public, Birmingham News (Alabama) November 11, 2003**

4. **Combined Readings: AG Maura Healey and Bridgewater State University (2016 - 2017).**

5. **Watts, A., & Martinez M., Judge rejects Arizona's effort to dismiss prison teacher rape lawsuit, CNN (Feb. 5, 2015).**


7. **Indiana Attorney General Curtis Hill's law license suspended 30 days, May 11, 2020**

8. **Disciplinary Complaint against SC AG Alan Wilson, Office of Disciplinary Counsel, SC, Jan. 12, 2021**

9. **The Four Seasons – Ethics Hypotheticals**

---

**Week #4**

**Consumer Protection**

1. **GUEST SPEAKER: February 15, 2021 - Iowa Assistant Attorney General Jessica Whitney, Chief of Consumer Protection Division, State of Iowa**


4. **State Attorney General Consumer Protection Activity (For Reference)**

5. **Single State Attorney General Consumer Fraud Matters**

   2. **Uber Readings - 2014-2020**
   4. **AG Ferguson, Judge Finds Comcast Violated Consumer Protection Statute Nearly Half a Million Times (June 6, 2019)**
   5. **Az AG Cease and Desist Letter, Covid 19, June 25, 2020**
   6. **Tx AG CID - Amazon/Parler - January 13, 2021**

8. **Supplemental Readings**

6. **The Role of Mandatory Arbitration in Consumer Protection**

7. **AT&T Mobility LLC v. Concepcion 131 S. Ct. 1740 2011-04-27**

8. **Supreme Court Ruling Cuts Off Avenue to Class Proceedings, Law 360, (April 24, 2019)**


---

**Week #5**

**Multistate Advocacy**

1. **Speaker - Prof. Paul Nolette - Multistate Consumer Actions and Settlements, Website of Prof. Nolette, Marquette University**

2. **State Litigation and AG Activity Database, An Overview of State AG Activities: Website of Prof. Nolette:**


5. **Examples of multistate consumer fraud enforcement by attorneys general**

2. **Tobacco Litigation of the 1990’s**
   1. **Thomas A. Schmerling, Stag Hunting with the State AG: Anti-Tobacco Litigation and the Emergence of Cooperation Among State Attorneys General, 25 Law & Policy 429 (2003)**

2. **Historical summary and perspective on the attorney general tobacco litigation of the 1990’s (For Research)**

3. **The Public Health Law Center, Mitchell Hamline School of Law, St. Paul, Mn. (For Research)**
4. The Fall of Big Tobacco, Part 3, Washington Post, March 31, 1998, CiCi Connolly and John Mintz (Supplemental Reading)

5. As a Young Lawyer, Gillibrand Defended Big Tobacco - The New York Times, Mar 26, 2009


4. Honda Will Pay $85 Million in Takata Airbag Settlement (to) a group of U.S. states, Autoweek, August 31, 2020

5. Ct. AG Jepsen Leads Settlement with Career Education Corp. (Jan. 3, 2019) (Links to an external site.) (Links to an external site.)

6. Supplemental Readings

   1. NY AG James Release Announces Settlement with Fiat Chrysler (Jan. 2019)
   3. Ct. AG Jepsen DCP Conn Joins Multistate Settlement with Boehringer Ingelheim, Dec 12, 2017
   5. Department of Justice, Federal Government and State Attorneys General Reach $25 Billion Agreement with Five Largest Mortgage Servicers to Address Mortgage Loan Servicing and Foreclosure Abuses, 2012, (Supplemental)

Week #6

Retention of Private Counsel by Attorneys General


2. American Legislative Exchange Council, Private Attorney General Retention Sunshine Act


4. "SC Gov McMaster Objects to Plutonium Settlement and $75 million legal fees," August 31, 2020

5. NC Attorney General brings in national law firm for PFAS investigation, X, Chemours, Posted August 12, 2020 (Supplemental Reading)

6. After Whistleblowers Left Texas AGO, AG Paxton Hired Costly Outside Counsel for Google Suit, Texas Tribune, January 5, 2021
7. State of New Jersey, Outside Counsel Guidelines (Supplemental Readings)
8. Multistate Advocacy - Role Playing Hypothetical and Related Articles
10. Eric Lipton, Energy Firms in Secretive Alliance with Attorneys General, New York Times (Dec. 6, 2014)
12. Multistate Case Hypothetical, Prof. Peter Brann

Week #7

Criminal Jurisdiction, Criminal Justice Reform, Police Misconduct and Public Corruption

1. AG Jennings tells prosecutors to seek lesser prison sentences for some crimes, Delaware News Journal (Feb. 19, 2019)
2. Delaware AG Internal Charging Memo - "Fairness and Equity in the criminal Justice System - Internal Policies" -February 15, 2019
3. Delaware Attorney General Jennings trying to balance legal playing field Aug 5th, 2020, Mike Finney, Delaware State News, Aug 5, 2020 (Supplemental)
4. Black Delaware lawmakers, attorney general call for police accountability with proposed reforms Sarah Gamard Delaware News Journal, June 10, 2020 (Supplemental)
5. General Jurisdiction and Relationship with District Attorneys
   3. Flowers Case Shows How AGs Are Stepping Into The Spotlight - Law360 - Sept 13, 2020
   4. MN county attorneys: State AG office should handle police deadly force cases Peter CoxJune 5, 2020, Minnesota Public Radio
   5. Dist Atty. Kim Gardner seeks to stop Missouri attorney general from meddling in McCloskey gun case, July 24, 2020St. Louis Post-Dispatch.
6. **St. Louis judge disqualifies Gardner, her office from prosecuting McCloskey gun-waving case** | Law and order | stltoday.com - Dec 20, 2020

7. **Appeals court upholds decision to dismiss Gardner from McCloskey case**, KSDK, January 8, 2021

6. **Parallel Proceedings**
   2. **New Mexico Attorney General’s parallel proceedings policy** (Mar. 9, 2011)

7. **Public Corruption**
   2. **New Mexico Attorney General Prosecutes Secretary of State** (2015)
   3. **Articles on AG Kane Convicted, Sentenced, Released from Jail** (2016 – 2019) (supplemental reading)
   4. **Monthly CEPI Newsletter (formerly Corruption Newsletter), CEPI and NAGTRI** (Further Research)

8. **State Grand Juries**
   1. **Articles on AG Investigations into Clergy Abuse** (2018 – 2019)

**Week #8**

**Police Misconduct**

1. **Articles on AG Role in Police Shootings** (2015 – 2016)


3. **Illinois attorney general makes the case for licensing police officers; AG Kwame Raoul also complained that getting the Chicago Police Department to comply with the terms of a federal consent decree has been, at times, “like pulling teeth.”** Chicago Sun-Times, June 24, 2020
6. WV AG Letter on Review Board (Mar. 4, 2021) (Supplemental reading)
7. W.Va. Attorney General reacts to proposed police review board, Mar. 5, 2021
8. Attorney General James Files Lawsuit Against the NYPD for Excessive Use of Force | New York State Attorney General, January 14, 2021
10. Chicago Police Consent Decree (Supplemental Readings)
11. The Overlooked Potential of State AGs for Police Reform, Tony Woodlief, Governing Magazine, Opinion, June, 2020 (Supplemental Reading)

Opinions
1. Emily Myers, Antitrust Chief Counsel, NAAG; Andy Bennett, Judge, Tennessee Court of Appeals, Chapter 5, Opinions, State Attorneys General Powers and Responsibilities (2019)
3. Virginia Attorney General Ken Cuccinelli was just doing his job, Richmond Times-Dispatch, Jeff Shapiro (September 16, 2012)
5. Opinion of the Virginia Attorney General, Mark Herring, on Voter Intimidation, Sept 24, 2020
6. AG - AG Nessel Issues Formal Opinion Stating Guns can be Prohibited at State Capitol, May 11, 2020
7. What’s Your Opinion? Opinion Hypotheticals

Week #9
U.S. Supreme Court Practice
1. Speaker - Dan Schweitzer, '89, NAAG Supreme Court Counsel
2. The Evolving Role of State Solicitor General, Layton
3. Top 10 Reasons to have a SG, Dan Schweitzer

4. Results of Cert Petitions on Filed by States, NAAG (2020)

5. State AG Supreme Court Amicus Statistics (2020), Dan Schweitzer, NAAG Supreme Court Counsel

6. Where are they now? The Promise and Peril of being a Former SG : "Former State SG’s and Other State AG Attorneys Who Are Active Judges," Dan Schweitzer, NAAG Supreme Ct Counsel, September 1, 2020


8. NAAG Supreme Court Counsel Dan Schweitzer, Who Argues for the States in the U.S. Supreme Court (2017)

9. The journey from Wisconsin to Texas and take down the ACA - Houston Chronicle - Jan 11, 2019


Week #10
Relationship with Local and County Government

1. Guest Speaker- Dave Yost

2. The increasing divide between urban, suburban and rural communities
   1. Pew Research Center, What Unites and Divides Urban, Rural and Suburban Communities (May 22, 2018)

3. Summary of state v. local authority issues
   1. Intrastate Preemption (edited and no footnotes)

4. State and Local Divide - Opioids
2. In the Opioid Litigation, It’s Now the States v. Cities

3. WV counties, cities seek larger share of potential opioid settlement, Eric Eyre, Gazette Mail (Oct. 5, 2019)


6. 30 State Amicus Brief in Ok v. Opioid Manufacturers, Ok Sup Ct., Nov. 25, 2020

5. State and Local Divide – Covid-19

1. Orland Park dealt setback in lawsuit challenging COVID-19 restrictions - Chicago Tribune

2. Appeals court again halts El Paso County shutdown of nonessential businesses - The Texas Tribune

6. State and Local Divide - Guns

1. Fox News, More than 100 Virginia cities, counties declare themselves gun sanctuaries as Dems prepare to take over legislature (Dec. 20, 2019)


3. Washington state's I-1639: Attorney general says sheriffs must enforce the law - CNN - Feb 13, 2019

4. Columbus And Dayton Sue Ohio Attorney General To Force Fix Of Gun Background Checks – CBS Pittsburgh - Nov. 9, 2020

5. SC AG Opinion on Columbia Gun Ordinance

Week #11
Relationship with Federal Government

1. Speaker - Indiana Solicitor General Tom Fisher

2. History of conflict – inaction v. preemption

1. States Sue Over Acid Rain (Mar. 20, 1984)

2. They Warned Us About the Mortgage Crisis

3. Presidential Memorandum Regarding Preemption

4. After Scaling Back Student Loan Regulations, Administration Tries to Stop State Efforts, New York Times (Sept 9, 2018)
5. Dept of Education Preemption of State School Loan

3. State and federal cooperation

1. Federal Judge Rules In Favor Of FTC Challenge To Sysco And US Foods Merger - Forbes
2. DOJ files Google complaint
3. Attorney General James Announces Bipartisan Antitrust Investigation Into Google Will Continue, New York State Attorney General
4. The Justice Department has filed its antitrust lawsuit against Google, TechCrunch

4. States sue President

1. Multistate Actions Against the Fed Government, Website of Prof. Paul Nolette, Marquette University (For Reference)
2. Texas vs. the Feds — A Look at the Lawsuits, Texas Tribune, Jan. 11, 2017

5. Potential backlash against States suing President

1. Massachusetts v. Environmental Protection Agency 549 U.S. 497, 2007-04-02
2. Attorney General Sessions Releases Memorandum on Litigation Guidelines for Nationwide Injunctions Cases

**Week #12**

**Non-Profit Corporations, Charities, and Foundations**

1. Speaker - Maine AAG Paul Sutitter, ’15 -
2. The Nonprofit Sector in Brief 2019, National Center for Charitable Statistics, The Urban Institute, June, 2019
3. State Regulation and Enforcement in the Charitable Sector, Cindy Lott, et. al., Urban Institute, 2016 (Reference)
4. AAG Bob Carlson, Missouri, Assistant Attorney General, Chapter 12, Protection and Regulation of Nonprofits and Charitable Assets, State Attorneys General Powers and Responsibilities (2013)
8. Attorney General James Files Lawsuit to Dissolve NRA - New York State Attorney General
9. NY Complaint against NRA (Supplemental Reading)
10. NRA reports alleged misspending by current and former executives to IRS - The Washington Post
11. NRA v. NYAG - State Amicus Brief