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# CAPITOL ASSETS

NEWSLETTER OF THE CAPITOL HILL CHAPTER OF THE FEDERAL BAR ASSOCIATION

SPRING 2006

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## JUSTICE RUTH BADER GINSBURG TO SPEAK

The Chapter's annual Supreme Court luncheon will be held on May 24, 2006, from noon to 1:30 in the west conference room of the Supreme Court of the United States. Justice Ruth Bader Ginsburg will speak to the Chapter and then take questions.

Justice Ginsburg was born in Brooklyn, New York, on March 15, 1933. She married Martin D. Ginsburg in 1954, and has a daughter, Jane, and a son, James. She received her B.A. from Cornell University, attended Harvard Law School, and received her LL.B. from Columbia Law School. She served as a law clerk to the Honorable Edmund L. Palmieri, of the United States District Court for the Southern District of New York, from 1959 to 1961. From 1961 to 1963, she was a research associate and then associate director of the Columbia Law School Project on International Procedure.

Justice Ginsburg was a Professor of Law at Rutgers University School of Law from 1963 to 1972, and at Columbia Law School from 1972 to 1980, and a fellow at the Center for Advanced Study in the Behavioral Sciences from 1977 to 1978. In 1971, she was instrumental in launching the Women's Rights Project of the American Civil Liberties Union, and served as the ACLU's General Counsel from 1973 to 1980, and on the National Board of Directors from 1974 to 1980.

She was appointed a Judge of the Court of Appeals for the District of Columbia Circuit in 1980. President Clinton nominated her as an Associate Justice of the Supreme Court, and she took her seat on August 10, 1993.

*An e-mail notice about the luncheon was sent previously. Any member who did not receive it or has otherwise not yet registered for the luncheon should contact Cynthia Rapp right away at 202-479-3031 or [cjrapp@scus.gov](mailto:cjrapp@scus.gov) to do so.*

## CALENDAR OF UPCOMING EVENTS

### MAY 24, LUNCHEON PROGRAM

ANNUAL SUPREME COURT LUNCH, JUSTICE RUTH BADER GINSBURG

### JUNE 8, HAPPY HOUR

SONOMA RESTAURANT AND WINE BAR, 5:30-7:30 PM

### AUGUST 23-26, FBA NATIONAL CONVENTION

## MESSAGE FROM CHAPTER PRESIDENT WARREN BURKE

Greetings, Capitol Hill Chapter members! When I took the reins as Chapter president in September, 2005, I knew I had a tough act to follow. Under our former president, Jim Scott, the Chapter enjoyed an outstanding year. At the end of Jim's term, the Chapter received two Presidential Citation Awards and was one of only six chapters in the nation to receive a Presidential Excellence Award, the highest honor presented by the FBA to a chapter. With eight months as Chapter president, I am proud to say that we are enjoying yet another great year.



As you can see on these pages, the Chapter has presented some fantastic programs during the 2006 fiscal year. These programs included luncheons with: Solicitor General Paul Clement; the Executive Director of the Justice at Stake Campaign, Bert Brandenburg; Supreme Court reporter Joan Biskupic; Director of the ABA Death Penalty Representation Project, Robin Maher; District Court Judge Royce Lamberth; and former Nuremberg prosecutor Benjamin Ferencz. In the near future, we will be hosting a luncheon with Justice Ruth Bader Ginsburg.

I encourage you to attend each of our programs and to invite your colleagues who may be interested in becoming members of the Chapter. I also encourage you to take advantage of the many opportunities made available by the FBA and to become more involved in the Chapter. For instance, you could serve on a Chapter committee or take part in the FBA's Supreme Court Admissions Ceremony.

Please be sure to visit the Chapter website: [www.fbacapitolhill.org](http://www.fbacapitolhill.org). You can use the website to track our past and upcoming programs, learn more about the Chapter's history, and download FBA membership forms.

I am honored to have the opportunity to serve the Capitol Hill Chapter. Our officers and council members are extraordinary individuals, and I would like to thank them for their dedication and hard work. I look forward to working with you over the coming months to continue to make 2006 as strong a year for our Chapter as 2005.

If you have any questions or suggestions, please contact me at (202) 225-3381 or [warrenburke@mail.house.gov](mailto:warrenburke@mail.house.gov).

## GET INVOLVED WITH CHAPTER COMMITTEES

Committee membership is open to members, and your participation is encouraged! The Chapter currently has the following active committees:

### Membership Committee

The Membership Committee is responsible for increasing Chapter membership and promoting the Chapter to eligible attorneys. Chapter Vice President Susan Sawtelle (sawtelles@gao.gov) serves as Chair.

### Professional Affairs Committee

The Professional Affairs Committee is responsible for the Chapter newsletter and continuing education programs. Council Member Craig Winslow (winslow@gao.gov) serves as Chair.

### Programs Committee

The Programs Committee is responsible for identifying, recommending, and ensuring effective production and announcement of Chapter programs. Contact Chapter President Warren Burke (warren.burke@mail.house.gov) if you would like to be a member of this committee.

### Younger Lawyers Division

The Younger Lawyers Division is composed of all members of the Federal Bar Association who are 36 years of age and under or who have been admitted to practice for 3 years or fewer. The YLD's purpose is to provide services and information of particular interest to younger members of the federal legal profession. Council Member Brady Young (brady.young@mail.house.gov) serves as liaison to the YLD and Chair of the Capitol Hill Chapter's Younger Lawyers Committee.

## NOTICES OF EVENTS, INCLUDING SUPREME COURT LUNCHEON, BY E-MAIL ONLY

At its April 10 meeting, the Council voted to change the policy for notice of Chapter events. Information about events will be sent exclusively by e-mail. You should have received an e-mail regarding the May 2 luncheon with Lois Schiffer, followed by an e-mail regarding the May 24 Supreme Court luncheon with Justice Ginsburg. **If you have not received these e-mails, or are having any difficulty receiving e-mails from the FBA, please contact FBA staff at membership@fedbar.org to update your e-mail information.** You can also contact Capitol Hill Chapter President, Warren Burke, at warren.burke@mail.house.gov or (202) 225-6060 to express any concerns or suggestions regarding the new mailing policy.

## INTERIM ELECTION HELD

At the March 10 luncheon with Judge Royce Lamberth, Chapter President Warren Burke announced the results of the Chapter's interim election:

President Elect: Adam Bramwell (formerly Vice President)

Vice President: Susan Sawtelle (formerly Secretary)

Treasurer: Paul Vamvas

Secretary: Terry Halstead

National FBA Vice President Jim Richardson administered the oaths of office.

This interim election was made necessary by the departures of Stephanie Easley (formerly President Elect) and Roy Shannon (formerly Treasurer). Stephanie has moved to New Orleans to assist with post-Katrina recovery. Roy has taken a job with a real estate firm in Virginia. We wish Stephanie and Roy the best of luck in their new jobs and look forward to the leadership of our new officers during the second half of fiscal year 2006.

## BERT BRANDENBURG, EXECUTIVE DIRECTOR OF JUSTICE AT STAKE CAMPAIGN, ADDRESSES CHAPTER

The Executive Director of the Justice at Stake Campaign, Bert Brandenburg, addressed the Chapter on November 14, 2005. The Justice at Stake Campaign is a nationwide, nonpartisan partnership of more than thirty judicial, legal, and citizen organizations working to protect and promote judicial independence.

According to Mr. Brandenburg, judicial independence, embodied in the Constitution, is under growing threat. Judicial independence, in his view, means that judges are free to decide cases fairly and impartially, relying only on the facts and the law and protected from all pressures, whether political, legislative, special interest, media, public, financial, or personal.

Mr. Brandenburg expressed concern that special interests are spending millions to influence decisions and elect judges to serve their narrow interests, rather than the public interest. The cost of judicial campaigns is skyrocketing, forcing judges to raise money like politicians, and leading many Americans to believe that justice is for sale. The Justice at Stake Campaign was founded, in fact, after several national surveys indicated that large majorities of judges and voters were concerned that special interests were trying to use the courts to shape public policy to their own ends.

Mr. Brandenburg explained how his organization works to counter attempts to intimidate and punish judges who issue controversial decisions. Because many Americans do not know much about the American court system, even though courts make important decisions about their lives, the Justice at Stake Campaign works to educate the public. It also works for reforms that, in Mr. Brandenburg's words, keep politics and special interests out of the courtroom, so judges can do their job protecting our Constitution, our rights, and the rule of law.

## FORMER NUREMBERG PROSECUTOR BENJAMIN FERENCZ ADDRESSES CHAPTER

Benjamin B. Ferencz, who has, beginning with his prosecution of Nazi war criminals, long focused on issues of international justice and world peace, addressed the Capitol Hill Chapter at the Madison Building on March 30, 2006.

Mr. Ferencz was born in Transylvania in 1920 and came to this country with his family when he was ten months old. His family was poor and his earliest memories are of their small basement apartment in the “Hell’s Kitchen” district of New York City. Despite these humble beginnings, Mr. Ferencz attended Harvard Law School where he worked as a research assistant for Professor Sheldon Glueck, who had written a book on the prosecution of war criminals.

Upon earning his law degree in 1943, Mr. Ferencz entered the army as an enlisted man and fought under General Patton in every campaign in Europe. When in 1944 the allies turned to Professor Glueck for guidance in prosecuting war crimes, he suggested they locate Mr. Ferencz, noting that an article Mr. Ferencz had written on the rehabilitation of army offenders identified him as a corporal with the 115th AAA Gun Battalion. Much to Mr. Ferencz’s surprise, he was transferred to a new Judge Advocate section of Third Army Headquarters in Luxembourg that had been ordered to set up a war crimes branch.

His first assignments involved the prosecution of Germans who had committed atrocities against American troops, such as killing prisoners or downed flyers, as well as the prosecution of Nazi concentration camp commanders. A few enlisted men carried out investigations. After exhuming bodies of American flyers murdered by German mobs, for example, Mr. Ferencz prepared reports identifying the suspects and the violations of the laws of war. Witnesses were ordered to write out descriptions of the criminal event under penalty of being shot. Confessions were obtained in the same fashion, but were usually rewritten under more sympathetic circumstances before being validated by an officer who would offer them in evidence.

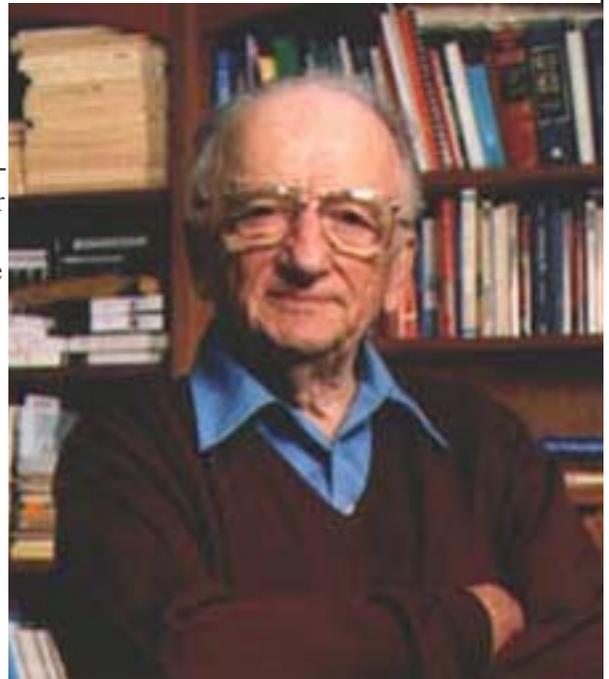
Mr. Ferencz entered several concentration camps, such as Buchenwald and Mauthausen, looking for records, including registries of inmates killed and the roster of German officers and guards. Crimes were certified by survivors’ affidavits describing their ordeals and naming their torturers.

When Sergeant Ferencz was discharged, he returned to New York to practice law, but was recruited for the Nuremberg war crimes trials. The International Military Tribunal prosecution of Herman Goering and other leading Nazis was already in progress under the American prosecutor, Robert M. Jackson, on leave from the Supreme Court.

When his investigative efforts produced evidence of mass murder, Mr. Ferencz, then 27 year old, was appointed to serve as chief prosecutor of the leaders of SS units—Einsatzgruppen—that followed German troops into Poland and the Soviet Union. Twenty-two defendants were charged with murdering over a million people, and thirteen were sentenced to death. In his opening statement to the Court, Mr. Ferencz declared that the case was “a plea of Humanity to Law.”

Since his prosecution of the Einsatzgruppen case, Mr. Ferencz has dedicated much of his life to issues of international criminal justice and world peace. He has been a strong supporter of the International Criminal Court (ICC) and spoke passionately about the current administration’s renunciation of the treaty establishing it. He asserted that we weaken our standing in the world when we insist that international law applies to everyone else but not to us.

Mr. Ferencz rejects the view that American soldiers could be prosecuted by the ICC, and said that it is in the interest of the country and the military to support the court. The best way to protect our military and world peace, he said, is through universal and equal enforcement of the rule of law. He believes the majority of the American public, if they knew the truth about the ICC, would agree.



## OFFICERS AND COUNCIL MEMBERS

### OFFICERS

#### Warren Burke, President

Assistant Counsel  
House Office of the Legislative Council  
202-225-6060, warrenburke@mail.house.gov

#### Susan Sawtelle, Vice President

Associate General Counsel  
Government Accountability Office  
202-512-6417, sawtelles@gao.gov

#### Adam Bramwell, President-Elect

Counsel  
Secretary of the Senate  
202-224-8789, Adam\_Bramwell@sec.senate.gov

#### Terry Halstead, Secretary

American Law Division  
Congressional Research Service  
202-707-7981, tjhalstead@gmail.com

#### Paul Vamvas, Treasurer

Assistant Division Director for FJTN and Video Programs,  
Federal Judicial Center  
202-502-4266, pvamvas@fjc.gov

#### James G. Scott, Immediate Past President

Senior Legislative Advisor  
Centers for Medicare and Medicaid Services  
202-690-5960

#### Diane Wolf, Past President

Advisory Board Member  
Capitol Preservation Commission  
202-342-7134, dianewolf@att.net

### COUNCIL MEMBERS

#### House of Representatives

Tobias A. Dorsey 202-225-6060  
Brady Young 202-225-6060

#### Senate

Mark Mathiesen 202-224-6461  
Richard Litsey 202-224-6461

#### Government Accountability Office

Doreen S. Feldman 202-512-8264  
Craig H. Winslow 202-512-8225

#### Library of Congress

Charlotte Douglass 202-707-8386  
Mary Levering 202-707-1393

#### Supreme Court

William K. Suter 202-479-3014  
Cynthia Rapp 202-479-3031

#### Government Printing Office

Kerry Miller 202-512-0008  
Latonya Hayes 202-512-0033

#### National Judicial Offices

Jeffrey A. Hennemuth 202-502-1817  
Jennifer Evans Marsh 202-502-4095

#### At-Large

Dale Bosley 703-548-2740  
Gary Greenfield 202-707-1592  
Robert Lincoln 202-707-1597  
Jeffrey A. Hennemuth 202-502-1817  
Barry Shillito 202-512-4663

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### REPORTER AND AUTHOR JOAN BISKUPIC ADDRESSES CHAPTER

Joan Biskupic, who has reported on the Supreme Court since 1989, formerly for *The Washington Post* and now for *USA Today*, addressed the Chapter and answered questions at the December 15, 2005 luncheon. Her book, *Sandra Day O'Connor: How the First Woman on the Supreme Court Became Its Most Influential Justice*, based on previously unavailable papers of the justices and hundreds of interviews, was published last year to glowing reviews.

Ms. Biskupic, a graduate of the Georgetown Law Center, spoke about covering the Court and individual justices. She discussed the path that led to former Justice O'Connor's appointment by President Reagan as the first female Justice. Always an outstanding intellect and hard worker who confronted gender discrimination with tact and determination, Justice O'Connor's early accomplishments did not necessarily suggest that she was destined for such heights. A law school classmate of the late Chief Justice Rehnquist, she helped prepare him for his own confirmation hearings. She became a well-respected state judge but few would have included her on the short list of possible Supreme Court nominees. When she was identified as a possible nominee by White House staff and invited to meet with President Reagan, however, he was impressed by her straightforward insights and the two of them hit it off immediately.

As the Court became more conservative, Justice O'Connor's importance and influence became more obvious. Her careful and measured response to issues generated both praise and scorn from both ends of the political spectrum. While her tie-breaking votes on many cases probably kept the court from moving further to the right than it otherwise would have, Ms. Biskupic made clear her view that Justice O'Connor remained acutely aware of how the Court is viewed by and affects the America people. Ms. Biskupic credits her with transforming the legal standards by which many issues will be considered by American courts far into the future.

## SOLICITOR GENERAL PAUL CLEMENT ADDRESSES CHAPTER

The Solicitor General of the United States, the Honorable Paul D. Clement, addressed the Capitol Hill Chapter and took questions at the Chapter's annual meeting on September 15, 2005. Mr. Clement has argued more than thirty cases before the Supreme Court.

Mr. Clement received a bachelor's degree *summa cum laude* from the Georgetown University School of Foreign Service and a master's degree in economics from Cambridge University. He was the Supreme Court editor of the Harvard Law Review and graduated *magna cum laude* from Harvard Law School in 1992.

After clerking for Judge Laurence H. Silberman of the Court of

Appeals for the D.C. Circuit and Associate Justice Antonin Scalia, he worked both in private practice and on the Hill before joining the Justice Department in 2001. Mr. Clement's nomination by President Bush to be the nation's 43<sup>rd</sup> solicitor general was confirmed on June 13, 2005.



*Chapter Pres. Warren Burke, Solicitor General Paul Clement, Past Pres. Jim Scott*

Mr. Clement eloquently described some of the Supreme Court's most far-reaching decisions this past term and the public response to some of them. He noted the *Kelo v. City of New London* eminent domain case, for example, in which the Court upheld the city's condemnation of property for private urban redevelopment as a constitutional taking for "public use," as an instance where public reaction likely stemmed more from policy disagreement than legal disagreement.

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### **The Sarah T. Hughes Civil Rights Award by Jim Scott, Vice President for the D.C. Circuit**

As a vice president for the D.C. circuit, I have an opportunity to see how the D.C. chapter, the Pentagon Chapter, and the Capitol Hill Chapter compare with other FBA chapters throughout the nation. In my opinion, the chapters in the D.C. circuit are the very best: each has excellent programs of its own and all go a step further by demonstrating collegiality through joint programming. I am certain that the individual achievements of many of your Chapter's members are deserving of national recognition as well.

For that reason, I ask you to please take a moment to recommend to your Chapter's leadership an attorney or judge who lives or works in Washington, DC, or who works at the Pentagon, for the Sarah T. Hughes Civil Rights Award. Your recommendation should be of a person whose career achievements have included either a groundbreaking achievement or a body of sustained and dedicated work in the area of civil rights, due process and equal protection.

Presented by the FBA for the first time in 2003, the Sarah T. Hughes Civil Rights Award honors the renowned federal district judge from Dallas. Judge Hughes was a pioneer in the fight for civil rights, due process, equal protection and the rights of women. The FBA created the prestigious award "to honor that man or woman who promotes the advancement of civil and human rights amongst us and who exemplifies Judge Hughes' spirit and legacy of devoted service and leadership in the cause of equality."

FBA Headquarters must receive all nominations by May 31, 2006. The award presentation is part of the President's Installation Banquet at the 2006 Annual Meeting and Convention. As you know, this year's Annual Meeting and Convention is in Las Vegas, Nevada, from August 23 through 26. For more information on the Sarah T. Hughes Award, visit <http://www.fedbar.org/Hughes-award.pdf>.

## SENATOR LINDSEY O. GRAHAM ADDRESSES CHAPTER

On March 15, the Pentagon and Capital Hill Chapters co-sponsored a dinner program with the Judge Advocates Association American Inn of Court, in Washington, DC. The event featured Senator Lindsey O. Graham, of South Carolina. The program included dinner at the historic Tayloe House, followed by a presentation by Senator Graham in the ceremonial courtroom of the U.S. Court of Appeals for the Federal Circuit.

Senator Graham served on active duty for six years as a judge advocate in the Air Force and is currently a colonel in the Air Force Reserve, the only U.S. Senator now serving in the National Guard or Reserves. Senator Graham reminisced about some of his experiences as an Air Force lawyer. He shared his thoughts about current events affecting the military and the relationship between uniformed and civilian attorneys in the Department of Defense.

The event was attended by many leaders of the military and veteran's bar, such as Maj. Gen. Jack Rives, Judge Advocate General of the Air Force; Rear Adm. James McPherson, Judge Advocate General of the Navy; Judges Moorman and Kasold from the U.S. Court of Appeals for Veterans Claims; Brig. Gen. David Carey, USA (Ret.), Executive Director of the American Inns of Court Foundation; and Brig. Gen. Edward Rodriguez, Jr. USAFR (Ret.), President-Elect of the Judge Advocates Association.



*Senator Lindsey Graham*

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## ROBIN MAHER, DIRECTOR OF ABA DEATH PENALTY REPRESENTATION PROJECT, ADDRESSES CHAPTER

Robin M. Maher, Esq., spoke at a Capitol Hill Chapter luncheon on January 25, 2006. Ms. Maher, currently Director of the American Bar Association's Death Penalty Representation Project, was student article editor of the *Journal of Law & Inequality* at the University of Minnesota Law School, and began working on death penalty cases as a volunteer in private practice.

Ms. Maher gave a compelling presentation about her organization's work assisting death row inmates who have no lawyers. The urgency of obtaining representation for individuals on death row was heightened with enactment of the Antiterrorism and Effective Death Penalty Act of 1996, which for the first time placed a statute of limitations of one year on the filing of federal *habeas* petitions. For a variety of reasons, there is a nation-wide shortage of qualified lawyers to represent individuals under sentence of death. For example, Supreme Court case law allows states to deny court-appointed counsel at the state post-conviction level. In 1995-96, Congress eliminated all federal funding for the post-conviction defender organizations known as "resource centers."



*Robin Maher*

Ms. Maher explained that the primary focus of the Death Penalty Representation Project, established in 1986, is to assure representation by qualified, adequately-compensated lawyers, not to abolish the death penalty. The Project works for systemic changes in the criminal justice system to assure such representation for those facing the death penalty at all stages, from trial through clemency.

Among her responsibilities, Ms. Maher recruits lawyers to take on appeals of death row cases. She noted that, for the most part, prisoners on death row are poor and were not provided with competent counsel and defense support during trial. She explained, somewhat to the surprise of the audience, that civil litigation lawyers are ideally suited for post-conviction appeals because these appeals are essentially civil proceedings.



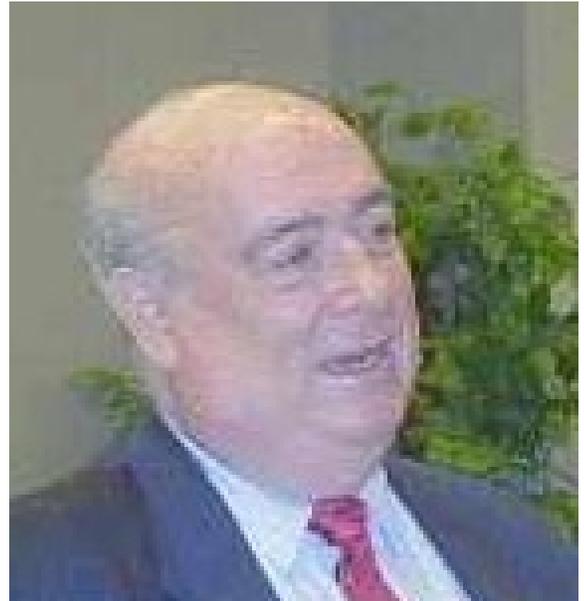
*Robin Maher and Chapter Pres. Warren Burke*

Ms. Maher's presentation was followed by a thoughtful question and answer session.

## DISTRICT JUDGE ROYCE LAMBERTH VISITS CHAPTER

On March 10, 2006, Judge Royce C. Lamberth of the United States District Court for the District of Columbia addressed the Chapter and fielded questions. Although he did not discuss specific cases, he was able to share insights into his experiences as a federal district court judge, as well as presiding over the Foreign Intelligence Surveillance Court from 1995 to 2005.

Judge Lamberth graduated from the University of Texas and completed his law degree there in 1967. From 1967 to 1974 he served as a captain in the Army's Judge Advocate General's Corp and later as an Assistant U.S. Attorney in the District of Columbia. Appointed to the District Court in 1987 by President Reagan, he was viewed by many as a darling of conservative Republicans when he ruled against Clinton Administration officials in a number of high-profile cases in the 1990s.



*The Honorable Royce C. Lamberth*

However, as Judge Lamberth's criticism of the federal government's mismanagement of Indian trust funds has continued and intensified into the Bush Administration, conservative enthusiasm for him has waned. His emphatic condemnation of government actions in the so-called Indian trust case, *Corbell v. Norton*, has brought him considerable press attention. Although his contempt ruling against former Interior Secretary Gale Norton was overturned on appeal, the government has taken the rare step of seeking to have him removed from the case. Judge Lamberth seemed confident that, should the government succeed in having him removed, he would get over it and carry on with other work.

Perhaps the most interesting and timely remarks by Judge Lamberth related to his service on the Foreign Intelligence Surveillance Court. He was appointed to preside over that court for a seven year term by then Chief Justice William Rehnquist. By statute, three of the eleven district court judges serving staggered terms on the court must live within 20 miles of the District of Columbia. Although his term on the court was not enough to compel him to relocate, Judge Lamberth acknowledged that one drawback of such service is the opportunity to learn of the many security risks and terrorist threats to the Washington area.

Addressing the controversy over warrantless wiretaps by the Bush Administration, Judge Lamberth stressed the lengths to which he and his colleagues on the Foreign Intelligence Surveillance Court were prepared to go to promptly consider administration applications for electronic surveillance. On the day of the attacks on the World Trade Center and Pentagon in 2001, he was stuck in traffic in Virginia in sight of the Pentagon. Nevertheless, using his cellphone from his car, he was able to adequately consider and approve several wiretaps before reaching his destination.

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FBA CAPITOL HILL CHAPTER  
PO Box 75971  
WASHINGTON DC 20013

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