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Circuit Hears Argument On Wiretap Program

A federal appeals panel on Friday heard arguments from lawyers who want the » Page 4 government to tell them whether they have been subject to warrantless wiretapping launched in the wake of the 9/11 attacks. The 23 lawyers who represent detainees at Guantánamo Bay maintain their electronic communications may have been intercepted under the Terrorism Surveillance Program. "The looming possibility of surveillance chills the Guantánamo lawyers' communications and hobbles their representations of clients," the Center for Constitutional Rights argued on behalf of the plaintiffs.

In June 2008, Southern District Judge Denise Cote granted the government's summary judgment motion dismissing a Freedom of Information request brought in 2007 by the center to determine whether the lawyers' records had been intercepted (NYLJ, June 07, 2008). On Friday, the center urged a panel to reverse Judge Cote's decision in *Wilner v. National Security Agency*, 08-4726-cv.

Asked by a three-judge panel, which included Judges José A. Cabranes, Debra Ann Livingston, and Edward Korman sitting by designation from the Eastern District, if the lawyers wanted the Second Circuit to declare the program illegal, Kathryn Sabbeth of the University of North Carolina at Chapel Hill School of Law, who argued for the center, replied, "Absolutely not."

However, she insisted Judge Cote had misapplied the *"Glomar"* doctrine, a judicial exception to FOIA allowing agencies to refuse to confirm or deny the existence of records.

Lawyers for the government countered that disclosing whether or not a person "may or may not have been" subject to the surveillance program was a "closely guarded" state secret.

—Noeleen G. Walder

Morgenthau's Former Chief Joins Consultancy

Manhattan District Attorney Robert M. Morgenthau's former top deputy, Daniel Castleman, has landed a position in the private sector. Seven months after resigning from his post as chief assistant district attorney, Mr. Castleman was to start work yesterday as a managing director at FTI Consulting Inc.'s New York office. Mr. Castleman, 56, quit his job in March after Mr. Morgenthau, who will retire Dec. 31, said he could not back Mr. Castleman as his successor (NYLJ, March 5).

Mr. Castleman said his work in FTI's global risk and investigations practice will focus on large scale investigations, monitorships and integrity advisory services for corporate clients.

He had considered joining a law firm, but ultimately decided that working for a consultancy would allow him to continue overseeing probes, the type of work he did for nearly 30 years at the Manhattan office. Mr. Castleman declined to disclose his salary, saying only he would be making "more than my last job."

—Noeleen G. Walder

Eastern District Assistant U.S. Attorney Is Honored

Marshall Miller, an assistant U.S. attorney for the Eastern District of New York, has been named the 2009 Most Outstanding Assistant U.S. Attorney by the National Association of Former U.S. Attorneys. The award, given to Mr. Miller at a ceremony last week in Seattle, is given annually to one or more federal prosecutors for their "conscientious efforts and professional contributions exemplifying" the association's ideals. Mr. Miller has played a key role in several of his office's most prominent cases, including the successful prosecutions of terrorists, drug traffickers and members of violent street gangs, including Shahawar Matin Siraj, who was sentenced to 30 years for plotting to bomb Herald Square on the eve of the 2004 Republican National Convention.

—Mark Fass

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