

The following text may be printed, copy/pasted, or downloaded and emailed.

Spy Court Judge Quits In Protest

Jurist Concerned Bush Order Tainted Work of Secret Panel

Carol D. Leonnig and Dafna Linzer

Washington Post

December 21, 2005

A federal judge has resigned from the court that oversees government surveillance in intelligence cases in protest of President Bush's secret authorization of a domestic spying program, according to two sources.

U.S. District Judge James Robertson, one of 11 members of the secret Foreign Intelligence Surveillance Court, sent a letter to Chief Justice John G. Roberts Jr. late Monday notifying him of his resignation without providing an explanation.

Two associates familiar with his decision said yesterday that Robertson privately expressed deep concern that the warrantless surveillance program authorized by the president in 2001 was legally questionable and may have tainted the FISA court's work.

Robertson, who was appointed to the federal bench in Washington by President Bill Clinton in 1994 and was later selected by then-Chief Justice William H. Rehnquist to serve on the FISA court, declined to comment when reached at his office late yesterday.

Word of Robertson's resignation came as two Senate Republicans joined the call for congressional investigations into the National Security Agency's warrantless interception of telephone calls and e-mails to overseas locations by U.S. citizens suspected of links to terrorist groups. They questioned the legality of the operation and the extent to which the White House kept Congress informed.

Sens. Chuck Hagel (Neb.) and Olympia J. Snowe (Maine) echoed concerns raised by Arlen Specter (R-Pa.), chairman of the Senate Judiciary Committee, who has promised hearings in the new year.

Hagel and Snowe joined Democrats Dianne Feinstein (Calif.), Carl M. Levin (Mich.) and Ron Wyden (Ore.) in calling for a joint investigation by the Senate judiciary and intelligence panels into the classified program.

The hearings would occur at the start of a midterm election year during which the prosecution of the Iraq war could figure prominently in House and Senate races.

Not all Republicans agreed with the need for hearings and backed White House assertions that the program is a vital tool in the war against al Qaeda.

"I am personally comfortable with everything I know about it," Acting House Majority Leader Roy Blunt (R-Mo.) said in a phone interview.

At the White House, spokesman Scott McClellan was asked to explain why Bush last year said, "Any time you hear the United States government talking about wiretap, it requires -- a wiretap requires a court order. Nothing has changed, by the way. When we're talking about chasing down terrorists, we're talking about getting a court order before we do so." McClellan said the quote referred only to the USA Patriot Act.

Revelation of the program last week by the New York Times also spurred considerable debate among federal judges, including some who serve on the secret FISA court. For more than a quarter-century, that court had been seen as the only body that could legally authorize secret surveillance of espionage and terrorism suspects, and only when the Justice Department could show probable cause that its targets were foreign governments or their agents.

Robertson indicated privately to colleagues in recent conversations that he was concerned that information gained from warrantless NSA surveillance could have then been used to obtain FISA warrants. FISA court Presiding Judge Colleen Kollar-Kotelly, who had been briefed on the spying program by the administration, raised the same concern in 2004 and insisted that the Justice Department certify in writing that it was not occurring.

"They just don't know if the product of wiretaps were used for FISA warrants -- to kind of cleanse the information," said one source, who spoke on the condition of anonymity because of the classified nature of the FISA warrants. "What I've heard some of the judges say is they feel they've participated in a Potemkin court."

Robertson is considered a liberal judge who has often ruled against the Bush administration's assertions of broad powers in the terrorism fight, most notably in *Hamdan v. Rumsfeld*. Robertson held in that case that the Pentagon's military commissions for prosecuting terrorism suspects at Guantanamo Bay, Cuba, were illegal and stacked against the detainees.

Some FISA judges said they were saddened by the news of Robertson's resignation and want to hear more about the president's program.

"I guess that's a decision he's made and I respect him," said Judge George P. Kazen, another FISA judge. "But it's just too quick for me to say I've got it all figured out."

Bush said Monday that the White House briefed Congress more than a dozen times. But those briefings were conducted with only a handful of lawmakers who were sworn to secrecy and prevented from discussing the matter with anyone or from seeking outside legal opinions.

Sen. John D. Rockefeller IV (D-W.Va.) revealed Monday that he had written to Vice President Cheney the day he was first briefed on the program in July 2003, raising serious concerns about the surveillance effort. House Minority Leader Nancy Pelosi (D-Calif.) said she also expressed concerns in a letter to Cheney, which she did not make public.

The chairman of the Senate Select Committee on Intelligence, Pat Roberts (R-Kan.), issued a public rebuke of Rockefeller for making his letter public.

In response to a question about the letter, Sen. John McCain (R-Ariz.) suggested that Rockefeller should have done more if he was seriously concerned. "If I thought someone was breaking the law, I don't care if it was

classified or unclassified, I would stand up and say 'the law's being broken here.' "

But Rockefeller said the secrecy surrounding the briefings left him with no other choice. "I made my concerns known to the vice president and to others who were briefed," Rockefeller said. "The White House never addressed my concerns."