

Role of the Attorney General
University of Florida College of Law
Syllabus: Spring 2023

Bill McCollum

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Former Florida Attorney General (2007-2011)

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

Meeting Time and Location

Monday, Tuesday, Wednesday, Thursday, Jan. 9 - 12, from 9:00am - 12:00pm

Friday, Jan. 13, from 10:00am - 12:00pm

Classroom: Room 355C

Required Text

Gilbert King, Devil in the Grove (2012) Harper Collins.

Students are urged to read Devil in the Grove before the compressed course week begins. It will be the basis for the civil rights class discussions. Gilbert King's follow-on book, Beneath the Ruthless Sun (2018) Riverhead Books, is highly recommended reading, but optional for this course

Learning Outcomes

After completing this course students should:

- understand the powers and duties of state attorneys general;
- know the relationship of attorneys general with federal and state government;
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- be aware of the role of AGs in consumer protection, antitrust, criminal law, litigation, issuing legal opinions, non-profit governance and civil rights;
- have a working knowledge of current policy and legal issues being addressed by AGs from participation with other AGs in multistate investigations to filing amicus briefs to promoting specific legislation;

- know and understand uniquely Florida AG responsibilities including service on the Florida Cabinet, educating state and local government entities on the requirements of Florida's Sunshine Laws, appointing and working with the Statewide, Prosecutor and handling all appeals from state court felony convictions.

Canvas

I will use Canvas to post documents related to this course. Where I have reason to believe you may have trouble with opening a link to a specific reading item or need a login code you may not have, I will post the text on canvas in addition to the link.

Class Participation

Twenty-five percent (25%) of your final grade will be based on your class participation. Each day I expect that you will have read the assigned materials and that you will be prepared to discuss those materials. Class assignments are in the syllabus following each class description. If assigned material is followed by "(review)" you will only be expected to scan the material. Otherwise you will be expected to have read it. There may be case studies and problems that we will evaluate together. The expectation is that you will be prepared to meaningfully participate in each of those case studies and problems. There will be several guest lecturers, and you will be expected to be prepared and participate in interaction with and questions for the guest.

Office Hours

I will hold office hours on Tuesday, January 10, 2023, and again on Thursday, January 12, 2023 from 12:00pm - 1:00pm in the classroom assigned for the course classes. If more privacy is needed just see me then, and we will find a nearby location to talk. I encourage students to call or email me if you are having difficulties with, or simply want to clarify your understanding of, any of the materials covered in the reading or class, or if my office hours do not work for you. My cell number is 407-353-4640. My email is bill.mccollum@dentons.com.

Common Courtesy

Please do not arrive late to class, leave early, or leave to take a break during class absent extenuating circumstances. Please turn off your cell phone during class. I reserve the right to deduct points from your final grade if you engage in behavior that disrupts the learning environment for your classmates.

Class Attendance Policy

Attendance in class is required by both the ABA and the Law School. I will take attendance and keep a record of it. If you miss more than two classes, your grade for the semester may be adversely affected. If you have a medical reason for missing class, you should contact me before or soon after class for your absence to be excused. Students who miss class for religious holidays must contact me beforehand by email to be excused from class. I will consider it a violation of the honor code if you have someone else sign you in and you are not present, and I reserve the right to lower your final grade.

Evaluation

60% of your grade will be based on a final typewritten paper of no more than 5,000 words on a topic to be assigned the final class period. It will be a research and analysis paper, not an exam. You will be asked to submit it to me by email. The paper will be due no later than 11:59 pm, January 23, 2023. In addition, for 15% of your grade you will be expected to write three reflection papers (5% each) of no more than 500 words on a specific reading assignment in the syllabus as specified in the class period description for which the reading assignment is listed. Each reflection paper will be due at or before the commencement of the class period for which it is assigned and must be submitted to me by email. The other 25% of your grade will be class participation as discussed above.

Information on UF Law Grading Policies

The Levin College of Law's mean and mandatory distributions are posted on the College's website, and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

Academic Honesty

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

Statement Related to Accommodations for Students with Disabilities

Students requesting accommodation for disabilities must first register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Dean

Mitchell) when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

Recordings of Class Discussions

All classes are recorded via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will determine when students may have access to these recordings, and the recordings will be password protected and accessible only on Mediasite. Any student who has access to a recording is strictly prohibited from sharing the recording in any form with anyone else. Students will not be able to access recordings when the semester concludes.

Online Course Evaluation Process

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens and can complete evaluations through the email they receive from GatorEvals in their Canvas course menu under GatorEvals or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

Course Workload and Class Preparation

Students should expect to spend at least two hours outside of class reading and preparing for every hour of class. Due to the compressed nature of the course the Gilbert King book, Devil in the Grove, should be read before the course begins as well as the lesson readings for the first three class periods. The readings listed after the class descriptions are required unless “(review)” or “(recommended)” appears at the end of the listing. “Review” means you will be expected to have scanned the listed case, document, or article to be familiar with it for class discussion, but you will not be expected to have read it so as to know all its details. Difficult to locate articles or documents will be posted on Canvas the day before the class for which the assignment pertains if not sooner. Highly relevant court decisions or articles that appear after the syllabus is posted may be added. Students will be expected to check Canvas for additions or changes in reading assignments before the course begins and each day of the course week.

Introduction

This Syllabus is for a one week, one credit, compressed course to be taught January 9 -13, 2023. It contains federal and state statutes and case law, and articles from a variety of sources, that describe the nature and function of the Office of State Attorney General with special emphasis on the Office of the Attorney General of Florida. A number of class assignments refer students to the home page of the website of Florida Attorney General Ashley Moody with directions to locate assigned items which can be found and read there or through links provided on the website.

The roots of the Office of State Attorney General run deep in American jurisprudence. All thirteen American colonies had an attorney general and today all fifty states and the District of Columbia have opted for providing legal services through an office of state attorney general.

Each office possesses extraordinarily broad jurisdiction and to varying degrees is independent from the executive branch of state government. Attorneys general in forty-three states are elected statewide on a partisan basis. The 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 high quality legal advice that will guide state and local governments in a constitutional and ethical manner. The course also will cover the relationship of attorneys general with the federal and state governments, the private bar and a myriad of advocacy organizations. It will focus on some of the most controversial of legal issues - challenges to the constitutionality of the Affordable Care Act; climate litigation; opioid litigation; antitrust lawsuits against Google and Facebook, and clemency; to name a few. In addition it will examine Florida's unique Cabinet System where the attorney general shares powers with the governor and two other statewide elected officials with regard to a number of state agencies and boards and Florida's Open Government laws.

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," for the 13,000 men and women lawyers in offices of state attorneys general it is representing the "public interest" that is the day to day reality of their professional lives.

Jan. 9- Period 1

The Authority and Role of the Attorney General

This first class period explores the nature of the authority and culture that pervades offices of attorneys general. The origins of the office of attorney general from England through the colonies and the states will be examined. Florida constitutional and statutory provisions related to the powers and authority of the attorney general will be reviewed and discussed. The significant common law powers of the attorney general that remain today will be a focus of this class period

1. Emily Myers, State Attorneys General Powers and Responsibilities (2018) (Fourth Edition), Chapter 1, "Origin and Development of the Office," (copy posted on Canvas)
2. Florida Statutes, Title IV, Chapter 16 (2019)
3. Richard P. Leyoub and Theodore Eisenberg, "State Attorney General Actions, the Tobacco Litigation, and the Doctrine of Parens Patriae," Tulane Law Review, June, 2000- Link:
https://heinonline.org/HOL/Page?handle=hein.journals/tulr74&div=58&g_sent=1&casa_token=&collection=journals

4. State of Florida v Exxon Corporation, 526 F.2d 266 (5th Cir. Ct. App 1976)
5. Office of the Attorney General, Department of Legal Affairs, State of Florida v. Sarasota County Public Hospital District, et al, Plaintiff's Motion for Summary Judgment and Supporting Memorandum of Law, Circuit Court, 2nd Jud. Cir., Leon Co. Fla, Case No. 2022 CA 000541, Nov. 4, 2022 (copy posted on Canvas)
6. State of Florida, Office of the Attorney General, Department of Legal Affairs v. Sarasota County Hospital District, et al, Sarasota County Public Hospital District's Response in Opposition to Plaintiff's Motion for Summary Judgment and Supporting Memorandum of Law or in the Alternative Motion for Continuance, Circuit Court, 2nd Cir., Leon Co. Fla., Case No. 2022 – CA – 000541, Nov. 23, 2022 (copy posted on Canvas)
6. Office of the Attorney General, Department of Legal Affairs, State of Florida v. Sarasota County Public Hospital District, et al, Defendant School Board of Miami-Dade County's Response in Opposition to Office of the Attorney General, Department of Legal Affairs, State of Florida's Motion for Summary Judgment, Circuit Court, 2nd Cir., Leon County Fla., Case No. 2022-CA- 000541, Nov. 29, 2022 (copy posted on Canvas) (review)
7. Diana Novak Jones, "Ballot Measure Can't Legalize Pot, Fla. Legislators Say," Law360 (Nov. 4, 2019) - Link: <https://www.law360.com/articles/1216726/ballot-measure-can-t-legalize-pot-fla-legislators-say>

Jan. 9 - Period 2

Structure of the AG Office and Litigation. Discussion of the organization and structure of the office of the Florida Attorney General; the role of the Chief Deputy; how investigations are begun; how and by whom decisions are made; relationships with the Governor and state agencies and boards; litigation - representing state agencies and the public interest. The question "Who is the client?" will be explored as will the ethics of client representation. The long running Florida litigation against Georgia over water and the role of the Attorney General in the Deepwater Horizon oil spill will be examined.

REFLECTION PAPER: After reviewing the departments, programs and services on the Florida Attorney General website, write a 500 word paper and list the 11 bureaus of the Civil Litigation Division and briefly describe the work of the Administrative Law Bureau and the State Programs Bureau and the work of the Criminal Appeals Division.

1. myfloridalegal.com (go to web page, click on "About the Office" and review each of the listed departments, programs and services by clicking on the links to each)
2. Myers, Emily, State Attorneys General Powers and Responsibilities (2018) (Fourth Edition), Chapter 6, "Conduct of Litigation," (copy posted on Canvas)
3. Florida v. Georgia, No.142, Orig., US Supreme Court, Opinion decided April 1, 2021 (locate on SCOTUS homepage)

4. Florida v Georgia, Exceptions to the Report of the Special Master and Brief in Support filed by Florida, April 13, 2020 (locate on SCOTUS homepage by clicking on Docket Search and typing in "Florida, Plaintiff, v. Georgia proceedings and orders and scrolling down) (review)
5. Florida v. BP, et al , U.S. Dist. Ct., Northern Dist. Of Fla., Panama City Div., Case No.: 5:13-CV-00123 , Complaint (filed April 20, 2013) (review)
6. Settlement Agreement Between Gulf States and the BP Entities (filed October 5, 2015) (review) (copy posted on Canvas) (review)
7. Deepwater Horizon Response Timeline (copy posted on Canvas)
8. Deepwater Horizon Oil Spill Settlement Fact Sheet - October 5, 2015 (Office of the Florida Attorney General) (copy posted on Canvas)
9. Gulf Environmental Fund: Five Year Report, 2013 -2018 (copy posted on Canvas) (review)
10. John W. Suthers, "A 'Veto' Attorneys General Shouldn't Wield," The Washington Post, Feb, 2, 2014 (copy posted on Canvas)
11. Matt Appuzzo, "Holder Sees Way to Curb Bans on Gay marriage," The New York Times, Feb. 24, 2014 (copy posted on canvas)

Jan. 9 - Period 3

Open Government and Sunshine Laws - Attorney General Opinions

Special Guest: Florida Lottery Deputy General Counsel and former Deputy General Counsel for the Florida Attorney General Alexis Lambert. Florida enacted the Government in the Sunshine law in 1967, and reinforced it with a constitutional amendment in 1992. To this day Florida has one of the strongest open government laws in the country. The Florida Attorney General advises state agencies and local governmental bodies on these laws. Separately the Attorney General in his/her discretion when requested by state agencies and local governments issues opinions interpreting state laws. This is one of the earliest functions of state attorneys general. These opinions are published and today may be found online. While these opinions are non-binding on courts they have long been relied upon by local governments and state agencies in their deliberations and determinations. This class period will examine the Florida Sunshine Law with special attention to the concerns attorneys should have with regard to these laws when representing both governmental and private clients. And the role of AG opinions will be discussed including who may request an opinion, how it is prepared, reviewed and issued and

how opinions impact the deliberations and decisions of local and state governmental bodies and agencies.

Note: Attorney General Opinions may be found chronologically by date or by opinion number and year at myfloridalegal.com, the Florida Attorney General website by clicking on AG Opinions under Resources and then clicking on Historical Collection of AG Opinions. Older opinions such as item 6 below may be found using the search feature, entering the key words and locating the opinion, i.e.AG-09-19.

1. Florida Government in the Sunshine Manual (copy may be found at myfloridalegal.com, the Florida AG website)
2. Art Levy, “Attorney: Open Government Laws Go Beyond the Computer,” Florida Trend, Nov. 1, 2008 - Link: <https://www.floridatrend.com/article/6646/attorney-open-government-laws-go-beyond-the-computer>
3. NCAA v. Associated Press, 18 So. 3d 1201
4. AGO 2020-03, Mar. 19, 2020, Public Meeting Quorums Using Technology (review)
5. AGO 2019-14, Nov. 22, 2019, Education Protection Commission (review)
6. AGO 09-19, April 23, 2009, “Municipalities - Records - Government in the Sunshine Law - Internet”

Jan. 10 - Period 4

Relationship with Federal Government - The Affordable Care Act

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, but in some cases state attorneys general attempt to either challenge or prompt federal action. This class period will explore and analyze this complex and changing relationship.

Cooperation is common with the investigation and prosecution of Medicaid fraud, human trafficking, internet child predators and all kinds of scams. But state AGs regardless of political party resist federal pre-emption of state laws and the AG enforcement powers in such areas as privacy and data breach. This class will examine *NFIB v. Sebellius* and *Texas v United States* which both involve the Affordable Care Act. These cases illustrate the complexity of the issues involved, the limit of federal ability to require state action, division among attorneys general and the increasing involvement of state attorneys general in issues of great national concern.

1. NFIB v. Sebellius, 132 S. Ct. 2566 (2012)

2. State of Florida, et al. v. United States Department of Health and Human Services, et al., Order and Memorandum Opinion, Case No.:10 -cv-91-RV/EMT, U.S. Dist. Ct., N. Dist, Fla., October 14, 2010 (review)
3. State of Florida, et al. v. United States Department of Health and Human Services, et al., Order Granting Summary Judgment, Case No.: 3: 10-cv-91-RV/EMT, U.S. Dist. Ct., N. Dist. Of Fla., January 31,2011 (review)
4. California et al v. Texas et al, 593 U.S. ____ (2021) , Opinion, Docket No. 19-840, decided June 17, 2021 (locate on SCOTUS website home page)
5. myfloridalegal.com -Under “News Releases” on General Moody’s website click on “view all,” scroll, locate and review the following press releases: “Attorney General Moody Takes Action Against Biden Administration Over Federal Restrictions to Limit State Tax Cuts,” March 31, 2021; “Attorney General Moody Sues Biden Administration for Ignoring Federal Immigration Requirements as Border Crisis Intensifies,” September 28, 2021; “Attorney General Moody Challenges Unlawful Vaccine Mandate Threatening to Exacerbate Health Care Worker Shortage Crisis,” November 18, 2021; “Attorney General Moody and 20 State Coalition Opposes Biden Administration Rule Requiring States to Reach Net-Zero Highway Emissions,” October 13, 2022; Attorney General Moody Files Brief in SCOTUS in Support of Deportation of Criminals in the U.S. Illegally,” October 25, 2022

Jan. 10 - Period 5

AGs and U.S. Supreme Court Practice

Special Guest: Florida First District Court of Appeals Judge and former Florida Solicitor General Scott Makar. Other than the U.S. Solicitor General, state government is by far the most frequent litigant in the U.S. Supreme Court. This class will study states’ practice before the U.S. Supreme Court, including the important role played by attorneys general submitting amici curiae briefs. It will also explore the rise and growth of the office of Solicitor General in state AG offices. And there will be a discussion of the role of the Florida AG in all appeals of felony convictions in the state.

1. Kevin C. Newsom, “The State Solicitor General Boom,” 32 Appellate Practice J. 6 (2013)
2. Rachel E. Nordby, “Florida’s Office of the Solicitor General: The First Ten Years,” 37 F.S.U. L Rev. 215 (2009); S. Makar, “introductory Remarks,” 37 F.S.U. L. Rev. 216 (2009)
<https://heinonline.org/HOL/Page?handle=hein.journals/flsulr37&id=217&collection=journals&index=journals/flsulr>

3. Michelle Casady, “CFPB’s Structure Isn’t Constitutional, 11 States Tell High Court,” Law 360 (November 1, 2019) - Link: <https://www.law360.com/articles/1216191/cfpb-s-structure-isn-t-constitutional-11-states-tell-high-court>
4. myflorida legal.com -Under “News Releases” on General Moody’s website click on “view all,” scroll, locate and review the following press release: “Attorney General Moody Takes Action Against Facebook to Fight Human Trafficking,” October 27, 2021
5. Link to SCOTUS case FL Solicitor General argues January 10, 2022: <https://www.scotusblog.com/case-files/cases/gallardo-v-marstiller/>

Jan. 10 - Period 6

The Florida Cabinet

Special Guest: Deputy Executive Director of the Florida State Board of Administration and former Florida Deputy Attorney General and General Counsel Kent Perez (appearing virtually). This class period will focus on the Florida Cabinet where the Florida Attorney General shares power with the Governor, the Chief Financial Officer and the Commissioner of Agriculture and Consumer Affairs on a dozen boards and commissions. The history of the Cabinet will be covered as will the voting powers of members and the nature of the business conducted at Cabinet meetings with respect to these boards and commissions. Florida’s attorney general is the only AG in the country who shares such powers with the governor and other state-wide elected officers of the state. Among the boards are the Board of Trustees of the Internal Improvement Fund, the Florida Department of Law Enforcement, the Board of Executive Clemency, the Department of Highway Safety and Motor Vehicles, the Financial Services Commission and the Florida Land and water Adjudicatory Commission. Only the Governor, Attorney general and Chief Financial Officer oversee the State Board of Administration.

1. Kent J. Perez, “The Florida Cabinet System,” Presentation to the Constitution Revision Commission (Oct. 4, 2017) (copy posted on Canvas)
2. Edwin A. Bayo & Kent J. Perez, Florida’s Cabinet System YK and Beyond, 74 FLA. Bar Journal 68 (November 2000) - Link: <http://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,uid&db=aph&AN=3797042&site=ehost-live>
3. Kent Perez, The New Constitutional Cabinet - “Florida’s Four”, 82 Fla. Bar Journal 62 (April 2008) - Link: <http://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,uid&db=aph&AN=31708192&site=ehost-live>
4. Ira William McCollum, Jr, The Florida Cabinet System - A Critical Analysis, 43 Fla Bar Journal 156 (March 1969) Link: https://heinonline.org/HOL/Page?public=true&handle=hein.barjournals/florbarj0043&div=19&start_page=156&collection=barjournals&set_as_cursor=0&men_tab=srchresults
5. Florida Constitution, Article 4, Sections 4, 8 and 11

6. Florida Constitution, Article 10, Sections 10 and 11

Jan. 11 - Period 7

Consumer Protection

Since the passage of Unfair and Deceptive Practices Acts (UDAP) in the late 1970s, all state attorneys general have responsibility in the area of consumer protection. This is usually considered to be the “white hat” division, fighting scammers and businesses that make misrepresentations or otherwise engage in unfair or deceptive practices that could be harmful to consumers. Students will be asked to visit the websites of two or three AGs before class and identify and be prepared to discuss one consumer protection action of note. There will be a discussion of what is “unfair” and what is “deceptive.” There will also be a discussion of remedies including Assurances of Voluntary Compliance (AVC) and Consent Judgments

REFLECTION PAPER: After reading the Billotti case assigned in item 3 below, write a 500 word or less paper and summarize the facts of the case, the question on appeal, the legal arguments and the ruling of the court

1. Henry N. Butler & Joshua D. Wright, Are State Consumer Protection Acts Really Little FTC Acts, 63 Fla. L. Rev. 163 (2011) (review) - Link: https://heinonline.org/HOL/Page?handle=hein.journals/uflr63&div=8&g_sent=1&casa_token=&collection=journals
2. Florida Statutes Title XXXIII, ss501.201 - 501.213 (Florida Deceptive and Unfair Trade Practices Law)
3. Office of the Attorney General, State of Florida v. Billotti, et al., 4th DCA FL, (Feb. 20, 2019), Case No. 4018 - 1645
4. State of Florida Office of Attorney General, In the Matter of Cingular Wireless LLC, Assurance of Voluntary Compliance, Feb. 28, 2008 (copy posted on Canvas)
5. Press Release “McCollum Retrieves Millions for Florida AT&T Wireless Customers Billed for “Free” Ringtones,” Feb. 29, 2008 (copy posted on Canvas)
6. myfloridalegal.com - Under “News Releases” on General Moody’s website click on “view all,” scroll locate and review the following press releases: “Attorney General Moody Secures More than \$11 Million to Address Ocwen Mortgage Servicing and Foreclosure Issues,” October 15, 2020; “Attorney General Moody Sues Flooring Contractors Taking Payment for Work Not Completed,” July 13, 2021; “Attorney General Moody Secures More Than \$20 Million Judgment and a Lifetime Industry Ban Against Deceptive Moving Business,” May 23, 2022; “Attorney General Moody and Anti-Robocall Task Force File Enforcement Actions Against Two Alleged Illegal Robocallers,” November 1, 2022; “Attorney General Moody Takes Legal Action Against MV Realty for Swindling Florida Homeowners,” November 29, 2022; “Attorney General Moody Files Court Action Against Miami Company Sending Foreign Robocalls Around

US,” December 5, 2022; “Attorney General Moody Secures Relief for Consumers from Pet Store Selling Sick Puppies,” December 21, 2022

7. Office of the Attorney General, State of Florida v. Equifax, Final Judgment and Consent Decree, 17th DCA FL (July 18, 2019), Case No. 19 - 015227 (review)

Jan. 11 - Period 8

The Florida Office of Statewide Prosecutor, Criminal Jurisdiction, Criminal Appeals, Justice Reform and Corruption

Special Guest: Holland & Knight Partner and former Florida Statewide Prosecutor (2007-2011) Bill Shepherd. In some states such as Ohio state attorneys general have concurrent prosecutorial authority with state and local prosecutors on every criminal matter. Other attorneys general have some, more limited prosecutorial powers. Florida’s attorney general has none save a constitutionally defined role in selecting, hiring and firing the Statewide Prosecutor. Conversely Florida’s attorney general is unique among the country’s AGs in handling all criminal appeals from felony convictions in state courts and a special role in death penalty cases. The Office of Statewide Prosecutor was created when Florida voters adopted a constitutional amendment recommended by the legislature in 1987. Every four years the Attorney General appoints the Statewide Prosecutor from a list of at least three nominees submitted by the State Supreme Court Nominating Commission. The Prosecutor’s office is housed in the Department of Legal Affairs headed by the AG, but the budget is separate. The jurisdiction is limited to criminal matters that involve two or more judicial circuits, organized criminal enterprises and public corruption. He/she also runs all statewide grand juries. This class period will examine the history and relationship of the Statewide Prosecutor with the AG and State Attorneys who have primary criminal jurisdiction in each judicial circuit. Statewide Grand Juries will be discussed as will corruption investigations and prosecutions. In addition, there will be a discussion of criminal justice reform and the role of the attorneys general with specific attention to Florida.

1. The Florida Constitution, Article IV, Section 4(c)
2. Florida Statutes Title IV, Chapter 16, Section 16.56
3. R. Scott Palmer and Barbara M. Linthicum, The Statewide Prosecutor: A New Weapon Against Organized Crime, Florida State University Law Review, Vol. 13:653 - Link: https://heinonline.org/HOL/Page?handle=hein.journals/flsulr13&div=34&g_sent=1&casa_token=&collection=journals
4. Laura Layden, “Florida Attorney General Drops Criminal case against Louis Bruno and his former employees,” Naples Daily News, November 22, 2021: <https://www.naplesnews.com/story/news/2021/11/22/florida-attorney-general-drops-charges-against-louis-bruno-employees-bruno-total-home-performance/8721168002/> <https://protecteu.mimecast.com/s/XkspCVPpwux4OGx0uGwPZ3?domain=naplesnews.com>

5. myfloridalegal.com - Under “News Releases,” on General Moody’s website click on “view all,” scroll, locate and review the following press releases: “Six Arrested for Stealing the Identities of Florida Seniors,” June 23, 2020; “Attorney General Moody’s Office of Statewide Prosecution Secures Life Sentence for Child Sex Predator,” November 18, 2020; “Attorney General Moody Secures 25-Year Prison Sentence for Illicit Fentanyl Traffickers,” August 15, 2022; “Attorney General Moody Secures 25-Year Prison Sentence for Fraudster Who Stole Life Savings from Eight Florida Seniors,” September 23, 2022; “AG Moody and Law Enforcement Agencies Bust Gang Members and Seize Enough Fentanyl to Kill Half of Florida’s Population,” October 12, 2022; “Attorney General Moody’s Office of Statewide Prosecution Charges Organized Retail Thieves for Eight County Crime Spree,” October 20, 2022; “AG Moody’s Statewide Prosecutors and HCSO Shut Down Sex Trafficking Ring, Arresting Two Traffickers and Rescuing Eight Women,” October 24, 2022

Jan. 11 - Period 9

The Role of State Attorneys General in Non-profit Governance - Medicaid Fraud

Special Guest: Holland & Knight partner and former Florida Statewide Prosecutor Bill Shepherd (appearing virtually) 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. There is now greater scrutiny in many AG offices of the non-profit governance of hospitals, health insurers and universities. This class analyzes the parameters of that authority.

Federal/state cooperation is common with the investigation and prosecution of Medicaid fraud. The Medicaid program is jointly funded by the states and the federal government but is administered by the states. Each state must designate an agency to administer its Medicaid program. It is the second largest program in most states after education. In 1978, the first Medicaid Fraud Control Units (MFCUs) were federally certified and federal grants were awarded to seventeen Units. The Florida MCFU is run by the Attorney General. Its primary function is to conduct a statewide program for the investigation and prosecution of health care providers who defraud the Medicaid program, but its authority has been expanded to many other areas including investigating complaints of abuse and neglect of those residing in board and care facilities. MCFU officers are the only sworn law enforcement officers operating in the Office of the Florida Attorney General.

1. Florida Trust Code, Florida Statutes Sec. 736.0110 (3)
2. Florida Statutes Sec. 617.0304 (2)
3. Blaine Winship, Special Counsel, Office the Attorney General, State of Florida, “The Florida Attorney General and Charitable Trusts” (2019) (copy posted on Canvas)
4. Office of the Attorney General, State of Florida Department of Legal Affairs v. The Ritz Theatre 100, Inc., a Florida Not-For-Profit Corporation, and Stella C. Heath, Circuit Ct., Tenth Judicial Cir., Case No.: 2018-CA-000797, Complaint (review)

5. Attorney General v. Hahnemann Hospital, 397 Mass. 820 (1986) (review)
6. Emily Myers, State Attorneys General Powers and Responsibilities, (2018) (Fourth Edition) , Chapter 12, “Protection and Regulation of Nonprofits and Charitable Assets” (copy posted on Canvas)
7. myfloridalegal.com - Under “News Releases” on General Moody’s website click on “view all,” scroll, locate and review the following press releases: “Attorney General Moody Secures \$2 Million Payment from Mediacare to Resolve False Claims and Kickback Allegations,” June 23, 2021; “Attorney General Moody Announces Arrest of Florida Man for Stealing Thousands Through a Medicaid Fraud Scheme,” October 19, 2021; “Attorney General Moody Announces Arrest of Caregiver Abusing Florida Seniors,” October 26, 2021; “Attorney General Moody Helps Secure More Than \$233 Million from Mallinckrodt over Alleged Underpayment of Medicaid Drug Rebates,” June 16, 2022; “Mother-Daughter Duo Defrauds Medicaid Out of More Than \$100,000,” September 20, 2022

Jan. 12 - Period 10

Local Government Litigation v. Role of AG -Public Nuisance - Private Attorneys

Cities and counties across the country have filed hundreds of lawsuits against the same pharmacies, manufacturers and distributors of opioids as have the state attorneys general. Although fewer in number, cities and counties have filed climate litigation lawsuits against large energy producing companies. In all these local government lawsuits the principal claim is under the common law doctrine of public nuisance. While every state has home rule laws that give local governments wide ranging decision making authority, these lawsuits, engaging outside counsel on a contingency fee basis and often claiming damages for injuries to a wider community than their city or county, have given rise to a growing debate over restricting their authority to bring such suits with legislation and/or enacting legislation narrowing the definition and scope of public nuisance. State attorneys general are increasingly outspoken on this issue. This class will explore this debate and discuss the legal issues involved.

Note: The three cases cited below and many more climate change cases, pleadings, orders, etc. may be found at climatecasechart.com which is the website of the Columbia Law School Sabin Center for Climate Change databases of all climate litigation. At the site click on “U.S. Climate Litigation” and then scroll to state litigation enforcement cases to find the Massachusetts case and scroll further and click on “Common Law Cases” to find the city cases.

Note 2 - SB 102 and HB 1053 may be located by going to the Florida Senate website or simply entering on a search engine : SB102 Florida senate 2021 session” Please READ the two bills and REVIEW the History and analysis of each.

1. State ex rel. Attorney general of Oklahoma v. Johnson & Johnson. Oklahoma Supreme Court, 2021 OK 54, Case No. 118474, decided Nov. 9, 2021

2. Rob McKenna, Elbert Lin and Drew Ketterer, Mitigating Municipality Litigation: Scope and Solution, U.S. Chamber of Commerce Institute for Legal Reform (March 6, 2019) - Link: [Mitigating Municipality Litigation](#)
3. Joshua K. Payne and Jess R. Nix., Waking the Litigation Monster: The Misuse of Public Nuisance, U.S. Chamber of Commerce Institute for Legal Reform (March, 2019) - Link: [Waking the Litigation Monster](#)
4. George Jepson and Perry Zinn Rowthorn, “Leave Opioid Lawsuits to State Attorneys General,” Wall Street Journal, March 3, 2019 [Leave Opioid Lawsuits to State Attorneys General - Texans for Lawsuit Reform \(tortreform.com\)](#)
5. Transparency in Private Attorney Contracting Act, Florida Statutes, Title IV, Ch. 16, Section 16.0155
6. SB 102, Florida Senate, 2021 session; HB 1053, Florida House, 2021 session
7. Eric Lipton, “Lawyer Create Big Paydays by Coaxing Attorneys General to Sue,” New York Times , Dec. 18, 2014. (posted on Canvas).
8. Suncor Energy (U.S.A.) Inc., et al, v. Board of County Commissioners of Boulder County, et al, US Supreme Court, Petition for Writ of Certiorari, Brief in Opposition, and Reply Brief for Petitioners, No. 21-1550 (locate on SCOTUS website home page -Docket search)
9. BP p.l.c., et al, v. Mayor and City Council of Baltimore, US Supreme Court, Petition for Writ of Certiorari and Brief for Respondent, No.22-361 (locate on SCOTUS website home page – Docket search) (review)
9. City of New York v. BP P.L.C., et al, U.S. District Court, Southern District of New York, No. 18, Civ. 182 (JFK), Opinion and Order Filed 7/19/2018
10. City of Oakland v. BP P.L.C., et al., U.S. District Court, Northern District of California, , No. C 17-06011 WHA and No. C 17-06012 WHA, Order Granting Motion to Dismiss Amended Complaints, June 25, 2018 (recommended)
11. Commonwealth of Massachusetts v. Exxon Mobil, Suffolk County Superior Court Civil Action, Complaint (filed October 24, 2019) (recommended)
12. Link to proposed Texas public nuisance legislation: <https://tcjl.com/legislation-filed-to-abolish-common-law-doctrine-of-public-nuisance/>

Jan. 12 - Period 11

Multistate Investigations and Litigation - Part I- Antitrust

Special Guest: Stearns Weaver Miller shareholder and Former Florida Chief Deputy Attorney General Trish Conners. States have worked together for decades in multistate matters, most often

pursuing potential antitrust and consumer protection violations by large companies, but their most recent efforts against certain big tech companies and the major opioids manufacturers, distributors, and retail pharmacies have thrust them more than ever into the national enforcement spotlight. This renewed attention has reinvigorated the years-long debate over whether state attorneys general should even have a role in nationwide antitrust and consumer protection enforcement or whether that role should be exclusively within the domain of federal enforcement agencies like the Federal Trade Commission, the U.S. Department of Justice, and the Consumer Financial Protection Bureau. This class period and the next will examine and discuss the origins and growth of multistate consumer protection and antitrust enforcement; delve into several recent examples and their importance; outline the pros and cons of state attorneys' general involvement in multistate enforcement matters; and look at what the future may hold. Part I focuses on multistate antitrust enforcement and Part II on consumer protection.

NOTE: Regarding Part 1, do not be daunted by the size of the list that follows. **To be a productive participant in class discussions, you should READ the material in section 1, 2, 3 and 6 of this part for a foundation in the law and the general contributions made by state attorneys general to antitrust jurisprudence.** The remaining Sections have been included simply to provide some high-level examples of the kinds of cases attorneys general pursue as multistate antitrust enforcement. You need only **REVIEW** these sufficiently to gain a general appreciation for the matters state attorneys general generally pursue.

1. **Jurisdictional Basis for AG's Federal Antitrust Enforcement Authority:** [Antitrust 101 National Association of Attorneys General \(naag.org\)](#)
 - [15 U.S. Code § 15c - Actions by State attorneys general | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](#)
 - [15 U.S. Code § 26 - Injunctive relief for private parties; exception; costs | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](#)
2. **Overview of Latest Developments in AG Multistate Antitrust Enforcement and the Impact:** [State Attorneys General Jolt Antitrust Enforcement – Cadwalader Expands A.G. Practice - Anti-trust/Competition Law - United States \(mondaq.com\)](#)
3. **Important Examples of AGs Impact on U.S. Antitrust Jurisprudence**
 - [State of California v. Frito-Lay, Inc., 333 F. Supp. 977 \(C.D. Cal. 1971\) :: Justia](#)
 - [Hartford Fire Ins. Co. v. California | FindLaw](#)
 - [California v. American Stores Co. :: 495 U.S. 271 \(1990\) :: Justia US Supreme Court Center](#)
 - [Illinois Brick Co. v. Illinois : 431 U.S. 720 \(1977\) :: Justia US Supreme Court Center](#)
 - [U.S. v. Microsoft Corp., 253 F.3d 34 | Casetext Search + Citator](#)
 - [16-1454 Ohio v. American Express Co. \(06/25/2018\) \(supremecourt.gov\)](#)
Cited as: 138 S.Ct. 2274 (2018)
4. **Examples of Recent Multistate Antitrust Non-Merger Enforcement:**

- **Big Pharma-**[Generic drug companies, executives slapped with price-fixing lawsuit - CNN](#)
- **Big Tech Cases-** [State Attorneys General: Big Tech Update | Ad Law Access](#)
- **Labor and No Poach Cases-** [Attorney General Becerra Announces Multistate Settlements Targeting “No-Poach” Policies that Harm Workers | State of California - Department of Justice - Office of the Attorney General](#)

5. Examples of Recent Multistate Merger Enforcement:

- **Airlines-** [News Release - Attorney General Moody Takes Legal Action to Protect Floridians from Anti-Competitive Airline Agreement \(myfloridalegal.com\)](#)
- **Telecommunications-** [Attorney General James' Multistate Lawsuit To Block T-Mobile And Sprint Megamerger Gains Additional Support From Attorneys General Across The Nation | New York State Attorney General \(ny.gov\)](#)

6. What the Future Holds?

- **Increased State/Federal Enforcement Collaboration?** [FTC’s Alternative Path to Restitution—Collaborating With State AGs \(bloomberglaw.com\)](#)
- **Increased Divergence?** [U.S. Legislators and State Attorneys General Raise Antitrust Concerns Regarding ESG Collaborations | Wilson Sonsini Goodrich & Rosati - JDSupra](#)
- **Antitrust Modernization?** [State AGs: Are More Antitrust Enforcement Actions on the Horizon? | Regulatory Oversight](#)

7. Examples of Recent Florida Antitrust Enforcement:

- [News Release - Attorney General Moody Sues Google for Antitrust Violations Over App Store \(myfloridalegal.com\)](#)
- [News Release - Attorney General Moody Takes Legal Action to Protect Floridians from Anti-Competitive Airline Agreement \(myfloridalegal.com\)](#)

Jan. 12 - Period 12

Multistate Investigations and Litigation - Part II - Consumer Protection

Special Guest: Stearns Weaver Miller shareholder and former Florida Chief Deputy Attorney General Trish Conners. Part II focuses on multistate consumer protection enforcement.

NOTE: As stated above, do not be daunted the size of the list below. **You should READ the items in Section 1 and 2 to gain a good understanding of the jurisdictional basis and the**

general evolution of multistate enforcement. You may simply **REVIEW** the remaining items to gain a good appreciation of the areas in which the attorneys general focus their enforcement efforts.

1. Jurisdictional Basis for State Attorneys General Multistate Consumer Protection

Enforcement: <https://www.naag.org/issues/consumer-protection>

- **State Law Jurisdiction:** Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2022): [Statutes & Constitution :View Statutes : Online Sunshine \(state.fl.us\)](#)
- ***Parens Patraie* Cases and Federal Court Removal:** [Mississippi ex rel. Hood v. AU Optronics Corp. :: 571 U.S. 161 \(2014\) :: Justia US Supreme Court Center](#)
- **Explicit Jurisdiction to Enforce 22 Federal Consumer Protection Laws:** [State Attorneys General Use of Concurrent Public Enforcement Authority In Federal Consumer Protection Laws \(harvard.edu\)](#) (Need Review Only annotations 30-94)

2. Evolution of Multistate Consumer Protection Enforcement Using State Law:

- **Tobacco:** [Summary of Key Points in the Master Settlement Agreement – PA Office of Attorney General](#)
- **Off-Label Marketing of Pharma Products:** [AG joins \\$71 million agreement to stop off-label medication marketing | Washington State](#)
- **Mortgage Servicing Settlement:** [NATLSETEXEC SUM\(2\).PDF \(hud.gov\)](#)
- **VW and Product Defect Disclosure Failures:** [Volkswagen Settlement Consumer Q&A \(tn.gov\)](#)
- **Data Privacy:** [News Release - Attorney General Moody Secures Millions of Dollars in Multistate Action Following Massive Data Breach \(myfloridalegal.com\)](#)
- **Opioids:** [News Release - VIDEO: Attorney General Moody Secures More Than \\$680 Million from Walgreens, Concluding State's Historic \\$3 Billion Opioid Litigation \(myfloridalegal.com\)](#)
- **Debt Collection:** [News Release - Attorney General Moody Secures \\$1.85 Billion Following Multistate Investigation into Student Loan Servicer Navient \(myfloridalegal.com\)](#)
- **On-Line Consumer Services:** [News Release - Attorney General Moody Secures More Than \\$140 Million for Floridians and Taxpayers Nationwide \(myfloridalegal.com\)](#)
- **On-Line Disclosures:** [News Release - Attorney General Moody Announces Multistate Action Against CarMax Over the Disclosure of Safety Recalls \(myfloridalegal.com\)](#)
- **Big Tech:** [News Release - Attorney General Moody Secures \\$390 Million Through Historic Multistate Action Against Google Over Location Tracking Practices \(myfloridalegal.com\)](#)

- **False Advertising:** [News Release - Attorney General Moody Announces Multistate Action Against Ford Motor Company Resulting in More Than \\$19 Million for States \(myfloridalegal.com\)](#)

3. Multistate Consumer Protection Enforcement Examples Using Federal Law:

- **Charities:** [News Release - Attorney General Moody Recovers Funds Following Multistate Investigation into Sham Veterans Charity \(myfloridalegal.com\)](#)
- **Children's Privacy:** [News Release - Attorney General Moody Leads Multistate Investigation into Instagram's Impact on Young People \(myfloridalegal.com\)](#)
- **HIPAA Privacy:** [News Release - Florida Attorney General Announces First-Ever Multistate HIPAA-Related Data Breach Lawsuit and Recovery \(myfloridalegal.com\)](#)

4. Multistate Consumer Protection Advocacy:

- **Telemarketing/Robocalling:** [News Release - Following Calls by Attorney General Moody and Other State AGs, the FCC Takes Action to Stop Foreign Robocalls \(myfloridalegal.com\)](#)
- **Senior Scams:** [NAAG Endorses Fraud and Scam Reduction Act - National Association of Attorneys General](#)
- **Debt Repair:** [AGs Support CFPB Implementing Debt Bondage Repair Act \(naag.org\)](#)

5. What the Future Holds?

- **More Fed-State Coordination?** [Feds + State Attorneys General = A New Enforcement Landscape | Ad Law Access](#)
- **Or More Divergence?** [Fourteen State Attorneys General File Amicus Brief In Support of Lawsuit by U.S. Chamber of Commerce Against the CFPB | Regulatory Oversight](#)
- **Hodge-Podge Enforcement with No Overarching Federal Laws in Place?** [State AGs Respond to COVID-19-Related "Price Gouging" and DOJ Antitrust Enforcement to Focus on Public Health Products | Paul, Weiss \(paulweiss.com\)](#)

Jan. 13 - Period 13

Civil Rights - Part I

Special Guest: Gilbert King, author of The Devil in the Grove and Beneath the Ruthless Sun. The Florida Attorney General has an Office of Civil Rights and is authorized to investigate and initiate actions for damages, injunctive relief, and civil penalties where he/she has reason to believe a person or group is engaged in a pattern or practice of discrimination on the basis of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status and the

discrimination raises an issue of great public interest. As Gilbert King described in his two books, Florida in the 1940s, '50s, 60s and 70s did not have an attorney general who took on the rampant civil rights abuses of that era and the state civil rights laws on the books today did not exist. Along with a general conversation with Mr. King about his two books and the state of civil rights in Florida in the era about which he wrote, we will examine the role of the state attorney general in civil rights enforcement today, the relationship with federal civil rights enforcement and the specific powers of the Florida AG.

REFLECTION PAPER - After reading Devil in the Grove write a 500 word paper and briefly tell what Walter Irvin, Charles Greenlee, Samuel Shepherd and Ernest Thomas were accused of, what became of each and what role Sheriff Willis McCall played.

1. Gilbert King, Devil in the Grove (2012), Harper Collins
2. Gilbert King, Beneath the Ruthless Sun (2018), Riverhead Books (optional - not required reading, but the complete picture of the 36 years of civil rights abuses when Willis McCall served as Lake County Sheriff cannot be gained without reading this book) (recommended)
3. Ch. 16, Section 16.57, Florida Statutes
4. Ch. 760, Florida Statutes
5. Emily Myers, State Attorneys General Powers and Responsibilities, (2018) (Fourth Edition), Chapter 19, "Civil Rights," : (copy posted on Canvas)

Jan. 13 - Period 14

Course Conclusion - Civil Rights Part II

Discussion will continue with special guest Gilbert King. Students will engage in an exercise using a hypothetical that assumes you are the Florida Attorney General in 1960, and you learn of certain facts involving very disturbing and probably illegal actions by Lake County Sheriff Willis McCall and want to take action. Understanding this is before enactment of either the federal or Florida civil rights laws and with no statutory authority to prosecute crimes, what would you do?