
REGULATORY OVERSIGHT — S02E10: A CONVERSATION WITH NAAG EXECUTIVE DIRECTOR BRIAN KANE
HOST: ASHLEY TAYLOR
GUEST: BRIAN KANE

Ashley Taylor:

Welcome to another episode of *Regulatory Oversight*, a podcast that focuses on providing expert perspective on trends that drive regulatory enforcement activity. I'm Ashley Taylor, one of the hosts of this podcast and co-leader of the firm's state attorneys general practice. This podcast features insights from members of our practice group, including its nationally ranked state attorneys general's team, as well as commentary from business leaders, regulatory experts, and current and former government officials. We cover a wide range of topics affecting businesses operating in highly regulated areas. Before we get started today, I want to remind our listeners to visit and subscribe to our blog at [RegulatoryOversight.com](https://www.regulatoryoversight.com) so you can stay up to date on developments and changes in the regulatory landscape.

Today I am thrilled to be joined by the National Association of Attorneys General Executive Director Brian Kane. Brian assumed the role of executive director in July of 2022, and prior to serving in his current position, Brian served as Idaho Attorney General's Chief Deputy Attorney General, where he acted as a liaison between the Attorney General and state and local and federal government. Brian, welcome and we are thrilled to have you with us here today. Brian, it may be a good place to start to explain to folks who may not be as familiar with the entity, what exactly is the National Association of Attorneys General?

Brian Kane:

Thank you, Ashley. I'm thrilled to be here and to join you. So, the simplest way to put it is the National Association of Attorneys General is the Attorneys General. It's a collection of all 56 attorneys general, meaning all the states and territories. We host generally two large conferences a year, and then we have a number of specialized conferences and trainings. We also work to bring them together on issues of common interest from time to time. I think the best way to think of the National Association is to think of us as a facilitator, a convener, a trainer, and a multiplier. I'm happy to explain a little bit more of each of those functions if you're interested.

Ashley Taylor:

That'd be a great place to start. Talk about what you mean by a facilitator.

Brian Kane:

So, we facilitate by offering the ability for folks with common interests to come together. It's one of those spots where both the private interests, the federal interests, the state interests, whoever they are, they can come together under a common roof and have discussions on issues, things that they agree on, things they disagree on, things that need to be addressed. Oftentimes we'll have private entities such as your clients that may come to the AGs and say, "Hey, we have an issue within our ranks. Do you have an

alternative for a solution," or something like that. And it creates that forum for folks to get together and have those open discussions that lead to results.

Ashley Taylor:

Is the National Association of Attorneys General, is that an organization that companies can join? Are there memberships?

Brian Kane:

Well, we're interesting. The National Association, the only members of the association are the attorneys general and their offices themselves. However, our conferences, the Capital Forum and the AG Symposium, they're open to all attendees. And then we're also, I'm more than willing, for example, if you have clients or a need, to get in touch with an attorney general, I'm always happy to facilitate that connection and to make those introductions as needed and to assist in that capacity.

Ashley Taylor:

You mentioned a training function as well. Talk a little bit about that.

Brian Kane:

Sure. We have a robust training platform. I can tell you that just in the six months that we're up to at this point, we have had over 6,500 registrants for our training in a capacity of areas, and those go everywhere from nuts and bolts of law practice, like legal writing and trial advocacy and depositions, all the way up into more sophisticated and specialized areas, like artificial intelligence, consumer protection, consumer fraud, bankruptcy, tobacco, all of those different areas, in order to help develop and hone the skillset of offices nationwide. And it's not just attorney training. We are a whole office solution for attorney general training in that we also offer training for IT folks and paralegals and all of the folks in between.

Ashley Taylor:

I hadn't planned to raise this issue with you, but as you discuss training, you reminded me of my experience with the National Association of Attorneys General when I was asked to serve as Deputy Attorney General of Virginia. It was one of the first training courses that I took, and it was more training on the office itself. So, I know that's something you all still do at a very high level, particularly for new administrations coming in. Why don't you talk about that a bit?

Brian Kane:

Sure thing. As you identified, we offer a new attorney general orientation to help them become familiar with the office, the scope of the office, all of the resources that are now available to them as they take office. We follow that up by offering management reviews. Sometimes an attorney general comes into office, and they say, "Hey, can you give us a snapshot of what we've already got in the dugout as far as the folks that we've got working for us?" We're happy to assist them with that. Then we also cultivate, so we offer a leadership and management training to the offices. There's an old model of leadership and management within the practice of law that is, if you're a really good attorney and you've been here for a long time, you should be the leader. Well, I think that the practice of law has by and largely recognized

maybe that's not the best leadership, mentorship and management model for folks. So, it's a way that we help professionalize our own ranks.

Ashley Taylor:

You have a very unique background, having served as Chief Deputy for a number of years. I think it would be interesting for the folks listening to this podcast to have some insight from you into how that impacts your thinking, how you go about doing your job and what your experience has helped by way of executing on a daily basis. Talk a little bit about that.

Brian Kane:

I really view this position, the executive director role, as a scaling up of the chief deputy's position. When you're the chief deputy, you handle a lot of different issues for an attorney general, whether it's the day-to-day operations of the office, maybe it's helping the attorney general out on specific projects. Maybe it's taking the lead on certain things that are of high value or high importance to the attorney general or the office. You never really know what you're walking into day-to-day as the chief deputy. Well, to me, this position is scaling that up so that instead of chief deputy to a single attorney general, I feel like I'm the executive director, the chief deputy to all 56 attorneys general and their offices. So as their needs change and as the environment is dynamic, so too are the expectations for both myself and our organization. We are a service organization that has to be responsive to what it is the attorneys general, and their offices are looking for.

Ashley Taylor:

That's a great segue into my next question, Brian. Talk about NAAG's future from your perspective.

Brian Kane:

When I look at the National Association, I think that our future really is the future of the Office of Attorneys General. When you look at the attorneys general, their breadth and scope has grown over the years. Just in our relationship, Ashley, you and I have touched on a number of additional topics from our very first meetings, which were quite a while ... We probably don't want to admit how long ago at this point. And to me, as you look into the future, I don't see the focus or the interests of the attorneys general narrowing. You look at, for example, the Wall Street Journal article yesterday on Instagram or you look at any of the articles addressing artificial intelligence. There are a number of areas where attorneys general are going to continue to be interested, involved and active. You look at crypto finance. There's all of these things that are in place and emerging rapidly, and there's an overlay that involves the attorney general space in all of those.

Ashley Taylor:

How do you measure success for an organization like the National Association of Attorneys General, where you're facilitating, you're training? What do you use for tools to measure your own success and the success of the organization?

Brian Kane:

To me, the very best measure of success for our organization is usage. If we have attorneys general and their offices that are using the resources that we're offering, that's our success. As I said before, we've

already trained more than 6,000 folks this year. Between June and July, so in just these next two months coming up, we will be hosting 22 different trainings. And the fact that folks are using us and using us at that high rate tells me that we're giving attorneys general services that they want and need. I think the other element of that is our agility. Every organization at times can struggle with agility, but one of the things that's come up is the increased need for artificial intelligence and how quickly and effectively can we pivot into that artificial intelligence space and offer training to the attorneys general and their offices so that they don't have to ever play catch-up on the issue.

Ashley Taylor:

So, I know one area that the National Association of Attorneys General has really built out over the past 20 years is in the area of Supreme Court training. I know, and this goes back to when you and I were both in the office, there was a time when it was probably described as catch as catch can, the ability to have that type of training, but now I know it is robust. Talk about that. I'm focusing on that because that's one area as I was thinking about this podcast, that folks listening to this probably have seen a state AG in action at the Supreme Court, and they probably didn't recognize the training you all provided for that experience.

Brian Kane:

Yes, thank you. Dan Schweitzer leads our Supreme Court project. He's done that for a number of years. He does a phenomenal job. As an Attorney General, the question isn't *if* you're going to have a Supreme Court case, it's *when* are you going to have a Supreme Court case. Granted, it may not be a case that gets taken by the court, but during an AG's term of office, there's going to be at least one, probably more than one cert petition involving the office. That doesn't even take into account the number of amicus brief requests that will cross an AG's desk while they're in office. So, in order to address that need within the AG Office, the National Association has provided a Supreme Court project and it has a Solicitor General's Conference. It offers moot courts, it offers brief review, it helps with circulation, and it just does a number of different things that are designed to enhance and improve the Supreme Court practice within the AG's Office.

Again, I think that there are two concepts that come to mind here. This is our continued professionalization of the services offered by the attorneys general, as well as our ability as the National Association to amplify the impact of the attorneys general in their practice.

Ashley Taylor:

Let me drill down into a practice area that you will have familiarity with from your experience as chief deputy and to see if the National Association plays a role now. Talk about what we in the profession call multi-state, talk about what a multi-state is, and then talk about the National Association's role in the multi-state process. I ask you to incorporate your experience as chief deputy into that response.

Brian Kane:

Sure. Let's start at the very top with what is a multi-state. A multi-state is very simply just when you have two or more states that come together on a common issue of interest to those state attorneys general. It could involve a corporation, it could involve federal government action, it could involve a Supreme Court case, any of those things, essentially any legal matter that falls within the ambit of the attorneys general, they take a look at it. Our association, the National Association, we help them

connect with one another. We have a consumer protection project, we have a tobacco project, we have our Supreme Court project. All of those help the attorneys general connect with one another.

So, in that role, again, if we go back to what we do, we're facilitating and convening at that point in order to help those folks connect and streamline the efforts both on the attorney general side of the desk, but then also on the folks that we're looking into side of the desk. It's much easier to respond to a single common inquiry than it is 50 or 56 or 25 disparate inquiries. So, in that respect, it really helps to focus and hone what it is that's being asked and how to respond to it. And I think that those are all really critical elements within this space.

Ashley Taylor:

Let me turn to your relationship to the federal government. The National Association is centered in Washington, DC, and in preparing for this podcast, I noticed a number of references on your website to the role that your organization plays vis-a-vis the states and the federal government. So, talk about that and what role you all play in that relationship.

Brian Kane:

You've highlighted it. Being centered in Washington, DC, we act as a fairly convenient conduit to federal government and the folks that hold office there. So, a lot of times, we help to facilitate the relationships between attorneys general and the federal government, whether it's at the FTC or the FBI or the DOJ or whatever the entity is, we help to foster and facilitate the relationship between them. So often, when you come to a National Association Conference, it's not uncommon to run into those federal folks as well. They will be there to speak, they will be there to network and to build relationships among both the attorneys general and the attendees at those conferences. Just this week, I was at a conference that was hosted by the FBI that was talking about engagement and facilitating those sorts of relationships. I think that to me, that's again one of the more critical components that we serve for the attorneys general is to act as that connector.

Ashley Taylor:

I know one of the projects that the National Association has undertaken in the past couple of years is to collect and to make public settlement agreements. Talk, if you would, about why the National Association decided to do that and what you hope the public gets out of it, and how do you think it should be used by the public.

Brian Kane:

There's a lot there in those questions. I'm going to try to walk through all of them. The why is I think that to me, if there's one thing that I have learned after 20 years in state government is transparency is actually one of government's most powerful allies because when government isn't transparent, we tend to fill in the lack of transparency with negative assumptions. So, when you look at what's happening nationally at times, one of the question marks is are the theories that are being floated because government is being transparent or because we don't have enough information about what government is doing? In order to address that, the National Association has said, "Look, we've been doing this for a long time. We're going to put it all out there in the public. You all can research it as much as you want and take a look at whatever it is that we've done, or not that we've done, that the attorneys general

have done collectively and create a history and a digest of all the things that they've undertaken and what the outcomes have been."

That becomes a really important resource to both trace the history of what the attorneys general have done, as well as if you're an entity that's interacting with the attorneys general, it helps you to understand what to expect and how it may turn out and what the parameters are within it. And to help with that, we've created a database with the help of Dr. Paul Nolette of Marquette that allows for users to search it by keyword, settling entities, the issue area, the settlement date, lead and participating states. You can search by the number of states, whether the federal government was involved, the settlement type and the industry type. So, it's a huge way for folks to understand what it is that has been done and how it's been done.

Ashley Taylor:

To plug another podcast, we've actually had the professor on as a guest. He's a tremendous asset, someone who has been tracking state attorneys general activity for almost two decades now. I'll be speaking to his class here I think this fall. But he is a wonderful resource and truly an expert. Let me dig in on two topics. One would be tobacco and one would be AI. I'll start with tobacco. From my perspective, having been in the office during the Tobacco National Settlement Agreement negotiations and execution, I look back at that time as an inflection point. I wonder if you would agree with that characterization, and if so, describe the inflection point and what it did to state AGs going forward.

Brian Kane:

If I were to think deeply about that question, I always think about the National Association. The National Association came together in 1907 to fight Standard Oil. I always think about that because we've got the organization coming together in 1907, and then it's a quiet association for a number of years. In the '70s, there were some price fixings in what's called the Milk Fund, which was led by former Attorney General Bob Abrams out of New York, who's a wonderful person and still active within the AG community. But then we fast-forward to the late '90s and tobacco. I think that what that demonstrated was the power that the attorneys general have when they all come together and speak with a single voice. I think that that's where the association and the attorneys general really started to understand the benefits and the opportunities of what bringing them all together in a bipartisan way for nonpartisan outputs, what the potential really was for that.

To me, and this is I think to your point, that became a critical launching off point for the attorneys general because they started to understand the dynamics of them working together, not just in terms of tobacco, but also in other areas, to the point that Justice Scalia in one of his books said, "Amicus briefs are a tough area. We don't physically have time to read them all as the justices, but if I as a justice see a brief that's signed by 36 or 40 attorneys general, that's going to get my attention." And again, it's reinforcing that collective ability of the attorneys general as large bipartisan groups to have an effect, impact and influence in everything that we do.

Ashley Taylor:

So, I'm going to pull us forward and refer back to a topic you mentioned probably about 10 minutes ago now, AI. You mentioned AI, and I've been asked actually at one of the conferences that you and I will both be attending in a couple of weeks to discuss AI. I'm going to provide a few comments. Most of my comments will be grounded in sharing with the audience my perspective on how states are thinking

about AI based on cases that I'm handling. But one of my recommendations that I'm toying with, so I'll see if you think it makes sense, is that state AGs should be discussing this in a collective sense, not necessarily drilling down into state specific legislation. But, and this is my advocacy point, I think from a defense council perspective and from a state AG's perspective, I don't think we should collectively want this regulatory landscape to be shaped by settlements exclusively. So, talk about that and any ideas on how states could go about helping shape a regulatory landscape beyond just the settlement structure.

Brian Kane:

Sure. I want to pick up on one point that you made that I think is critically important, and I don't want it to get lost because it goes back to my time as chief deputy in Idaho. I think that one of the things that Attorney General Wasden always emphasized was he preferred a landscape where the actors regulated themselves and didn't necessarily have to look to external regulation. If you think about that big picture, why do we have laws, why do we have lawsuits, it's because our self-regulation mechanisms break down at some point and we say, "Hey, we need an external influence to tell us here are the" ... If cows could stay in a pasture, we would never need fences. And it's the same principle when you think those things through.

So, to your point, when we start thinking about emerging technologies like AI, we want to understand what the boundaries are. In order to get there, we as attorneys general have to understand what the capabilities are and what it is that we're actually discussing, and where are the areas where it's beneficial, where are the hazards, and have an eyes wide open discussion to deal with it. Once we establish those minimal boundaries and expectations, well then, we get to the point where we're like, "Okay, now we've got bad actors." Are those bad actors ones that can be dealt with through self-regulation, maybe through an AI association or a network of technology groups or something, or is it something that we as attorneys general need to regulate through lawsuits or legislation, proposing legislation or whatever that landscape is? But to your point, I think the key is for all of the AGs to come together, get a common understanding of what we're talking about, and then move forward from there, essentially create baselines for each part of the process.

Ashley Taylor:

I want to highlight something that from my perspective may be intuitive for us folks who practice in the space and folks like you who operate in the state AG world every day, but may not be as obvious to others, and that is the fact that state attorneys general go on to serve in offices beyond the State Attorney General. Talk to us, if you would, about the historical and the current life after you're a state AG.

Brian Kane:

I think that's a really important thing to think about, is that as you move through government, you don't stay static. I'll be honest, we have attorneys general in our ranks that were former state treasurers or former state secretaries of state or former state legislators or former congress persons. So, I think that when you think about that, you collect this knowledge, and you move through it. To me, one of the more important elements of the attorney general space is the relationship space. When I think about our organization, our association as a convener and facilitator, it's in folks' interest to have conversations with attorneys general. One of the more effective tools that I've seen folks such as yourself do, Ashley, is you don't wait for the crisis to create the relationship. You get out ahead of it and

you create the relationship so that then if a crisis occurs, you have a phone number to call, you have somebody to reach out to and to have that conversation.

I can tell you that from experience, the trickiest part for folks is when the crisis occurs and they don't have anywhere to turn, and that becomes a real hazard point for folks. But the attorney general community, that is a mobile community, meaning the attorney general, a lot of them are term limited, so they can only serve two terms and then they're going to go on to whatever the next thing is, whether it's the governorship or Lieutenant Governor or Congress or Senate. We actually have a former attorney general who's the Vice President of the United States now. So, when you start thinking about who is it that you're sitting across the desk from, understand that's not a static position, and that relationship is very likely to follow. Whether it's a good or a bad relationship, that's likely to follow career-wise wherever the attorney general winds up in their next stop.

We do have attorneys general who serve for quite a while, and then we have attorneys general who get done with being attorney general and they decide, I want to go back into the private sector. We also have attorneys general that wind up as presidents of colleges and universities and deans of law schools. To me, it's a position that really has limitless potential, and I think that as folks approach it, they should think about the fact that the person sitting on the other side of the desk is somebody that really has a ton of future potential somewhere.

Ashley Taylor:

Brian, to your point, I have described to folks the Office of the Attorney General is unique because it's a combination that you don't find in any other place in our government because it's a combination of law, politics, and policy, and it tends to attract people who like all aspects of those issues. It's not just legislative, it's not just executive, it's not just legal, but it's a combination of politics, law, and policy. I think that that speaks to what you were just saying that AGs go on to these various roles as they leave the office. Does that characterization resonate with you?

Brian Kane:

Absolutely. I think it's an astute observation, and if I can underscore an element of it, the Attorney General's Office is unique within government because in a lot of jurisdictions, it's an independently elected constitutional officer. So yes, they're part of state government, but they also call their own shots to a large degree in how they represent and what they represent. And I think that that's something that you look at how you interact with attorneys general, you can't forget that element.

Ashley Taylor:

I'm going to give you a chance to close, Brian. Any parting thoughts or suggestions that you'd like to share with our audience? Part of this podcast's goal is to educate the broader community on state AGs, and our hope is that after the audience listens to a few podcasts, the Office of the Attorney General won't sound like such a black box. That's our real goal. So, any closing comments in that regard?

Brian Kane:

Sure. The National Association of Attorneys General is here to facilitate those relationships and to open up, as you referred to it, the black box of attorneys general. So, if there's ever anything that I personally can do to help out you or your listeners, please always feel welcome to reach out directly to me, and I'm happy to answer questions or talk you through any scenario. The second thing I would say is that our

attorneys general are a wonderful community of professionals that are interested in acting in the best public interests of their respective states and collectively. I can't stress how important relationship cultivation and development is with that group, but I can offer you a story.

Several years ago, when I was in Idaho, we were investigating a group of folks that we had reason to believe had acted inappropriately, so we sent out letters to meet with all of them. And when we sent out these letters, we got three different responses from folks. We got a group of folks that said, "Yep, we are happy to meet with you and explain what we did and why we did it and what happened." We got a couple of folks that said, "You know what? We messed up. We'd like to settle." And then we had a group of folks that didn't respond at all. They just blew us off. So, what happened was we met with the folks that wanted to meet with us. There were a couple of them that said, "Hey, this is what we did. We don't think we did anything wrong." And we said, "Yep, you're absolutely right. We agree with you." We had other folks that they explained it. We're like, "We still think we have a problem. We're going to work that out through our means."

The folks that didn't respond, though, we only had a single option left to us, and that single option was we had to sue them because there was no other way for us to initiate and have that conversation. So, I think to me, one of the things that if I can impress upon your listeners is don't be afraid of that conversation with the attorneys general. If you get an inquiry, you already know what your worst-case scenario is. I always think about it as you can't make the hole any deeper. So, it helps you and behooves you to sit down across from the desk and fully understand where the Attorney General is coming from and explain where you are coming from because that's your first best chance to cultivate that relationship and help each side understand where they're coming from.

Ashley Taylor:

Brian, I think that is great advice, and I'm thrilled that you're willing to share it with the audience. That was very helpful. I want to thank you again for joining us today, Brian. I know our listeners enjoyed your insights, and I want to thank our audience for tuning in today. Please make sure to subscribe to this podcast via Apple Podcast, Google Play, Stitcher, or whatever platform you use, and we look forward to the next time. Thank you again, Brian.

Brian Kane:

Thank you.

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