The Berkshire Eagle

Al Franken's actions were not funny

By Robert F. Jakubowicz

Updated: 12/10/2009 10:04:48 AM EST
Thursday, Dec. 10 PITTSFIELD

Sen. Al Franken as a former comedian, talk show host, and author, delighted in attacking Republicans and trying to make them look like fools. And now, some of the Minnesota Democrat's Republican colleagues are acting like fools for attacking him because they claim he unfairly embarrassed them as rapist sympathizers for voting against his amendment to a Defense Department appropriation bill.

Franken's amendment prohibits the use of any funds in that bill for military contractors who force their employees to resolve claims for sexual assault and harassment, emotional distress, false imprisonment, and negligent hiring and supervision of employees by an out-ofcourt, behind closed doors, binding arbitration process in place of the right to sue the contractors in the court system. This amendment passed by a vote of 60 to 30. All Republican woman senators voted for it while 30 of their male GOP colleagues voted against. And after these male Republican senators found themselves being confronted, as was Louisiana Sen. David Vitter, by incensed women wanting to know how he and his colleagues could support a process barring a rape victim from access to the courts, they not only attacked Franken's motives, but they also demand that he should make the critics stop using his amendment to characterize Republicans as rapist sympathizers. This is an absolutely ridiculous demand by those who voted against Franken's measure. They want him to defend them against the public outrage they deserve. Sen. Lindsey Graham of South Carolina wants Franken to "make it clear that GOP senators don't support assault and rape." Sen. John Cornyn of Texas said Franken was attempting t o use a rape victim "to misrepresent and embarrass his colleagues." Sen. John Thune of South Dakota hopes that the Senate will "not see a lot of (partisan, political blog type) amendments in the future coming from (Franken) and hopefully he will settle down and do the kind of serious legislating that's important."

The basis for Franken's amendment was serious and important. It was obviously based on the case of Jamie Leigh Jones and similar cases by other employees of Halliburton/Kellog Brown and Root (KBR) in Iraq. Ms. Jones was required to sign a waiver of her right to sue her employer in court for any claim relating to her employment and instead to resolve it by binding arbitration. Two days after she arrived in Iraq, she allegedly complained to a manager of sexual harassment in her male dominated barracks and requested a transfer to other quarters. No action was taken. She then alleged that on the following day, after a social evening, she was " drugged, beaten, and gangraped" by co-employees which left her with serious injuries, including torn pectoral muscles. She reported the rape and was examined at a hospital. And later, she alleges, she was placed under armed guard in a container. Then she alleged that she was given two alternatives by her employer, stay and "get over it," or return home with no job guarantee. Another former employee, Dawn Leaman, who alleges she was sexual assaulted, said she was discouraged by KBR to report it because "You know what will happen if you do."

Miss Jones filed a complaint with the Equal Opportunity Commission which concluded that she was sexually assaulted by one or more of her coemployees, suffered physical trauma, and claimed

The Berkshire Eagle

that KBR's investigation was inadequate. She also filed a demand for arbitration, but after hiring a new lawyer, she filed her claim against her employer and others in a federal district court. Halliburton tried to dismiss the court action and compel her to use the secret arbitration process. The court after reviewing a mix of precedents from other court rulings on this issue concluded that her claims for assault and battery, emotional distress, negligent hiring and supervision of employees engaged in the assault, and false imprisonment - all were actionable in a court despite the arbitration agreement. So far a federal appeals court has upheld this ruling. But the law is still unclear and the case is pending.

Arbitration, as a legal method to resolve claims, is favored by business. It is cheaper, faster, and much less public than court litigation. The parties in the dispute either select a single arbitrator or each selects one and they select a third as a panel to hear the claim in private, usually without adhering to strict rules of law and evidence to decide the matter. And there is no appeal if the arbitration is binding.

Military contractors , principally Halliburton and its sub KBR, in Iraq and the Middle East have a big financial stake to protect and an equal interest in avoiding bad publicity. And the appalling tales told by alleged victims of sexual assaults and harassment has led to a number of stories with the following headlines that have appeared in publications and computer sites ranging from the New York Times "Limbo for U. S. Women Reporting Rape in Iraq," to a Cato Institute reprinting of an article entitled" No Justice On Contractor Rape," to the Nation's "KBR's Rape Problem." And as indicated by such headlines and stories these military contractors have a serious problem and they are trying to keep a lid on it according to the allegations of a number of their former women employees who have come forward.

Franken's amendment is intended to give these women their day in court and the Republicans should be embarrassed for opposing it.

Robert "Frank" Jakubowicz, a Pittsfield lawyer, is a regular Eagle contributor.