WASHINGTON (Reuters) - Two secret courts that authorize U.S. spying operations such as the massive collection of telephone data are adding two judges who were put on the bench by Democratic presidents, a spokesman said on Friday, in a shift following criticism that one of the two courts is one-sided.

The appointments, to the 11-member U.S. Foreign Intelligence Surveillance Court and to the three-member U.S. Foreign Intelligence Surveillance Court of Review, came without comment from Chief Justice John Roberts, who in addition to heading the U.S. Supreme Court has exclusive power to determine the makeup of the two spy courts.

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Roberts is a conservative judge appointed to the high court in 2005 by Republican President George W. Bush. The vast majority of the judges he has chosen for the spy courts have been Republican appointees.

Seattle-based 9th U.S. Circuit Court of Appeals Judge Richard Tallman joined the court of review for a term that started last month. Democratic President Bill Clinton appointed Tallman, a Republican, as a federal appeals court judge in 2000.

A former federal prosecutor, Tallman joined the 9th Circuit as part of a deal between Clinton and Republican senators. Tallman has developed a reputation as a smart, hard working judge who frequently sides with the government in criminal cases, said Rory Little, a Hastings College of the Law professor who regularly argues before the court.

“He certainly does not express suspicion of governmental action very often,” Little said.

U.S. District Judge James Boasberg, based in Washington, D.C., will join the lower spy court in May. Democratic President Barack Obama appointed him as a federal trial judge in 2011.
Federal judges serve for life, but their terms on the spy courts are fixed at seven years. They go on hearing their regular cases while helping on the spy courts.

Civil liberties advocates, as well as Democratic Senator Richard Blumenthal of Connecticut, have said that the lower spy court risks its impartiality by having at one point 10 of its 11 seats held by Republican-nominated judges.

Congress created the two courts in 1978 after revelations that federal agents had routinely and unlawfully spied on Americans.

By law, the Foreign Intelligence Surveillance Court oversees investigations related to non-U.S. targets, and it usually approves requests made by Justice Department lawyers.
In an annual report to Congress that is publicly available, the Justice Department said that in 2012 the government made 212 applications for access to business records. The court denied none of the applications but amended 200 of them, the report said.

Leaks to the news media from former National Security Agency contractor Edward Snowden showed, beginning last year, how expansive the court’s orders can be.

The court approved, for example, the creation of a database that includes information on virtually every U.S. telephone call, such as the length of the calls and the numbers dialed. Obama has ordered changes to that program.

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