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Democrats Readying for Judicial Fight

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BODY:

President Bush has yet to make his first nominee to a federal court and no one knows whether anyone will retire from the Supreme Court this summer, an event that would lead to a high-stakes confirmation battle.

Nonetheless, the Senate's Democrats and Republicans are already engaged in close-quarters combat over how to deal with the eventual nominees from the Bush White House. Democrats in particular are trying to show some muscle as they insist that they will not simply stand aside and confirm any nominees they deem right-wing ideologues.

"What we're trying to do is set the stage and make sure that both the White House and the Senate Republicans know that we expect to have significant input in the process," Senator Charles E. Schumer, New York's senior Democrat, said in an interview. "We're simply not going to roll over."

Forty-two of the Senate's 50 Democrats attended a **private retreat** this weekend in Farmington, Pa., where a principal topic was forging a unified party strategy to combat the White House on judicial nominees.

The senators listened to a panel composed of Prof. Laurence H. **Tribe** of Harvard Law School, Prof. **Cass** M. Sunstein of the University of Chicago Law School and **Marcia** R. **Greenberger,** the co-director of the National Women's Law Center, on the need to scrutinize judicial nominees more closely than ever. The panelists argued, said some people who were present, that the nation's courts were at a historic juncture because, they said, a band of conservative lawyers around Mr. Bush was planning to pack the courts with staunch conservatives.

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"They said it was important for the Senate to change the ground rules and there was no obligation to confirm someone just because they are scholarly or erudite," a person who attended said.

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Senator Tom Daschle of South Dakota, the Democratic leader, then exhorted his colleagues behind closed doors on Saturday morning to refrain from providing snap endorsements of any Bush nominee. One senior Democratic Senate staff aide who spoke on the condition of anonymity said that was because some people still remembered with annoyance the fact that two Democratic senators offered early words of praise for the nomination of Senator John Ashcroft to be attorney general.

Senators Robert G. Torricelli of New Jersey and Joseph R. Biden Jr. of Delaware initially praised the Ashcroft selection, impeding the early campaign against the nomination. Both eventually acceded to pressure and voted against the nomination.

The current partisan battle is over a parliamentary custom that Republicans are considering changing, which governs whether a senator may block or delay a nominee from his home state. Democrats and Republicans on the Judiciary Committee have not resolved their dispute over the "blue-slip policy" that allows senators to block a nominee by filing a blue slip with the committee.

On Friday, Senator Patrick J. Leahy of Vermont, the ranking Democrat on the Judiciary Committee, and Mr. Schumer sent a letter to the White House signed by all committee Democrats insisting on a greater role in selecting judges, especially given that the Senate is divided 50-50 and that the Republicans are the majority only because Vice President Dick Cheney is able to break any tie.

Senator Trent Lott of Mississippi, the Republican leader, told reporters today that he believed "some consideration will be given to Democratic input, but I don't think they should expect to name judges from their state."

Mr. Lott said he expected that Democrats might slow the process but, in the end, would not block any significant number of nominees.

Behind all the small-bore politics is the sweeping issue of the direction of the federal courts, especially the 13 circuit courts that increasingly have the final word on some of the most contentious social issues. How the federal bench is shaped in the next four or eight years, scholars say, could have a profound effect on issues like affirmative action, abortion rights and the lengths to which the government may go in aiding parochial schools.

Mr. Bush is expected to announce his first batch of judicial nominees in the next several days, and it is likely to include several staunch conservatives as well as some women and members of minorities, administration officials have said. Among those Mr. Bush may put forward to important federal appeals court positions are such conservatives as Jeffrey S. Sutton, Peter D. Keisler, Representative Christopher Cox of California and Miguel Estrada.

The first group of nominees, which may number more than two dozen, is part of an effort to fill the 94 vacancies on the federal bench while the Republicans still control the Senate.

But it remains unclear if there will be a Supreme Court vacancy at the end of the court's term in July. Speculation on possible retirements has focused on Chief Justice William H. Rehnquist and Justices Sandra Day O'Connor and John Paul Stevens. But in recent days, associates of Justice O'Connor have signaled that she wants it known that she will not retire after this term.

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