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[ASHLEY TAYLOR]

Welcome to the first episode of Regulatory Oversight, this is a Podcast by Troutman Pepper Hamilton Sanders Regulatory Group that focuses on recent trends in government and regulatory enforcement and covers topics of interest to clients who may be facing scrutiny litigation or monitoring regulatory developments. We will share this Podcast with the ABA, in my capacity as co-chair of the ABA Committee on State Attorneys General, so you can hear this podcast through the ABA. By way of introduction, I'm Ashley Taylor, one of the host of the podcast and a partner at Troutman Pepper. Today I have the pleasure of being joined by Iowa Attorney General, Tom Miller. General Miller has served as Iowa's attorney general since 1995 and is the longest currently serving attorney general in the Nation. He is also president of the National Association of Attorneys General, a non-partisan forum for America's State and Territories Attorneys General. NAAG as the entity is known, provides a community for attorneys general and their staff to collaboratively address issues important to their work as well as training and resources to support attorneys general and protecting the rule of law in the United States and they often work together in a variety of ways. So welcome General Miller, it's an honor to have you here today.

[TOM MILLER]

Well thanks, thanks for having me and giving me a chance to talk about one of my favorite topics, NAAG, the National Association of Attorneys General, you know we have a wonderful group of AGs that I enjoy working with and enjoy talking about.

[ASHLEY TAYLOR]

That's a good place to start, I suspect there will be a number of listeners who hear the acronym NAAG and wonder what is NAAG, they may have never heard of that acronym, so General what is NAAG?

[TOM MILLER]

Well it's the National Association of Attorneys General and it's a wonderful group, let me tell you why. You know I have just wonderful colleagues as attorneys general around the country, they're talented people, they're people that are great to work with, they become your personal friends, I've been attorney general a long time and have served with a lot of different groups of AGs and they've all been really good groups. Somewhat different, not always the same, but having some similarities, and the current group is a group of very impressive people. You combine the people with the responsibilities. The office is just an incredible job in the sense that it's, as Dave Freohnmayer, a long time ago, one of our leaders, the attorney general of Oregon at the time, said it's a confluence of law, public policy and politics, including separating out politics in many of the things that we do and for me to use the law to serve the interest of ordinary lowans is a calling and responsibility and a joy. So, you know we have

these terrific people, we have these incredible responsibilities and NAAG is the unity of that. NAAG as an organization has grown and developed, and is over a 100 years old, we've been united in this organization for more than 100 years. Some of the services that the organization provides the attorney generals is truly robust in my opinion. Probably the crown jewel of what we have is NAAG Tree, it's the training program which has, over the years grown and developed and has great expertise, we have a staff on the NAAG staff that does some of the programs and recruits a lot of people and a lot of the experts around the country and AG office to do training programs and it's done two ways, one is sort of as a group and that anybody can participate, or they go to a particular state with a particular area of law to deal with. The expertise, the quality has risen to a very high level and the appreciation therefore is this is sort of the crown jewel of our robust services, but not the only by any means. We have a terrific Supreme Court project that's headed by Dan Schweitzer, does moot courts, does a lot of coordination and a lot of thinking on what the Supreme Court is developing. We have a network of solicitor generals and have a solicitor general conference each year in that area and then I think, you know you've made reference from time to time of, to our multistate work, which is a way that we're able to do for our states as a group, things we couldn't do as individual states and NAAG is a real important partner in all of that, providing the funding, providing some of the expertise and the work and the coordination and the logistics. Additionally, NAAG does a lot of webinars on the various topics and we're the group where we're able to come together as attorney generals and get to know each other, and really become a support group for each other in a lot of ways. There's a lot of challenges in the office and outside the office, family and otherwise and we always are incredibly supportive of each other. So I think that it's a remarkable organization, one I've been in for long time and have supported and benefited from in many ways. I truly believe that it's the best organization of public officials in the country and our goal is to make it even better.

[ASHLEY TAYLOR]

So General Miller one of the things that I have noticed, it surprises me and perhaps it may surprise you, most folks don't know about NAAG and my working hypothesis is that the press and the media more generally gravitate to the political fight and what I did not hear in your comments about NAAG was any reference to partisanship, can you talk about that relative to NAAG? I think that would be of interest to our listeners.

[TOM MILLER]

Yeah, yeah, one of the great benefits of NAAG is our ability to work together on a non-partisan basis. You know I believe that the attorney generals are the most non-partisan, the most bipartisan organization of public officials in the country and maybe by far. That happens because, in part of the people and the traditions that we have, in part because of our responsibilities, our responsibilities are law enforcement, criminal law enforcement, consumer law enforcement, that don't lend themselves necessarily to partisanship quite as much. We're not involved in sort of what I call pure partisanship, like the legislature or governor's office is, we're a little bit shielded from that so we get a little less attention from some of the special interest groups, to some extent. There is this ability to work together and when you dig it, you're not even deep, just a little beyond the service, it's such a rich history. I mean we've, 10-15 years ago we had the bank mortgage settlement and, and, which was preceded by enormous negotiations and in one of the most controversial issues of the time, we had 49 out of 50 states. That would be like getting 98 out of 100 senators on an issues that was really controversial and that just never happens. On opioids, which is another big set of issues and

challenges that we're working on currently, we really have all 50 states working together. Again, on something that could be controversial, we had the Microsoft case, where we had a bipartisan group of attorney generals, that was an incredibly important antitrust case and of course the tobacco case where we had all 50 states join in that. So I mean we've got this rich history and current history on opioids of working together. That doesn't mean that we're totally shielded from politics, what's happening in America affects us and affects us somewhat, particularly involving the Trump administration and to some extent the elections. We've had some division and we try and, try and work with that. But when you look at over it all at what we're able to do, you know I think you can really say we're the most bipartisan group of elected officials in the country. You know frankly, I've sort of noticed that when things work and work well and work incredibly well sometimes, you don't get as much attention when we're not working...

[ASHLEY TAYLOR]

Correct.

[TOM MILLER]

...and when there's controversy and conflict...

[ASHLEY TAYLOR]

Right.

[TOM MILLER]

That, that, you know Ashley I don't know how that works, but that seems to get more attention.

[ASHLEY TAYLOR]

Yeah, General Miller I was told early in the practice, you'll never see a headline "Plane lands safely today", right, you'll never see that headline.

[TOM MILLER]

Yeah, you never will.

[ASHLEY TAYLOR]

So let me, General Miller we introduced you to the audience today nothing that you currently serve as the president of NAAG, perhaps you can share with the audience the process by which you were appointed and/or elected to that position by your colleagues and what priorities you have for the organization and I would be remiss if I did not as you to talk about your presidential initiative.

[TOM MILLER]

Okay, thank you. NAAG has a somewhat unusual way of choosing its officers and it's by region. We have four regions around the country that you would expect, North, South, Midwest and West and each region selects an officer. In the Midwest I was chosen as vice president a couple years back and then became president elect and now president. And frankly, I thought about being NAAG president but was disinclined to do so because I was NAAG president a long time ago now, in 1989 and 90. But, so I was thinking well, you know I'd sort of like to do this but I have before and sort of the tradition was people didn't get to be president twice, although they didn't give as attorney general as long as I did so. I have a wonderful neighbor, Doug Peterson, the attorney general of Nebraska, a great friend and we worked together on a lot and we had a discussion and I thought Doug should be president and he thought I should be president and somehow he was more persuasive, I ended up being president of NAAG and it's a wonderful opportunity and I appreciate Doug and everybody else that allowed me and supported me to be NAAG President. As NAAG President you get to choose a set of priorities or initiatives. The one I chose was in the area of consumer protection. Consumer protection has been such a priority and a joy for me in a lot of ways and it's been such a priority for NAAG. NAAG has done such great work, the AGs together on consumer protection. So that's generally my initiative and it's a pretty big umbrella, I've talked to a lot of attorney generals to see if that made sense and it did, to get ideas and we're focused on sort of three areas but not exclusively necessary, depending on what comes up, what happens during the year and those are the use of social media to deal with sort of the, better and more effectively in terms of consumer education preventing consumer fraud. Give to the public the basic fundamental frauds, the social security fraud or the IRS fraud, cutting off the public utility fraud, the grandparent fraud and many others that are basic. How do we better communicate to the public and particularly those that are vulnerable sort of the elements that those are the content, the elements are three that there's sort of a crisis and a rush, rush to make a decision. There's the suggestion of some harm or apprehension along with the rush to make a decision and then there's sort of the unconventional way of payment, that they want payment other than checks and was common because we can reverse that. And then the next is sort of the intractable frauds, how do we deal with telemarketing fraud and how do we use technology as a tool to frustrate for instance, the payment of, there's two things they have to do, one they have to get the phone lines, there's regulatory issues where we're making some progress there and then the second is how do they get the payment. The payment now is largely in gift cards and so, how do we use technology, we've talked to some companies to do that but then the basic areas is the intersection of consumer protection with technology which is challenging, which is broad, some of the things that AGs have already been working on include targeting of kids, the whole question of kids, the algorithms that try to keep kids and adults engaged when they're trying to have less time or get off the internet and the whole question of algorithms and dark patterns, the use of dark patterns in this scheme. And so we've had a number of programs already, a webinar on internally, within NAAG on dark patterns in January, 130 people

involved, in other words two to three per state. We had the romance scams event on Valentines Day, had a huge audience of that. We're developing other webinars and we're going to have a terrific program in Austin on April 25-27 that will include some of these issues as well. You know we encourage people to come to the conference, to the NAAG Symposium, we're calling it, in Austin April 25-27. You know I think we're going to have most of the states represented there. We're working on the agenda, we're close to being done, I think it will be a terrific agenda so I encourage people to come to that, I think they'll find it a terrific event.

[ASHLEY TAYLOR]

General Miller your comments about technology and attorneys general leads me to want to talk to you about what I have characterized as the modern attorney general and the modern attorney general's role in our national regulatory landscape. So in my own mind at least, and admittedly it's because I was in the office as a staffer at the time, in Virginia, but I mark the tobacco settlement, the 1997-98 timeframe as a significant event in the evolution of the modern attorney general, could you talk about that? You're uniquely positioned given the number of years you have served in the office, but I'd love to get your reaction to that.

[TOM MILLER]

It was a major event in terms of the attorney general's office and in terms of the country. Until that point, the tobacco companies had never paid a dime or a penny for that matter, on any kind of settlement or judgment in court and they went from zero to paying more than any other industry. I think the estimate over 25 years was twenty-five billion dollars, a huge amount of money. That sort of, that broke their winning streak, it broke part of, sort of the shield that they had in the public's eye, it disclosed a lot of the documents that again, educated the public on what was happening and what the company was doing and provided sort of a pivot I think, towards significant reduction in tobacco use by adults and kids. You know it's also, also significant for AGs in our world and just to put it into some context, you know we started multi states in the late 70s in the consumer area and then they developed again in the mid-eighties in the antitrust area and then in the 90s along came the tobacco case, which was by far the biggest case and the one that received by far the most attention around the country, but was in a way a part of an evolution that you know put us on the map certainly publicly and achieved a lot for our states and a lot in terms of public health itself, you know that I referenced just a few minutes ago. And then after that we had the Microsoft case, after that the case on bank mortgage and then the opioids case, so it's been a fairly logical progression that we discovered very early on that we could do things together that we couldn't do individually. Initially we were concerned about resources, pooling resources, but we discovered it was not just resources it was a dynamics change when you had a series of states involved. So over that period of time, we discovered, you know fairly immense power with the attorney generals for a variety of reasons and it's always been a challenge to use that power in the best way possible, not to misuse the power in any way, and to try and choose the cases and the causes where we can do the most good and I think particularly in tobacco in bank mortgage and in opioids, the public had huge amounts at stake and we were able to do some good things, some very important things in all three areas.

[ASHLEY TAYLOR]

Well General Miller as a practitioner in this space, because I've worked with the states through this evolutionary process as you've described, whether it's a class-action fairness act or state's refining the multi-state process, right, in terms of how states work together, it has been an evolution and it's been, it's one in which, when people ask me about it, I say it's not like federal court where you can go and pull the federal rules of civil procedure off of your shelf, but states have developed protocols, right, there are protocols and there are ways of doing business in a multi-state setting that have developed over time, rather effectively I think.

[TOM MILLER]

Yeah I think that's right, you know, some of them are written down and some of them more like a common law...

[ASHLEY TAYLOR]

Right.

[TOM MILLER]

That practices in understandings that developed among the states and you know we have, it's just a remarkable group of deputy attorney generals and assistant attorney generals in our office, it's one of the great, one of the great treasures of the office and one of the great joys for me to work with some of our people on our staff. And that's true throughout the country, so when we do have a multi-state and we do have, in opioids for instance, where the deputies are also involved, we have deputies and assistant attorney generals that really work incredibly hard and are very motivated to do the right thing and a really, a very important part of what I consider, you know the strength the association of attorney generals.

[ASHLEY TAYLOR]

And on that point I have seen General Miller and I'm thinking of someone like Al Lama in particular, you all have brought talented chief deputies and deputies from various states into the NAAG infrastructure and again as an observer I have watched that happen and it really strengthens the connection between the states and NAAG and allows for that free flowing information that you were describing earlier in this program, that seems to serve everyone, everyone well.

[TOM MILLER]

I think that's right and you mentioned Al, Al Lama, he's a terrific guy and worked for a long time in the New Mexico office and worked his way up and was a deputy in one of the best, most respected deputies, and then joined NAAG as the deputy director there brings a lot of talent and judgment and goodwill and, but I was in Washington last week for the St. Pats party at the White House, which was wonderful, just a great time, and while I was there I had a chance to meet with some of the NAAG's key staff, upper staff and just had a wonderful discussion with them and it became clear to me how talented they were and how much they believed in our organization and believed in the AGs. And you mentioned the deputies, I sometimes joke about the deputy attorney generals, they have their own network, which is a wonderful network that helps all of us. They have an annual meeting where they all get together and I sort of joke and say that, you know sometimes I get the impression that they

think they might be more important, or at least do more work than the attorney generals and the conclusion is, you know they may be right, that may well be true Ashley, I don't know.

[ASHLEY TAYLOR]

Well the good ones understand how to be keenly aware of the office holders priorities, General Miller, that's what I've observed.

[TOM MILLER]

That's right, and a very interesting story that Jim Tierney told me, Jim was attorney general of Maine for 10 years and has worked with attorneys generals for decades and now teaches, teaches a course at Harvard Law School on attorney generals where he has, I think 30 students, it's over prescribed, I think the most over prescribed course at Harvard Law School, some of them end up as interns in our office. He's a great sort of sage guru of AGs in some ways and he tells the story about Greg Zeller, who was a remarkable deputy and attorney general and he said Greg was deputy attorney general in Indiana and did a lot of work there and the AG delegated to him a huge amount of work and responsibility, so he said he, and then of course he became AG and he thought he was one of the best prepared people ever, to be attorney general, having been deputy and having the kind of experience he had as deputy and he said he got to be AG, says it's totally different, it was just totally different, he didn't buy this theory that he was so well prepared because it was just different sitting in that chair.

[ASHLEY TAYLOR]

Well General Miller I want to thank you on behalf of all the folks who will listen to this podcast, for taking the time to share your experience and your priorities as NAAG president. Any closing comments before we, before we close?

[TOM MILLER]

Yeah, just this, that I sort of touched on in the beginning, you know that I feel very lucky to be Attorney General of Iowa and feel very lucky to be a part of this organization of attorney generals and work with my colleagues. It's an extraordinary office, you get to use the law to serve the interest of ordinary Iowans, we always try to do what we think is right, including, especially in interpreting the law and people understand that even when they might disagree with the result. And then to have this rich group of AGs to work with and be colleagues with and do these multistate with and be a support group with, you know I feel very fortunate, I'm thankful for Iowans to give me the change to be attorney general quite a few times now and I'm thankful to be part of this group of I think extraordinary people, the Attorney Generals of the United States.

[ASHLEY TAYLOR]

Well General Miller thank you for joining us on this podcast and thank you for all you do as both NAAG president and as Attorney General of Iowa.

[TOM MILLER]

Thank you Ashley, thanks for having me.

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