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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Q&A With Morgan Lewis' Eric Sitarchuk

Law360, New York (November 02, 2010) -- Eric W. Sitarchuk is a partner in the Philadelphia office of Morgan Lewis & Bockius LLP and chair of the firm's corporate investigations and white collar practice. Sitarchuk focuses his practice on white collar litigation and also handles related civil litigation, including civil False Claims Act and antitrust class action defense.

Sitarchuk has defended federal criminal and civil cases alleging health care fraud, clinical research fraud, antitrust and securities violations, import/export violations, technology transfer, theft of trade secrets, defense contract fraud, money laundering, official corruption, tax fraud, pyramid schemes, commercial bribery, environmental violations, kidnapping, and a variety of other offenses.

Q: What is the most challenging case you've worked on, and why?

A: It was one I worked on as a prosecutor, the investigation of the the conduct of federal law enforcement during and in the aftermath of the deadly incident at Ruby Ridge, Idaho. There, the attempt to effect the arrest of separatist Randy Weaver on gun charges led to the death of a decorated deputy U.S. marshal, and Weaver's young son and wife. The investigation led to the obstruction of justice conviction of an FBI executive.

The case was challenging on multiple levels — the magnitude of the tragedy for both sides; the unavoidable impact the investigation had on the careers of its subjects; disappointment in seeing flaws in law enforcement agencies for which I had and still have such great respect; and the logistical difficulties of conducting an investigation in a politically charged atmosphere with a parallel congressional investigation of the same matter.

Q: What accomplishment as an attorney are you most proud of?

A: The accomplishment I am most proud of falls into a category. It is those cases that I

cannot talk about because they went away without charges being filed. To me, a defense attorney's greatest success is persuading a prosecutor not to pursue criminal or civil charges in a case. While a well-trying case and favorable verdict is unquestionably the most personally satisfying experience for the lawyer, much of the damage such litigation inflicts on a client cannot be undone. A quiet declination of prosecution, however, preserves the reputation and resources of the client. That is a real win.

Q: What aspects of law in your practice area are in need of reform, and why?

A: Criminal discovery in white collar criminal cases. The federal criminal discovery rules are designed for the violent crime cases, to protect witnesses from retaliation and evidence from destruction. In the vast majority of complex white collar cases, those concerns do not come into play. The result is a dramatic imbalance in pre-trial access to information between the prosecutor and the defense. Especially in complex cases where the issue is often whether a crime even occurred, as opposed to "whodunit," such an imbalance is antithetical to the adversary system. It can also render a supposedly "fair" trial largely a fiction.

Among reforms that should be considered are giving judges discretion to order pre-trial production of Jencks material, expanding the Rule 17(c) process for documentary evidence and permitting in appropriate circumstances defense depositions of third-party witnesses.

Q: Where do you see the next wave of cases in your practice area coming from?

A: I think we will see a significant increase in criminal and civil false claims cases in all areas. The amendments to the False Claims Act, a growing and sophisticated relator's (whistleblower) bar, expanded investigatory resources and the breadth of federally funded programs all point to this conclusion. We will continue to see a proliferation of health care fraud investigations, including an expansion into medical devices, clinical trials and adverse event reporting and quality of care. We are also starting to see a significant increase in procurement fraud investigations.

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A: David Howard, the new in-house head of litigation at Microsoft Corp. David is one of those rare lawyers who is as good on his feet as he is on paper. He has a sharp yet practical intelligence that allows him to get to the simple nub at the center of even the most complex issues, and then bring seasoned and practical judgment to bear in finding a solution. Microsoft chose well and will be very well served by having David on board.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A: Seek out every opportunity to be on your feet and get as much experience as possible. Get out of your comfort zone and do not be afraid to fail — that is the only way to learn. Nurture and expand the friendships and professional relationships you have with your lawyer peers. Many of those early bonds will last throughout your career, and be both personally and professionally satisfying.