

**Role of the Attorney General  
University of Florida College of Law  
Syllabus: Spring 2022**

**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.*

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**Meeting Time and Location**

Monday, Tuesday, Wednesday, Thursday, Jan. 10 - 13, from 9:00am - 12:00pm

Friday, Jan. 14, from 10:00am - 12:00pm

Classroom: Holland Hall 270

**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;
- 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 11, 2022, and again on Thursday, January 13, 2022 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](mailto: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 24, 2022. 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 10 -14, 2022. 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. 10- 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 (copy posted on Canvas)- Link: [https://heinonline.org/HOL/Page?handle=hein.journals/tulr74&div=58&g\\_sent=1&casa\\_token=&collection=journals](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 (5<sup>th</sup> Cir. Ct. App 1976)
5. Diana Novak Jones, “Ballot Measure Can’t Legalize Pot, Fla. Legislators Say,” Law360 (Nov. 4, 2019) (copy posted on Canvas)- Link:  
<https://www.law360.com/articles/1216726/ballot-measure-can-t-legalize-pot-fla-legislators-say>

## **Jan. 10 - 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 briefly describe the work of the State Programs Bureau and the Child Support Enforcement Bureau in the Civil Litigation Division 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)
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 (review) (copy posted on Canvas)
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. 10 - 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](http://myfloridalegal.com), the Florida Attorney General website.

1. Florida Government in the Sunshine Manual (copy may be found at [myfloridalegal.com](http://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 09-19, April 23, 2009, "Municipalities - Records - Government in the Sunshine Law - Internet"
5. AGO - 09 -51, Nov. 24, 2009, "School Districts - Insurance - Workers Compensation"

## **Jan. 11 - 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



## Jan. 11 - 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) (copy posted on Canvas)  
<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) (copy posted on Canvas)- 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. 11 - 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) (copy posted on Canvas)- 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) (copy posted on Canvas)- 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) (copy posted on Canvas- 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](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. 12 - 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).

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) (copy posted on Canvas) (review) - Link: [https://heinonline.org/HOL/Page?handle=hein.journals/uflr63&div=8&g\\_sent=1&casatoken=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/uflr63&div=8&g_sent=1&casatoken=&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 Takes Action Against Local Pet Store Alleged to be Selling Sick Puppies,” May 18, 2020; “Attorney General Moody Secures More than \$11 Million to Address Ocwen Mortgage Servicing and Foreclosure Issues,” October 15, 2020; “Attorney General Moody Secures More Than \$2 Million In COVID-19 Recoveries for Florida Consumers,” December 2, 2020; “Attorney General Moody Shuts Down Moving Scams and Recovers Millions for Consumers Duped by Malicious Movers,” March 2, 2021; “Attorney General Moody Sues Flooring Contractors Taking Payment for Work Not Completed,” July 13, 2021; “Attorney General Moody Secures Half a Million Dollars from HVAC Scheme,” September 23, 2021; Attorney General Moody Takes Action Against Pool Company for Hundreds of Jobs left Unfinished,” October 13, 2021
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. 12 - 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 (copy posted on Canvas)- Link:  
[https://heinonline.org/HOL/Page?handle=hein.journals/flsulr13&div=34&g\\_sent=1&casa\\_token=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/flsulr13&div=34&g_sent=1&casa_token=&collection=journals)
4. myfloridalegal.com - Under “News Releases,” on General Moody’s website click on “view all” scroll, locate and read the following press releases: “Six Arrested for Stealing the Identities of Florida Seniors,” June 23, 2020; “Attorney General Moody’s Office of Statewide Prosecution Files Charges Against Operator of Human Trafficking Ring Involving a Minor, Controlled Substances and Violence,” August 27, 2020; “Attorney General Moody’s Office of Statewide Prosecution Secures Life Sentence for Child Sex Predator,” November 18, 2020; “Attorney General Moody Announces 25-year Prison Sentence for Opioid Trafficker,” October 15, 2021; “Attorney general Announces Lengthy Prison Sentence for Georgia Man Trafficking Meth in Florida,” November 17, 2021.

## **Jan. 12 - 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 (MCFUCUs) were federally certified and federal grants were awarded to seventeen Units. The Florida MCFUCU 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 Medicea 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.

## **Jan. 13 - 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](http://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. BP P.L.C. et al v. Mayor and City Council of Baltimore, US Supreme Court, Opinion, decided May 17, 2021, No.19-1189 (locate on SCOTUS website home page)
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
11. Commonwealth of Massachusetts v. Exxon Mobil, Suffolk County Superior Court Civil Action, Complaint (filed October 24, 2019) (review)
12. Link to proposed Texas public nuisance legislation: <https://tcjl.com/legislation-filed-to-abolish-common-law-doctrine-of-public-nuisance/>

**Jan. 13 - Period 11**

**Multistate Investigations and Litigation - Part I- Antitrust**

Special Guest: Stearns Weaver Miller shareholder and Former Florida Chief Deputy Attorney General Trish Connors . 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, 5 and 6 of this part for a foundation in the law and the general contributions made by state attorneys general to antitrust jurisprudence. Sections 2, 3, and 4 are mostly links to press items or short articles provided as examples of the kinds of cases attorneys general pursue as multistate antitrust and consumer protection matters. You need only REVIEW these enough 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 \(mondaq.com\)](#)
  - a. **Big Pharma Cases**
    - [Indivior stumbles as US states file antitrust suit | BioPharma Dive](#)
    - [Generic drug companies, executives slapped with price-fixing lawsuit - CNN](#)
    -
  - b. **Big Tech Cases:**
    - [Facebook, Google face off against a formidable new foe: State attorneys general - The Washington Post](#)
    - [U.S. DOJ, State Attorneys General File Antitrust Complaint Against Google \(orrick.com\)](#)

- [Google antitrust cases in U.S. and Europe: overview \(cnbc.com\)](#)
- [States bring new antitrust suit against Google over Google Play \(cnbc.com\)](#)
- [How nearly 50 US states aligned to sue Google, Facebook | MLex Market Insight](#)

#### **Florida Engagement with Big Tech:**

- [News Release - Attorney General Moody Sues Google For Violating Antitrust Laws \(myfloridalegal.com\)](#)
- [News Release - Attorney General Moody Takes Action Against Google for Anticompetitive Practices \(myfloridalegal.com\)](#)
- [News Release - Attorney General Moody Sues Google for Antitrust Violations Over App Store \(myfloridalegal.com\)](#)
- [New York Attorney General Leads 48 States In File Antitrust Lawsuit Against Facebook – Deadline](#)
- [News Release - Attorney General Moody Leads Action to End Facebook’s Monopoly Control \(myfloridalegal.com\)](#)
- [Judge dismisses FTC and state antitrust complaints against Facebook \(cnbc.com\)](#)
- [State AGs to fight dismissal of Facebook antitrust claims \(cnbc.com\)](#)
- 

#### **c. 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](#)

### **3. Merger Enforcement:**

#### **a. The Current Landscape:**

- [State Attorneys General and Their Influence on Merger Enforcement - Bruning Law Group](#)
- [State Attorneys General Ramping up Merger Enforcement | Orrick - Antitrust Watch - JDSupra](#)

#### **b. T-Mobile/Sprint:**

- [Sprint and T-Mobile face another legal challenge to merger - CNN](#)
- [T-Mobile, Sprint \\$26 Billion Merger Cleared After Court Ruling - Variety](#)
- [Makan Delrahim: T-Mobile/Sprint ruling sets high bar for state challenges \(cnbc.com\)](#)

#### **c. Airlines:**

- [News Release - Attorney General Moody Takes Legal Action to Protect Floridians from Anti-Competitive Airline Agreement \(myfloridalegal.com\)](#)

### **4. AG Advocacy in Antitrust:**

[Final-State-Antitrust-Enforcement-Venue-Act-Endorsement.pdf \(netdna-ssl.com\)](#)



- [State AGs: Are More Antitrust Enforcement Actions on the Horizon? | Regulatory Oversight](#)
- [Critics fear antitrust proposal could place the future of business under state AG rule | Legal Newsline](#)

## 5. Important Examples of AGs Impact on U.S. Antitrust Jurisprudence

- [HARTFORD FIRE INS. CO. v. CALIFORNIA | FindLaw](#)
- [California v. American Stores Co. :: 495 U.S. 271 \(1990\) :: Justia US Supreme Court Center](#)
- [12-1036 Mississippi Ex Rel. Hood v. AU Optronics Corp. \(1/14/2014\) \(supremecourt.gov\)](#)
- [16-1454 Ohio v. American Express Co. \(06/25/2018\) \(supremecourt.gov\)](#)  
Cited as: 138 S.Ct. 2274 (2018)

## 6. What the Future Holds?

- a. Preemption of State Antitrust Laws?**
  - [Antitrust Federalism, Preemption, and Judge-Made Law - Harvard Law Review](#)
- b. Increased State/Federal Enforcement Collaboration?**
  - [FTC's Alternative Path to Restitution—Collaborating With State AGs \(bloomberglaw.com\)](#)
- c. Increased Divergence?** See T-Mobile/Sprint, e.g. in Section 3b.  
[Critics fear antitrust proposal could place the future of business under state AG rule | Legal Newsline](#)

Jan. 13 - 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 9 to gain a good understanding of the jurisdictional basis and other rationale behind state consumer protection laws, multistate enforcement of the these laws and what to expect in the future. 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>
  - a. State Law Jurisdiction: Florida's Deceptive and Unfair Trade Practices Act:
  - b. Explicit Jurisdiction to Enforce of Federal Consumer Protection Laws:

[State Attorneys General Use of Concurrent Public Enforcement Authority In Federal Consumer Protection Laws \(harvard.edu\)](#) (Read annotations 30-94)

c. **Other Important Developments:**

[AT&T Mobility LLC v. Concepcion :: 563 U.S. 333 \(2011\) :: Justia US Supreme Court Center](#)

[AMERICAN EXPRESS CO. ET AL. v. ITALIAN COLORS RESTAURANT ET AL. | FindLaw](#)

2. Key Coordinated Consumer Protection Enforcement Matters Using State Law:

- Tobacco: [Summary of Key Points in the Master Settlement Agreement – PA Office of Attorney General](#)
- Mortgage Servicing Settlement: [NATLSETEXECSUM\(2\).PDF \(hud.gov\)](#)
- Defect/Failure to Disclose Cases: [Honda Will Pay \\$85 Million in Takata Airbag Settlement \(autoweek.com\)](#)
- Medical Devices/Failure to Disclose: [News Release - Attorney General Moody Secures Millions for Florida Through Multistate Investigation into National Medical Device Manufacturer \(myfloridalegal.com\)](#)
- Defect/Failure to Disclose Fed-State-Private Bar Settlements: [Volkswagen Settlement Consumer Q&A \(tn.gov\)](#)
- Opioids/Distributors: [Florida Attorney General - Attorney General Moody Secures Relief for Opioid Crisis \(myfloridalegal.com\)](#)
- Opioids/Purdue: [News Release - Attorney General Moody Secures Billions for Opioid Abatement Funds from Purdue Pharma Bankruptcy Plan \(myfloridalegal.com\)](#)
- Online Platforms: [OfferupVaccineCardletter-NAAG-1.pdf \(netdna-ssl.com\)](#)  
[NAAG Works to Prevent the Online Sale of Fraudulent COVID Vaccination Cards - National Association of Attorneys General](#)

3. Key Coordinated Consumer Protection Enforcement Matters Using Federal Law:

- Charities: [Attorney General Leads Multistate Settlement with PayPal Charitable Giving Fund – National Association of State Charity Officials \(nasconet.org\)](#)

[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:  
[The Medical Informatics HIPAA Settlement: Implications for the Future of State Data Security Enforcement – NCBarBlog](#)  
[CHS Reaches Multistate HIPAA Settlement After OCR Fine - Compliancy Group \(compliancy-group.com\)](#)

- Debt Collection: [News Release - Attorney General Moody Takes Action Against Nationwide Debt Collection Agency Over Massive Data Breach \(myfloridalegal.com\)](#)
4. Multistate Data Breach Enforcement:
    - [50 Attorneys General Secure \\$600 Million from Equifax in Largest Data Breach Agreement in History | Wisconsin Department of Justice \(state.wi.us\)](#)
  5. Federal and State Law Telemarketing/Robocalling Multistate Advocacy:
    - [News Release - Attorney General Moody Leads Efforts to Stop Robocallers from Misusing Legitimate Phone Numbers \(myfloridalegal.com\)](#)
    - [Attorneys General Urge FCC to Accelerate Deadline for STIR/SHAKEN Adoption \(naag.org\)](#)
  6. Federal Senior Scam Multistate Advocacy:
    - [NAAG Endorses Fraud and Scam Reduction Act - National Association of Attorneys General](#)
  7. Multistate Coordination to Deter Pandemic Price-Gouging: [Coronavirus price gouging: AGs demand action from Amazon, Walmart \(usatoday.com\)](#)
  8. AG Advocacy in Consumer Protection:
    - [Attorney General Josh Shapiro Joins Multistate Letter Opposing U.S. Department of Education Rollback of Student Loan Servicing Reforms – PA Office of Attorney General](#)
    - [FDA-Letter-NAAG.pdf \(netdna-ssl.com\)](#)
    - [Attorney General Becerra Supports Kentucky’s Fight Against Price Gouging | State of California - Department of Justice - Office of the Attorney General](#)
  9. What the Future Holds?
    - [Director Chopra Remarks – December NAAG Meeting | Consumer Financial Protection Bureau \(consumerfinance.gov\)](#)
    - [Feds + State Attorneys General = A New Enforcement Landscape | Ad Law Access](#)

## **Jan. 14 - 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. 14 - 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? College of Law faculty will be invited to join the class for this period and after the class is over all students taking the course and faculty will be invited to a 12:00pm -1:00pm lunch hosted by the College where an informal discussion with Gilbert King will continue