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## **Spy-Court Ex-Judge Was Frequent Critic**

James Robertson had criticized the Guantanamo Bay detention center. He quit the spy court to protest secret wiretaps.

Carol Rosenberg

Knight Ridder

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A federal judge who quit the nation's secret spy court in protest over the Bush administration's covert domestic wiretaps has been one of the judiciary's most active and feisty critics of the Guantanamo Bay detention center in Cuba, where hundreds of foreigners have been held for years without charges.

U.S. District Judge James Robertson, 67, resigned as one of 11 members of the Foreign Intelligence Surveillance Court. An aide to Robertson told the Associated Press that the resignation letter submitted to Chief Justice John G. Roberts Jr. was not being released.

Nevertheless, Robertson remains on the federal bench and is expected to issue another ruling in a Guantanamo case this week.

The spy court is perhaps the most secretive in America, created by the Foreign Intelligence Surveillance Act. It reviews U.S. government requests for eavesdropping to gather intelligence on suspected U.S. enemies. Last year, according to a report to Congress, it received 1,758 warrant requests - and approved all but four.

President Bush set off a political firestorm Saturday by confirming a New York Times story that he had secretly authorized eavesdropping on U.S.-foreign calls and some e-mail without seeking warrants, as part of a National Security Agency program to gather intelligence on al-Qaeda.

Administration officials cited the need for "agility" in bypassing the FISA court - despite their ability to obtain warrants after the fact. The Senate Judiciary Committee is calling hearings to examine Bush's assertion that his war powers permitted him to authorize the eavesdropping program, which he did more than 30 times.

"Apparently Judge Robertson did not want to aid and abet criminal NSA electronic surveillance," the New York Center for Constitutional Rights said in a statement. The center has alleged for four years that Bush has been overstepping his war powers in his Guantanamo and enemy-combatant practices.

Robertson was unrelenting in his criticism of the administration when he shut down the Pentagon-created Guantanamo war-crimes court a year ago in a 45-page opinion that accused the White House of using a pick-and-choose approach on prisoner-of-war policies.

"The government has asserted a position starkly different from the positions and behavior of the United States in previous conflicts," he wrote, "one that can only weaken the United States' own ability to demand application of the Geneva Conventions to Americans captured during armed conflicts abroad."

On Nov. 8, 2004, Robertson issued a restraining order against the Pentagon's military commission accusing Salim Hamdan of Yemen of war crimes for serving as Osama bin Laden's driver.

Robertson, appointed to the federal bench by President Bill Clinton in 1994 and to the FISA court by Chief Justice William H. Rehnquist in 2002, has repeatedly bristled at the government's exercise of war powers since the Sept. 11, 2001, attacks.

Duke University law professor Scott Silliman called Robertson one of the judiciary's leading critics of Bush's war powers. "He feels strongly that the rule of law must pertain to some of these cases," Silliman said.