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Employee Rights and the Food Safety Modernization Act: Luncheon Keynote

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EMPLOYEE RIGHTS AND THE FOOD SAFETY MODERNIZATION ACT:

LUNCHEON KEYNOTE

This Article is an annotated transcript of a panel that occurred on February 11, 2011 at the American University Washington College of Law. The podcast of the event can be found on the American University website at <http://media.wcl.american.edu/mediasite/SilverlightPlayer/Default.aspx?peid=136d32f0-d0a8-4bd1-9630-da0f48041e3b>. The event was co-sponsored by the Washington College of Law and The Government Accountability Project.

BEGIN TRANSCRIPT

ROBERT VAUGHN: We want to get started with our featured luncheon talk. We are very honored to have with us Paul Igasaki who is the Chief Judge of the Administrative Review Board, and has been such for about a year now. He was previously the Deputy Chief Executive of Equal Justice Works . . . from 1994 to 2002. He was [at different times] Chair, Vice-Chair, and Commissioner of the [Equal Employment Opportunity Commission] (EEOC) under President Clinton. He served as Executive Director of the Asian Law Caucus in San Francisco. He was the Washington Representative to the Japanese American Citizens League. And was a liaison to Asian Americans for the mayor of Chicago. Additionally, he was counsel to the Chicago Commission on Human Relations. He also was the Staff Director of the American Bar Association Pro Bono Project. And a Staff Attorney and Fellow to Legal Services of Northern

California in Sacramento. He is a graduate of Northwestern University and the University of California at Davis Law School. I give you Paul Igasaki.

PAUL IGASAKI: Thank you. It is a pleasure to be here. . . . Just a moment ago, I was speaking with Judge Corchado who is my colleague at the Administrative Review Board (ARB).¹ I think you just saw him poke his head in.

As a Federal appointee I am obligated to give you some caveats of my experiences, something that I get used to doing a lot. [My statements here are of my own and not a reflection of the] Department of Labor or Secretary Hilda Solis . . . , or the Department of Justice, for that matter.

So I, [in my role as the Chief Judge of the ARB], objectively review and decide cases. [A]s a [member of the] Board . . . I cannot specifically interpret the Food Safety Modernization Act² (Act), nor can I speak about any cases that are in front of us. So why do you want me here?

I think your organizers can better answer that. The Act is a recent law, as you all know. Other laws under our jurisdiction have been in place for many months, or even years, before we see any cases. Some laws produce a great number of cases before us; others very few. So, it should be no surprise then that we have received no cases under the Act to date, nor do we expect to [receive any] for some time, but we [eventually] will.

So, while my thoughts here today are based upon work at the [ARB] and, to some degree, my work at EEOC,³ or outside of the government, I [will] look more broadly at the [Act], how it works, and the role of the ARB [on the whistleblower process]. Those of you who will pursue some of the cases before this Board may have some interest in knowing more about this process. Things such as these take time, and you need to know what to expect and what you might hear when your case is eventually heard.

Whistleblowers are people inside an organization that see something problematic and call attention to the problem.⁴ In the best of all worlds the company or agency appreciates what is going on, sees the concern, corrects it, and doesn't retaliate against the employee who brought it forward. We don't hear about these types of situations, but it does occur.

In the classic whistleblower situation, an employee complains of an abuse that they become aware of either by bringing it to the attention of the supervisor,

1. *See generally* U.S. DEP'T OF LABOR, ADMINISTRATIVE REVIEW BOARD, ESTABLISHMENT AND MISSION, <http://www.dol.gov/arb/mission.htm> (last viewed Aug. 26, 2011) (explaining that the Administrative Review Board issues final agency decisions in accordance with federal worker protection laws including the Food Safety Modernization Act).

2. Food Safety Modernization Act of 2010, 21 U.S.C. § 2201 (2010) (amending 21 U.S.C. § 350d (2006)).

3. *See* U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, <http://www.eeoc.gov/eeoc/index.cfm> (last visited Jan. 21, 2012).

4. BLACK'S LAW DICTIONARY (9th ed. 2009).

a government agency, or even the press. The employee then could face an adverse job action because of their whistleblower activity; that action could be reduced pay, suspension, or ultimately, and most commonly, job loss.⁵ If that is the case, then, if the employer is held liable, it may have to reinstate the employee, perhaps pay damages, or take some other action. The company will undoubtedly claim that no protected activity occurred, saying, for example, that maybe the employee said he knew about the problem but never told the company or anyone else who could do anything about it. The company may also claim that the person was fired for some other reason. An example of this is when the company either claims that the employee complained or he didn't complain, but they really fired him for work performance. So, they fired him because—and this is much more common in our cases—he or she doesn't get along with others.

Under whistleblower laws, we are not in a position to rule against firing for bad reasons, only for actions in retaliation for engaging in protected activity. So there are a lot of times when I shake my head wondering, "Gosh, the manager did that?" But then, I also feel that it does not reach the standards that we have to apply, so we can't really take action. Also, sometimes you will see similar issues coming up before the National Labor Relations Board or perhaps the EEOC or some other entity for different issues, but we are only empowered to deal with cases in our area.

Now, why is it so important to protect those willing to come forward? Often, there is little motivation for people who do come forward other than altruism. It takes a lot to stick your neck out. If the complained-of situation could hurt the company's reputation or otherwise cost them money, management could have a reason to retaliate. Even if not, if it hurts the employee's reputation with the company, why risk it? It is true that you take a risk by making any kind of complaint or other legal action. Once someone knows you are willing to do this, that you are willing to stick your neck out, right or wrong, some employers will say, "this person is a troublemaker and we won't hire them" or "we don't want them." Nobody likes a troublemaker. Indeed, one of the biggest excuses, as I mentioned earlier, for firing an alleged whistleblower is [s]he does not get along with others. There is an old Buddhist saying that a person who calls attention to themselves sticks out a like a nail in a board and they get hammered. So, that is why these laws are developed, so that there is some protection—not enough in some cases—but something that will help provide some zone of safety so that if you find something that you think is wrong, that there is some reason to believe that you will be protected. Whistleblower laws are intended to change that balance and to assure employees that yes, they are taking a risk and there are no guarantees, but there are tools.

5. Michael T. Rehg et al., *Antecedents and Outcomes of Retaliation Against Whistleblowers: Gender Differences and Power Relationships and Power Relationships*, 19 ORG. SCIENCE 221, 225 (2008) (explaining that managers may believe that retaliation or its threat will convince whistleblowers to stop complaining and not make their story public).

We exist to make sure that the balance is there. Sometimes the persons with the courage to come forward are people who typically stick out. Sometimes they complain about things that are not worthy of legal protection. However, the next time the person who may be a pain and who may make the manager say, "Gosh, I would never hire this person" complains, they may be the only person willing to stick their neck out in a corporate culture that is extremely averse to coming forward. The person who has the chip on his shoulder may be the only person willing to step forward. You have to be ready to look for and consider that because we are not deciding cases by determining if this person is a good or a bad person. Again, the question is, did this person engage in protected activity under the law? If the corporate culture does not encourage people to come forward, it [makes it even more difficult].

It is true that a lot of cases do not even get to us because they are not appealed, but some of the people who are willing to appeal their case are also the people who were willing to come forward. We do turn down cases where the cases are not strong enough. But, there is no law against firing a person who doesn't get along with his co-workers unless you do so to discriminate or to retaliate.

Generally, a whistleblower needs to perform his or her function whether that is complaining to superiors about an unsafe condition, talking to a government agency about a law or regulation, or similar acts that are protected activity. Once that is established, if the employer acts and it is due to the employee's protected activity, there could be retaliation or discrimination. It gets a little confus[ing].

Whistleblower protections are a relatively recent legal phenomenon. Whistleblowers . . . certainly could lead to a change in practice, because [they] [could] cost [a] company money. But, depending on the laws, [they are] essentially closing the barn door after the horse is gone. Whistleblowers are within the American tradition of individualism. A woman or a man standing alone for what is right against an institution—that is an all-American kind of tradition. It is something that you see if you look at our movies such as *Mr. Smith Goes to Washington*⁶ or our realities—Frank Serpico calling out the police corruption issues in New York,⁷ Karen Silkwood complaining of nuclear contamination,⁸ or John Dean and Deep Throat on the Watergate case.⁹

6. MR. SMITH GOES TO WASHINGTON (Columbia Pictures 1939).

7. See generally, Corey Kilgannon, *Serpico on Serpico*, N.Y. TIMES, Jan. 22, 2010, available at http://www.nytimes.com/2010/01/24/nyregion/24serpico.html?page=1&_r=1 (last visited Jan. 26, 2012) (telling the story of Frank Serpico, a New York City police officer, who blew the whistle on corruption in the city's police force).

8. See generally, *The Karen Silkwood Story*, LOS ALAMOS SCIENCE VOL XXIII (1995) available at <http://la-science.lanl.gov/lascience23.shtml> (recalling the story of Karen Silkwood, an employee of a Kerr-McGee nuclear plant facility, whose estate sued the Kerr-McGee corporation for plutonium contamination).

9. See generally, *Whistleblowers: An Interview with Daniel Ellsberg and John Dean*, HUFFINGTON POST, Aug. 26, 2011, <http://www.huffingtonpost.com/ann-beeson/whistleblowers-an-interview-285637.html> (last visited Jan. 26, 2012) (noting the story of Daniel Ellsberg, a United States military analyst, who released the *Pentagon Papers* in 1971 and John Dean, the Nixon administration official who accused President Nixon of direct involvement in the Watergate break-in and subsequent cover-up).

Congress continues to pass whistleblower laws in one area after another. While Congress right now, at least the House side, is in a state of change, there is no reason to expect that the growth in whistleblower practices or processes is going to end. So, indeed, at least with the more traditional leadership on the Hill, both Republicans and Democrats have demonstrated support for whistleblower practices and systems.¹⁰ Therefore, I think we will see more and more of it.

Consider the many whistleblower laws that we enforce. [For example], in the trucking industry [if] you file a complaint under and have an administrative hearing, then the suit will automatically come before the [ARB].¹¹ We used to see a lot of cases involving the trucking industry, but this is now reduced. Now, my friends working with the Teamsters inform me that we will be hearing a lot of complaints brought under the Railroad Safety [Act].¹² However, we have yet to see them since it is a relatively new law. Most of the cases in the trucking and railroad industries are about worker safety, although not exclusively.

Other cases involving transportation are less focused on worker safety and more focused on public safety, like the airline law—Air 21, where a mechanic, for example, may report a problem.¹³ The idea of why you want to catch those situations before they go wrong is pretty obvious in the airline industry, but, like I said, we are talking about public safety concerns. Some whistleblower complaint laws involve the environment, such as the Clean Water Act¹⁴ or radiation laws.¹⁵ We have seen a fair number of radiation cases. So, there are a number of areas where you can see the public good or the public interest being advanced by someone coming forward to report a problem. These are cases where it is important to deal with the situation before the bad thing happens.

Most recently, with the collapse of our financial institutions that led to the economic crisis, Congress passed the Sarbanes-Oxley law¹⁶ and the Dodd-Frank law,¹⁷ which provide legal liability for financial abuses and fraud. They also provide whistleblower protection to people who come forward. That is yet another type of law that comes in front of the [ARB].

10. See Mary Kreiner Ramirez, *Blowing the Whistle on Whistleblower Protection: A Tale of Reform versus Power*, 76 U. CIN. L. REV. 183, 184 (2007) (noting that the Sarbanes-Oxley Act of 2002 passed in the U.S. Senate ninety-nine to zero).

11. Surface Transportation Assistance Act, 49 U.S.C. § 31105 (2006).

12. Federal Railroad Safety Act, 29 U.S.C. § 20109 (2006).

13. Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121 (2006).

14. Federal Water Pollution Control Act, 33 U.S.C. § 1367 (2006).

15. See e.g., Energy Reorganization Act of 1974, 42 U.S.C. § 5801 (1974) (amended 2005).

16. See Stephen M. Kohn, *Sarbanes-Oxley Act: Legal Protection for Corporate Whistleblowers*, NATIONAL WHISTLEBLOWERS CENTER, http://www.whistleblowers.org/index.php?option=com_content&task=view&id=27 (last visited Aug. 26, 2011).

17. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, 124 Stat. 1376 (2010) (to be codified at 12 U.S.C. § 5301).

As you heard in my introduction, I used to work at the EEOC. There the term discrimination is used when you are discriminating against someone based on [her] characteristics, gender, race, nationality, age, and/or disability. It is a slightly different situation to discriminate against someone for his protected activity, but the result is the same—you end up losing your job or you lose a job benefit. However, the standards are not exactly the same. People who are lawyers know that a lot of Title VII law¹⁸ gets imported into our area, and sometimes that is appropriate and sometimes it is not. That is kind of what we do for a living at the ARB, making that determination. That is one of the reasons I think they put me at the ARB, because I have an EEO background to make some of those determinations.

Generally, the remedy in these situations is going to be reinstatement. While people can bring actions for other kinds of job benefits getting cut back, the fact of the matter is—and this is true in the EEOC as well—there is no incentive to come forward if you still have your job. Most people are willing to take the hit with a salary reduction or an assignment that is not quite as desirable even though the law might protect them. However, most people are willing to say, “if this was wrong and I lost my job, then I will pursue it.” That is why most of the cases that we do see involve job loss and most of the resolutions involve reinstatement.

Sometimes people do not want reinstatement because there was such a soured relationship that the employee doesn’t want to go back. But, the legal standard we start with is the resolution of reinstatement. Then, we may move to damages or something else. All of this is within the context of administrative law. For those of you who are lawyers, this is old hat and is kind of superficial, but for those of you who are not, it is a little different when you come through the administrative law system than when you come through the regular courtroom system at the state and federal levels.

The need to protect people’s rights has expanded in our complex society. Our federal and state trial system takes so much time to do the cases that are in front of them already. If we, for example, were to have all the denials of Social Security benefits coming before the Federal District courts, the number of judges would have to be tripled or quadrupled. As it happens, my wife is a Social Security appellate administrative judge, and these judges are tremendously overworked as it is.

The idea is that the administrative hearing system brings cases forward and has them flow more efficiently. They flow more efficiently because there are relaxed standards of evidence, relaxed formalities. You don’t get a jury, you get an administrative hearing officer or administrative law judge. You do have witnesses, but the laws of evidence are a little more relaxed. Also, in theory, the hearing body will have greater expertise so they will understand the technicalities and that sort of thing.

18. Civil Rights Act of 1964, 42 U.S.C. § 2000e-1 (2006) (prohibiting employment discrimination based on race, color, religion, and national origin).

The ARB is a little different. We have fifty-something laws that come before us. We have better knowledge or experience with some of them than others. A majority of the cases that we see are whistleblower cases. But then, whistleblower cases, as I had mentioned earlier, come from a wide range of backgrounds. So, we learn a lot about the airlines. I know more about the trucking industry than I ever did a year ago. We are also learning fast about securities law. We struggle to keep on top of these things, but the types of cases before us do change.

In administrative law, we have certain procedures that we follow. In the regular trial system there are the Federal Rules of Civil Procedure¹⁹ and their state counterparts. There is an Administrative Procedures Act²⁰ that is a backdrop for basic procedures. But, if you look at the rules behind every statute that comes before us some fifty different statutes as I mentioned—they each have different rules. Sometimes that can be a little challenging, especially for practitioners. I see a few in the audience. You have to become an expert. One of the things that this administration is doing is trying to consolidate and regularize our procedures as much as possible. So, the [ARB] drafted a document with input from many of the stakeholders in this area, and we have regular procedures so the rules will be as similar as possible except to the extent that Congress has mandated certain rules. This allows the [ARB] to move more quickly, but people who truly are experts would chuckle to hear me say that I am an expert in an area such as securities law. We have some cases that come up for us under the Sarbanes Oxley Act²¹ where we beg for Securities and Exchange Commission²² to file amicus briefs. That way we can get some expert input which helps us a lot. More often, one of the things we rely heavily upon is for the advocates, or even the claimants, to bring us their expertise. Then, we assess that expertise because so many of the standards are “reasonable person” standards. Those of you who are lawyers or law students know that the “reasonable person” standard stretches across the law absolutely. In my life, I wait to meet the reasonable person, but that is a standard that we end up applying quite a bit.

At the same time, although administrative law is designed to move cases quickly, backlogs still occur. My wife tells me how enormous their backlog is, and, since she works on weekends and evenings and whenever else on those cases, I believe her. Part of the problem with backlogs has to do with the staffing. We have all these laws that come before us – the five judges on our Board. We have one vacancy right now which I expect to be filled before too long. We have six lawyers working with us. We have one other vacancy, which I’m told that given the budget situation, we won’t be able to fill at least for the foreseeable future. One of the things that enticed me about the [ARB]

19. FED. R. CIV. PROC., 28 U.S.C. § 2072 (2010).

20. Administrative Procedure Act, 5 U.S.C. § 500 (2006).

21. See Kohn, *supra* note 16.

22. U.S. SECURITIES AND EXCHANGE COMMISSION, <http://www.sec.gov> (last visited Jan. 26, 2012).

was knowing that the administration had desired to acquire two additional attorneys which would give us greater strength. But, with the current political situation and Fiscal Year 2011 budget, it is probably dead on arrival. So, we will do the best we can and try to chop down our backlog, but it is kind of a problem.

The EEOC has a little different scheme of things. We, at the [ARB], get a matter of several hundred cases on our desk. EEOC has 80,000 to 100,000 cases crossing theirs—so it is a slightly different thing.²³ When I was at the EEOC, we were able to chop the backlog almost in half and reduced the average processing time by almost a year. But, frankly, our predecessors hadn't been as efficient as they should, and also we had reasonable resources that allowed us to focus a little more. It is harder for us here at the [ARB].

Now, at the Department of Labor, the [ARB] is a relatively small rowboat in a big ship. I have never worked in a building that large. We have our own post office and that sort of thing. You have the Wage & Hour²⁴ people and the Federal Contract Compliance²⁵ over here.

There are only three bodies that are deputized to hear administrative appeals: the [ARB] who hears the bulk of labor [cases] and two other panels. The other panels actually have more cases than us, but they have more focused agendas. One of the administrative appeal groups does federal employee worker compensation appeals, and the other does longshore and black lung benefits. Both are very important and have a fair number of cases, but they are specialized, as opposed to what we do. . . . So when I got here, the trucking cases were the majority of our cases. They have gone down, and the Sarbanes-Oxley cases have gone up. We may also get more railroad cases. It is hard to predict where it is going to go, and it is always interesting to see what our next case is about because, not only do we get the whistleblower cases, we also get Davis-Bacon wage and hour cases.²⁶ We get H1-B immigration cases.²⁷ We get farm labor cases and a number of other things that show up that we have never seen before. So, it is always interesting, and sometimes I feel like I am in law school again because I am learning a lot very quickly. Although, I do find that you learn a lot quicker when there are real people and real facts involved. My law professors would be surprised how well I learn now when I have real cases to look at.

23. See U.S. EQUAL EMP. OPP. COMM'N, *Enforcement and Litigation Statistics*, <http://www.eeoc.gov/eeoc/statistics/enforcement/index.cfm> (last visited Jan. 26, 2011).

24. See U.S. DEPARTMENT OF LABOR: WAGE AND HOUR DIVISION, <http://www.dol.gov/whd/> (last visited Jan. 26, 2012).

25. See U.S. DEPARTMENT OF LABOR: OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, <http://www.dol.gov/ofccp/about.html> (last visited Jan. 26, 2012).

26. The Davis-Bacon Act of 1931, 40 U.S.C. § 3141 (2006).

27. Immigration and Nationality Act, 8 U.S.C. § 1101 (2006) (amended 2010).

Now, if someone gets a decision from us, some of those decisions involve us saying, “okay, here is what we rule on the law, but you applied this part of the law wrong so you have to go back down and have another hearing.” I don’t like to do that because it wastes a lot of resources. If we can make a decision on the law and be done with it, that is great. A lot of the time our authority only allows us to say, “go back and hear this again. You applied the law wrong. Bring it back to us again.” We try to give them enough guideposts so they don’t go and do it all over again because that could be a little circuitous. Although, sometimes it happens anyway. In any case, the administrative law judges that feed cases to us have the same large number of cases we hear and a few additional. So, it is a challenge for them. However, their staffing is such that each administrative law judge has clerks of their own—something that our judges do not have. We do not lose a lot of sleep over overturning their decisions. If you do not like our decision, you need to appeal it. Most of those cases have to be appealed to the U.S. Courts of Appeals which can be costly and time-consuming, but that is where they go.

We have a pretty good record with cases that have been appealed to the U.S. Court of Appeals, but a lot depends on what kind of decisions we are making. I have been with the [ARB] a year. Most of my colleagues have been here an even shorter amount of time except for four of my deputies who were here a month longer than me. So, we will see over time how our batting average is with the Courts of Appeals. I suspect they will overturn some of our decisions, and we are not afraid of that, but we do try to make the law stick as much as we can. So, we hope that we will be successful with that.

Most of the cases, as I said, come to us from administrative law judges. Some of them come directly from the Wage and Hour Administrator of the Department of Labor. So, if it is a Davis-Bacon prevailing wage case, those come to us from the Department of Labor department as opposed to a judge. Similarly, some cases come from the Office of Federal Contract Compliance. So, cases do come at us from all sides. At the appellate level we don’t hear witnesses; we don’t see new evidence. We review what is in the record that was developed by the judge, and we apply the law as we see the law. So, most of the cases in our office don’t necessarily have the need of a courtroom or anything.

Last month we had our first hearing of oral arguments from parties, the third time in the history of the agency and the first time that they did in many years. This was because it involved a big issue, and we were considering whether we might change the law or not, change our precedent or not. So, we wanted to make sure we heard everything. Even though going into the case we thought we knew everything about the case, we learned new things. I think it has had an impact on our thinking, which means we may have more oral arguments in the future. But we will still be sparing about it. It takes a lot of extra time, and we want to move as quickly as we can.

Before the ARB existed, these decisions were made by a unit of the Secretary of Labor and pieces were heard by other bodies. At one point, they decided to consolidate all of these cases, and then, remove it from the Secretary’s office. The Secretary still appoints us, but people are only appointed for a term, although a very short two-year term. It is one of the shortest terms in

the Federal government. But, generally speaking, what that really means is as long as your Secretary's administration continues you will probably continue as well at least until the completion of your terms. Like other appointments, you change jobs a lot. It is part of the reality.

One reason I am very happy to be here today is because we try to communicate what our standards, our interests, and what we do as much as possible. When I was at the EEOC, we were covered by the media constantly. When we [decided] the Mitsubishi Motors sexual harassment case, I was on television maybe six or seven times.²⁸ We went to Japan, and I was on television there as well. So, people follow the EEOC as they should. People don't really follow labor and whistleblower law as closely. It really takes a claimant who has seized the media's eye to bring them forward into the spotlight.²⁹ Even then, it is not the [ARB] that is going to be covered but rather the individual. Even then, the administrative law system does not really promote the same level of publicity. But, nevertheless, we do have an impact and the ability to make decisions. What does make public outreach important, from my point of view, is that not enough people know about our rules and means of operation.

Most of the people who come before us are represented, but a good number of people are unrepresented, so there are pro se claimants. That makes it really hard because the rules of administrative law are very precise. They say you have got to do this, by then, and do it this way, in this form. We try to spell it out as much as possible, but it is very hard for a non-lawyer to figure out some of this stuff. Yet, we still have to apply the standards that are given us by the law. That is why I like to see more and more experienced advocates out there on all sides. Whereas, at the EEOC and some other places, I have found that the companies were generally always very well represented and the claimants were not. But, that is not true in the whistleblower area.

People may be represented on both sides, but many times the attorneys for claimants and for companies know very little about whistleblower law and relatively little about our standards. It makes much more work for those of us in the ARB. However, if you have a lawyer, good or bad, we are going to hold you to a tougher standard than if you are on your own.

So, there is a very small group of plaintiffs' experts who focus on whistleblower law. A couple of them are in this room, and there are maybe a handful of others around the country. There simply is not a large group of whistleblower advocates on the complainants' side. On the defense side the

28. See *Mitsubishi Motor Manufacturing and EEOC Reach Voluntary Agreement to Settle Harassment Suit*, U.S. EEOC, <http://www.eeoc.gov/eeoc/newsroom/Release/6-11-98.cfm> (June 11, 1998) (last visited Jan. 26, 2012).

29. See Dan Harris & Kate Barrett, *Former Manager Says Peanut Plant Complaints Ignored*, ABC NEWS, <http://abcnews.go.com/GMA/story?id=6888169&page=1> (Feb. 16, 2009) (showing interview with Kenneth Kendrick, the man who blew the whistle on unsanitary conditions at a peanut plant in Texas); see also Michael Moss, *Safety of Beef Processing Method is Questioned*, N.Y. TIMES, Dec. 30, 2009, available at <http://www.nytimes.com/2009/12/31/us/31meat.html?pagewanted=all> (discussing ammonia-treated beef products and the continuing concern regarding e. coli and salmonella pathogens found in beef).

same is true. Some of the really big defense firms—Seyfarth [Shaw]³⁰ and a few others—have someone who specializes in whistleblower law. But, a lot of other defense firms have nobody. So when you look at a moderate sized, small city firm, relatively few of those firms have anyone with whistleblower law background that results in disadvantage to their clients. It sometimes means we end up battling about procedure issues that we shouldn't have to be worrying about. That is why I appreciate the interest of a community of advocates, companies, and anyone else who wants to know more about whistleblower law. I don't get invited to the ABA meetings as much as I did when I was at EEOC, so any time I see opportunities like this I jump at it, even though there are a lot of rules about what I can and can't say.

So, with all that, I do appreciate your interest and commitment to this area of the law. It is my pleasure to serve our nation in this capacity at this time. I want to thank you for this opportunity. I wish you luck in helping this new law serve its purposes. In my role, I have to be objective as to a result in any single case. I do believe in the laws that we enforce, and I take seriously our duty to make them work as they were intended. To be perfectly frank, there is so much on Congress's plate. They don't always think about all the things that need to be put down and decided for a law as it is put forward. So that is why it is necessary to have appellate bodies such as ours. It is our job and our interest to see these laws speak and their spirit to be effectuated in the way most intended by the American people.

So, I thank you as well for your interest in Food Safety Modernization and its effective implementation. Thank you very much.

END TRANSCRIPT

30. SEYFARTH SHAW ATTORNEYS LLP, http://www.seyfarth.com/index.cfm/fuseaction/firm_overview.firm_overview/firm_overview.cfm (last visited Jan. 26, 2012).