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**From:** Bradford A. Berenson ( CN=Bradford A. Berenson/OU=WHO/O=EOP [ WHO ] )

**To:** Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] ), Timothy E. Flanigan ( CN=Timothy E. Flanigan/OU=WHO/O=EOP@EOP [ WHO ] ), Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] ), Alberto R. Gonzales ( CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [ WHO ] )

**Subject:** : FWD: Merc News story

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TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )

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05/30/2002 10:56 AM -----

James Meek (b)(6)

05/30/2002 10:33:27 AM

Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP

cc:

Subject: FWD: Merc News story

Posted on Sun, May. 26, 2002

Federal judicial choices prompt grumbling

GOP CRITICS SAY DEMOCRATS HAVE TOO MUCH POWER IN PROCESS

By Howard Mintz

Mercury News

The Bush administration and California's two Democratic senators cut a unique deal nearly a year ago that was supposed to take the political rancor out of choosing federal judges across the state.

But as the White House has moved in recent months to find candidates for eight federal judgeships, including one in the Bay Area, the bipartisan approach -- which uses a selection committee of three Republicans and three Democrats -- is showing signs of trouble. Conservative Republicans are

attacking the process for allowing too much Democratic influence into judge selection and for shutting out qualified candidates. Even the White House has given it lukewarm reviews.

For a state that could have as many as a dozen more of these lifetime appointments up in the coming years, the fate of the process is no small matter.

Tensions over judicial nominations are already running high between the Democrat-controlled Senate and the White House, and officials warn nomination fights common in other states could take place here if California's political pact falls apart.

Friction over the process is not expected to sidetrack Bay Area lawyer Jeffrey White's pending nomination to the San Francisco federal bench. Although many local Republicans are dissatisfied with the process behind White's selection, he is not considered controversial. Lawyers close to the process say White, a former federal prosecutor and top litigator whose clients have included Oracle CEO Larry Ellison and Seibel Systems, will be nominated any day.

However, while White's nomination appears secure, the process by which he was selected may not be.

Critic backpedals

White House Counsel Alberto Gonzalez said during a speech earlier this month that he has not ``been overjoyed at the way the commission process has worked in California." Gonzalez backed off slightly last week in a letter to Sens. Dianne Feinstein and Barbara Boxer, saying that he is only frustrated with the pace of the process and supports the bipartisan approach.

But both Republicans and Democrats say it is a tenuous peace.

``It's all coming to a head," said a Democratic member of one of the California committees.

Traditionally, senators from the president's political party play a major role in naming their home state's federal District Court judges, who decide issues ranging from cyberlaw to death penalty appeals. But that time-honored system doesn't always work in states that have a situation like California's.

Already, major conflicts have broken out over judge selection in other states with two Democratic senators, notably Florida and Washington. And Congress and the White House are warring over the president's choices for federal appeals courts. In fact, for nearly a year Boxer has been behind the effort to tie up the nomination of Los Angeles judge Carolyn Kuhl to the San Francisco-based 9th U.S. Circuit Court of Appeals.

When it comes to selecting district judges, California is the only state to use committees made up of three Republicans and three Democrats.

That has soured conservatives who say that many candidates who might be favored by the White House never reach the president's desk, filtered out



by Democrats on the committees.

“It's bad precedent,” said John Nowacki, director of legal policy for the Washington, D.C.-based Free Congress Foundation, an influential conservative group. “I don't like the idea of the president giving up nominations power, even in a slight degree like this.”

On the surface, the compromise between the White House and Feinstein and Boxer appears safe, as all sides say they remain committed to making it work.

#### Quality nominees

“It's easy to indict the process,” said Eric George, co-chairman of Bush's statewide judge commission. “But we believe the committee structure has been validated by the quality of the nominees and the quick pace of their Senate confirmations.”

Bush's California nominees have thus far breezed through the Senate. Just last month, senators confirmed two judges in Los Angeles, both of whom received strong support from Feinstein and Boxer.

In the Bay Area, many Republicans are unhappy with the way the process played out in choosing White to succeed San Francisco U.S. District Judge Charles Legge, who retired last June. A number of Republicans and Democrats say the White House also wasn't satisfied with the search to replace Legge, and eventually demanded more candidates.

That resulted in Santa Clara County Superior Court Judge Leslie Nichols making the final cut for the judgeship, one of five candidates to be interviewed by the White House before White got the nod.

Defenders of the system, while declining to discuss specific candidates, say only lawyers on the ideological fringes are affected by the inclusion of Democrats on the committees.

Joseph Russoniello, San Francisco's former U.S. attorney and chairman of the Bay Area selection committee, and others denied any White House dissatisfaction with the San Francisco search, saying more candidates were sought only after one candidate, Kevin Ryan, was picked to be San Francisco U.S. attorney.

Russoniello is among a group of Republicans who defend the process but admit they would prefer running their own judicial selection show. That will only happen if Republicans gain control of the Senate, which must confirm Bush's judge choices.

“I hope it happens,” Russoniello said. “But any time you have division between the political branches of government, some accommodation has to be made.”

