

Withdrawn/Redacted Material

The George W. Bush Library

DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Cover Sheet	[Cover Sheet]	1	N.D.	P2; P5; P6/b6;
002	Memorandum	Eastern District of Washington - To: Brett Kavanaugh - From: Amy Flachbart & Rep. Nethercutt	1	02/19/2002	P2; P5; P6/b6;
003	Letter	[Letter] - To: Patty Murray, et al. - From: Joseph P. Delay, et al.	3	02/11/2003	P2; P5; P6/b6;

COLLECTION TITLE:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

[Judges] - Eastern District of Washington

FRC ID:

9631

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

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Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

Withdrawal Marker

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Kavanaugh, Brett - Subject Files

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[Judges] - Eastern District of Washington

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OA Num.:

1823

NARA Num.:

1741

FOIA IDs and Segments:

2018-0016-P

2017-0345-F

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EYMANN • ALLISON • FENNESSY • HUNTER • JONES*ATTORNEYS AT LAW*

A PROFESSIONAL SERVICE CORPORATION

801 WEST MAIN AVENUE, SUITE 801 • SPOKANE, WA 99201-0613

TELEPHONE 509-747-0101 • 1-800-862-4804 • FAX 509-458-5977 • WWW.EAHJLAW.COM

January 31, 2003

Via Facsimile/Hard Copy to Follow

The Honorable Patty Murray
United States Senate
173 Russell Senate Office Building
Washington, D.C. 20510
Facsimile: (202) 224-0238

The Honorable Maria Cantwell
United States Senate
717 Hart Senate Office Building
Washington, D.C. 20510
Facsimile: (202) 228-0514

The Honorable George Nethercutt
United States House of Representatives
223 Canon House Office Building
Washington, D.C. 20515
Facsimile: (202) 225-3392

The Honorable Doc Hastings
United States House of Representatives
1323 Longworth House Office Building
Washington, D.C. 20515
Facsimile: (202) 225-3251

Rc: Federal Judicial Vacancy - Federal Judicial Merit Recommendation Committee

Dear Senators and Congressmen:

On behalf of the Federal Judicial Merit Recommendation Committee selected to make three recommendations for the upcoming vacancy in the Federal District Court for the Eastern District of Washington, it is my honor to bring you up to date with regard to the Committee's work. At the outset, you should know that the Committee will meet the imposed deadline of Friday, February 14, 2003 to submit the three most qualified candidates. Having said that, the Committee was in unanimous agreement that providing proper notice to all possible applicants throughout the Eastern District of Washington was seriously compromised. You should also know that assessment of the applications and interview process in such a short time frame has, in one or more ways, disrupted each of the Committee members' schedules, both at home and at work. Notwithstanding these difficulties, this Committee, to the very best of its ability, will provide you with our recommendations of the three most qualified applicants for this obviously important lifetime appointment to the judiciary.

You are also advised that the Committee has not been given any geographical parameters for this appointment other than the "Eastern District of Washington." Accordingly, the Committee is considering applicants from both the Fourth and Fifth Congressional Districts. The Committee would look with disfavor upon any geographical limitations as we have, on a very accelerated basis, provided notice in numerous ways to all attorneys throughout the Eastern District of Washington. Included in this notification process were the following:

The Honorable Patty Murray
The Honorable Maria Cantwell
The Honorable George Nethercutt
The Honorable Doc Hastings
January 31, 2003
Page 2

1. Posting of the application process on the Washington State Bar Association website;
2. Notice to each and every county bar association president with the request that he or she provide notice to each and every bar member in their county;
3. Public service announcements in several newspapers published for distribution in the Eastern District of Washington; and
4. Written correspondence to those persons rumored to have an interest in this position.

As of this date, 11 persons have indicated serious consideration of applying for this upcoming vacancy. For each, we have responded with notice of an application format that in addition to recommendation letters, references and résumés at their discretion, asks them to respond to the following 21 questions:

1. Why do you want this appointment?
2. Name all organizations with which you have been affiliated since graduation from college.
3. List all organizations in which you are/were active in supporting in front of public bodies.
4. List all articles, reports or other materials you have authored, including dates and publications, if any.
5. If you are/were a judge, what are/were the 10 most significant decisions/opinions you have authored or written? Please give appellate cites where your decisions were reversed or criticized, especially for significant federal or state constitutional issues.
6. How often did you appear in court? In which types of courts? Civil or criminal? Describe your typical clients in your practice as an attorney.

The Honorable Patty Murray
The Honorable Maria Cantwell
The Honorable George Nethercutt
The Honorable Doc Hastings
January 31, 2003
Page 3

7. Briefly describe the 10 most significant litigated matters you personally handled. Give citations, if any.
8. Have you ever played a role in a political campaign? Give dates, candidates, etc. and brief description of your role for each.
9. What is your opinion of how the state, tribal and federal courts should interact in handling a case where an individual's conduct violates law of multiple jurisdictions?
10. Please describe the biggest personal or professional challenge that you have faced in the past five years. How did you handle it? Why did you take that course of action? Would you change anything you did?
11. What is your understanding of the Appearance of Fairness ethical doctrine?
12. Describe the biggest ethical challenge you have faced personally and how you resolved it.
13. Please describe any personal or professional experiences that have made you sensitive to the needs and concerns of the economically disadvantaged, women, people of color, gays and lesbians, persons with disabilities or members of other minority groups.
14. Do you feel a trial judge should intervene, such as asking questions, when there is an obvious trial experience discrepancy between opposing counsel? What about the case of a pro-se litigant?
15. What are your views on affirmative action programs, including ones made available to people of color?
16. What are your views on the increasing concerns over gender discrimination and sexual harassment in the United States?
17. What do you believe has been the most significant legal precedent regarding sovereignty of Native Americans? Why?

The Honorable Patty Murray
The Honorable Maria Cantwell
The Honorable George Nethercutt
The Honorable Doc Hastings
January 31, 2003
Page 4

18. What do you feel are the pros and cons of the Federal Sentencing Reform Act that changed criminal sentencing to determinate sentencing?
19. Explain how you have complied with Canon 2 of the Code of Professional Responsibility (regarding service to the "disadvantaged").
20. Discuss your views on "judicial activism," which some believe is an ongoing attempt by the judiciary to usurp prerogatives of other branches of government. Characteristics include a tendency to employ individual plaintiffs to impose far-reaching orders on classes of individuals; tendency to impose affirmative duties on governments and societies; and tendency for judiciary to impose itself on other institutions via continuing oversight responsibilities. Discuss your views and how you would conduct yourself when faced with such issues.
21. Is there anything in your life history that could or would embarrass the President of the United States if you were selected?

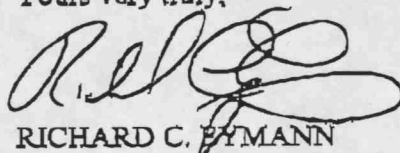
These questions were derived from speaking with former applicants and/or screening committee members for prior vacancies in the Eastern and Western Districts of the Federal Courts of the State of Washington. Four general questions were added to 16 previously utilized as well as one very specific question intended to protect all involved, including the President of the United States, to wit question number 21.

All further requests from interested individuals will be immediately provided with the notice of application format. The deadline to return this information to the Committee is on or before 3:00 p.m., Friday, February 7, 2003. The schedule of the Committee's work begins immediately after this deadline for applicants' submissions. Each committee member will be working throughout the evening hours and early morning hours of February 7th and 8th to review the submissions, with a conference call following at 10:00 a.m. on February 8, 2003 to reduce the field of applicants to ten. Throughout the rest of that weekend, each committee member will intensely scrutinize the 10 applications further. Interviews of the final 10 will occur throughout the day of Monday, February 10, 2003. One member of the committee, Joseph Delay, our committee Chair, will be present throughout via telephone. This is unfortunate but there is no alternative given the acceleration of the deadlines for this selection process.

The Honorable Patty Murray
The Honorable Maria Cantwell
The Honorable George Nethercutt
The Honorable Doc Hastings
January 31, 2003
Page 5

It is the Committee's goal to arrive at a unanimous decision with regard to the three most qualified applicants by Tuesday, February 11, 2003. However, the Committee will not be rushed in making this important decision and may not be able to reach its decision until later in the week. However, as stated above, the deadline imposed by the President of the United States will be met.

Yours very truly,



RICHARD C. EYMANN
Vice Chair, Federal Judicial
Merit Recommendation Committee

RCE/das

cc: Joseph P. Delay
Nancy L. Isserlis
Debby J. Kurbitz
Michael C. Ormsby
John G. Schultz

Withdrawal Marker

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GEORGE R. NETHERCUTT, JR.
5TH DISTRICT, WASHINGTON

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:

AGRICULTURE
INTERIOR
DEFENSE
VICE CHAIRMAN

COMMITTEE ON SCIENCE

SUBCOMMITTEES:

ENERGY
SPACE AND AERONAUTICS

Congress of the United States
House of Representatives
Washington, DC 20515-4705

P.01
223 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20615
(202) 225-2006

920 WEST RIVERSIDE, SUITE 594
SPOKANE, WA 99201
(509) 353-2374

9209 EAST MISSION AVENUE, SUITE B
SPOKANE, WA 99206
(509) 924-7775

29 SOUTH PALOUSE
WALLA WALLA, WA 99362
(509) 529-3358

555 SOUTH MAIN STREET, SUITE C
COLVILLE, WA 99114
(509) 684-3481

www.house.gov/nethercutt (web)
www.house.gov/nethercutt/contact (e-mail)

FAX TO: Brett

ORGANIZATION: _____

PHONE: _____ FAX: 456-5104NUMBER OF PAGES (INCLUDING COVER): 5SENT BY: ☐ REP. NETHERCUTT☒ AMY FLACHBART☐ ROB NEAL☐ PAUL KAVINOKY☐ JACK SILZEL☐ DARIN BEFFA☐ KEN VAN POOL☐ APRIL GENTRY☐ JULIE BLACKORBY☐ PIPER FOSTER☐ ELIZABETH FLEMING☐ _____

COMMENTS: _____

You may want to talk with
Ken Lisaius or David Thomas
regarding the additional candidates.

Congress of the United States
Washington, DC 20515

Brett

January 16, 2003

The Honorable Patty Murray
United States Senate
173 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Maria Cantwell
United States Senate
717 Hart Senate Office Building
Washington, D.C. 20510

Dear Senators Murray and Cantwell:

Thank you for your letter dated January 8, 2003 regarding your selections for a commission to select a successor to retiring United States District Court Judge William Fremming Nielson.

As you are aware, we have agreed to use a bipartisan commission for the selection of a successor to Judge Nielson. This committee will be composed of six members, three selected by you as the United States Senators representing Washington State, and three selected by us as the Members of the United States House of Representatives representing Eastern Washington. The commission will interview candidates, and recommend to us the three best candidates who receive the support of at least four members of the commission. The names will then be forwarded to the President for his consideration.

We are pleased with your choices for the commission - Mr. Mike Ormsby, Ms. Nancy Isserlis, and Mr. Dick Eymann - and have selected three additional Eastern Washington residents to complete the Committee. Mr. John Schultz, Ms. Debbie Kurbitz, and Mr. Joe Delay are respected citizens in their respective communities, and will serve the commission well. We believe that the six commissioners combined will provide a superb list of three judicial candidates to the President. Since you have selected

half the commission members, we fully expect that you would support the commission's choices.

Best wishes.

Sincerely,



GEORGE R. NETHERCUTT, JR.
Representative in Congress



DOC HASTINGS
Representative in Congress

cc: Alberto R. Gonzales, Counsel to the President
Mr. John Schultz
Ms. Debbie Kurbitz
Mr. Joe Delay
Mr. Mike Ormsby
Ms. Nancy Isserlis
Mr. Dick Eymann

Bret

THE WHITE HOUSE
WASHINGTON

October 16, 2002

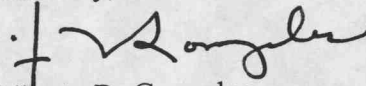
Dear Senator Murray and Senator Cantwell:

Thank you for your letter of support for Ron Leighton, President Bush's nominee for the United States District Court for the Western District of Washington. The President selected a well-qualified nominee in Mr. Leighton, and we are gratified by your support.

As you may know, a new vacancy in the Eastern District of Washington comes open as of May 30, 2003. Ideally, we would like to have a judge confirmed by that date so as to ensure a seamless transition. That likely would require the President to submit a nomination by about the end of January, which in turn would require us to begin an FBI background check for a candidate by about the end of November. We therefore would encourage you to coordinate as soon as possible with Congresswoman Dunn, Congressman Hastings, and Congressman Nethercutt so as to ensure that qualified candidates for this seat are expeditiously identified and evaluated, and forwarded to the President by the end of November if possible.

Thank you again for your support of Mr. Leighton. We look forward to continuing to work closely with you and your staffs on future judicial vacancies in Washington.

Sincerely,



Alberto R. Gonzales
Counsel to the President

cc: The Honorable Jennifer Dunn
The Honorable Doc Hastings
The Honorable George R. Nethercutt, Jr.

United States Senate
WASHINGTON, DC 20510

Forward
to Brett?
response
DN - ay

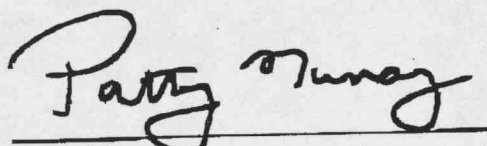
September 30, 2002

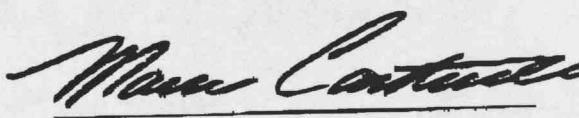
Alberto Gonzales
Counsel to the President
1600 Pennsylvania Avenue
Washington DC 20500

Dear Judge Gonzales:

We are writing with regard to the pending District Court vacancy in Tacoma, Washington. As you know, we convened a commission to review candidates for the vacancy, and we recently had the opportunity to interview the candidates recommended by the commission. Ronald Leighton was among the individuals recommended by the commission and interviewed by us, and as a result, we are prepared to move forward with a hearing for Mr. Leighton. While ideally we would have liked to see Mr. Leighton's name withdrawn and formally renominated, given the brief time remaining in the congressional session, we believe the better approach is to move forward on the pending nomination at this time.

We look forward to the use of full bipartisan commission for future judicial nominations, as committed to in your letter of March 5, 2002, and we are confident that this process will lead to excellent candidates being sent to the President for his selection, and to speedy Judiciary Committee consideration and confirmation of those candidates.


Patty Murray
United States Senator


Maria Cantwell
United States Senator

THE WHITE HOUSE
WASHINGTON

9/21/02

The enclosed is referred for
your information.

Wanda Evans
G. Timothy Saunders
Executive Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WM. FREMMING NIELSEN
 Judge

Post Office Box 2208
 Spokane, Washington 99210-2208
 (509) 353-3163

July 23, 2002

LRM
 CALEE
 BLOMMER
 SELLERS
 MCCABE
 VAIL
 DOLAN (c)
 SEFREN
 JACKSON
 HOCKENBROUGHT
 PRESTON
 POESEL
 HOLLAND
 BRYSON

George W. Bush
 President of the United States
 The White House
 1600 Pennsylvania Avenue, N.W.
 Washington, D.C. 20500

Dear Mr. President:

Please be advised that on May 30, 2003, I intend to retire from regular active service as a United States District Judge for the Eastern District of Washington under the provisions of 28 U.S.C. § 371(b)(1), having attained the age and met the service requirements of subsection (c) of that section. It is my intention to continue to render substantial judicial service as a senior judge.

Very truly yours,



Wm. Fremming Nielsen
 United States District Judge

L02\240:jlk

xc: Hon. William H. Rehnquist
 Hon. Mary M. Schroeder
 Hon. Fred Van Sickle
 Hon. Fern M. Smith
 Mr. L. Ralph Mecham
 Mr. James R. Larsen
 Mr. Dan S. Jackson

Jul 31 11 11 AM '02
 ADM. SERV. OFFICE
 U.S. DISTRICT COURT
 EASTERN DISTRICT OF WASHINGTON
 SPOKANE, WA 99210

17964

Congress of the United States
Washington, DC 20515

January 16, 2003

The Honorable Patty Murray
United States Senate
173 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Maria Cantwell
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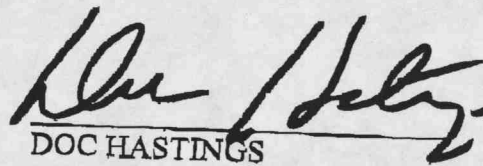
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cc: Alberto R. Gonzales, Counsel to the President
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Mr. Joe Delay
Mr. Mike Ormsby
Ms. Nancy Isserlis
Mr. Dick Eymann

**THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**

DATE RECEIVED: 2/5/2003

NAME OF CORRESPONDENT: Mary Place

SUBJECT: Rec. Lonny R. Suko for Distl. Ct of E. WA

ROUTE TO:		ACTION	DISPOSITION			
OFFICE/AGENCY	(STAFF NAME)	ACTION CODE	DATE M/D/YR	TYPE RESP	C D	COMPLETED M/D/YR

CUGONZ	A	1/8/2003	C		
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ACTION COMMENTS: _____

Brett	A				/ /
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ACTION COMMENTS: _____

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ACTION COMMENTS: _____

		/ /			/ /
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ACTION COMMENTS: _____

COMMENTS: _____

ADDITIONAL CORRESPONDENTS:

MEDIA:

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

ID# 549848
PAGE 1

DATE RECEIVED: 02/04/2003

NAME OF CORRESPONDENT: THE HONORABLE MARY PLACE

SUBJECT: RECOMMENDATION FOR UNITED STATES MAGISTRATE LONNY R. SUKO FOR UNITED STATES
DISTRICT COURT EASTERN DISTRICT OF WASHINGTON POSITION

		ACTION		DISPOSITION		
ROUTE TO: OFFICE/AGENCY	(STAFF NAME)	ACTION CODE	DATE YY/MM/DD	TYPE RESP	C D	COMPLETED YY/MM/DD
COUNSEL TO THE PRESIDENT	ALBERTO GONZALES	ORG	2003/02/04			

ACTION COMMENTS

ACTION COMMENTS:

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COMMENTS

ADDITIONAL CORRESPONDENTS: 0

MEDIA: LETTER

INDIVIDUAL CODES:

REPORT CODES:

USER CODE:

SCANNED
BY
ORM

EXEC. OFC. PRESIDENT
COUNSEL TO THE PRESIDENT
2003 FEB - 5 PM 5:34

ACTION CODES:

A - APPROPRIATE ACTION
C - COMMENT/RECOMMENDATION
D - DRAFT RESPONSE
F - FURNISH FACT SHEET
I - INFO COPY/NO ACT NECESSARY
R - DIRECT REPLY W/ COPY
S - FOR SIGNATURE
X - INTERIM REPLY

DISPOSITION CODES:

A - ANSWERED
B - NON-SEPC-REFERRAL
C - COMPLETED
S - SUSPENDED

OUTGOING CORRESPONDENCE:

TYPE RESP = INITIALS OF SIGNER
CODE = A
COMPLETED = DATE OF OUTGOING

REFER QUESTIONS AND ROUTING UPDATES TO RECORDS MANAGEMENT (ROOM 72, OEOB) EXT-62590

KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO
RECORDS MANAGEMENT.



OFFICE OF THE MAYOR
129 North Second Street
City Hall, Yakima, Washington 98901
Phone (509) 575-6050 • Fax (509) 576-6335

549848

270114

January 8, 2003

The President
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

RE: Nomination for U.S. District Court Eastern District of Washington Position

Mr. President:

It has come to my attention that a Judgeship for the United States District Court for the Eastern District of Washington will open in May 2003. The purpose of this letter is to provide a personal recommendation for U.S. Magistrate Lonny R. Suko and to ask that you nominate him for this position.

I have known Lonny Suko for 24 years, both on a personal and professional level. In my view, he possesses the highest standards of integrity and ethics in upholding the responsibilities of his profession. Lonny is highly intelligent, wise, sincere and a compassionate person with an exceptional commitment to his community.

Lonny completed his undergraduate education at Washington State University in 1965 then obtained his law degree from the University of Idaho. As an attorney and current U.S. Magistrate Judge sitting in Yakima since 1995, Lonny has earned the enduring respect, admiration and confidence of his peers and the public.

Lonny has established an outstanding record as a thoughtful and respected mediator and Judge throughout Eastern Washington. His skills have successfully handled and resolved some of the most contentious and complex cases in the region. He is able to recognize and analyze the dynamics and critical issues of a case from both a legal and practical standpoint. He works tirelessly to achieve fairness, objectivity and justice in negotiating settlements and making judicial decisions.

The Yakima Valley has the heaviest per capita number of federal criminal cases in Eastern Washington (42%). In the last few years, Yakima has gone from two United States Attorneys located in Yakima to six. This growing number of cases from our Valley makes it apparent that a Judge be appointed from Central Washington to meet these growing needs.

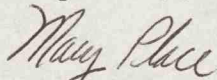


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Accordingly, I strongly and respectfully recommend the nomination and appointment of U.S. Magistrate Lonny Suko for Judge of United States Eastern District Court of Washington. Lonny possesses judgment, experience, integrity and leadership skills to be an outstanding member of the Federal Judiciary.

Thank you for your consideration.

Respectfully yours,



Mary Place
Mayor



25% COTTON

GOLD CREST

**THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**

DATE RECEIVED: 1/9/2003

NAME OF CORRESPONDENT: George Nethercutt

SUBJECT: moving forward on Washington State commission

ROUTE TO:		ACTION	DISPOSITION			
OFFICE/AGENCY	(STAFF NAME)	ACTION CODE	DATE M/D/YR	TYPE RESP	C D	COMPLETED M/D/YR

CUGONZ	A	12/14/2002	C		
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ACTION COMMENTS: _____

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ACTION COMMENTS: _____

COMMENTS: _____

ADDITIONAL CORRESPONDENTS:

MEDIA:

Forward to
Brett?

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N

GEORGE R. NETHERCUTT, JR.
5TH DISTRICT, WASHINGTON

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:

AGRICULTURE

INTERIOR

DEFENSE

VICE CHAIRMAN

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Congress of the United States
House of Representatives
Washington, DC 20515-4705

December 14, 2002

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(509) 684-3481

www.house.gov/nethercutt/web
www.house.gov/nethercutt/contact (e-mail)

The Honorable Patty Murray
United States Senate
173 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Maria Cantwell
United States Senate
717 Hart Senate Office Building
Washington, D.C. 20510

Dear Senators Murray and Cantwell:

As our letter dated October 17, 2002 indicated, there is a pending vacancy in the U.S. District Court for the Eastern District of Washington. On May 30, 2003, United States District Court Chief Judge William Fremming Nielsen intends to take senior status, and the Administration has asked our help in evaluating and identifying viable candidates to fill this position.

Since we have not heard from you, we plan to move forward with our suggestion and will create an advisory commission composed of six Eastern Washington residents - three Republicans and three Democrats - to recommend potential replacements for the position. The commission will be charged with selecting three exceptionally well-qualified candidates to recommend to the White House.

Best wishes.

Sincerely,


GEORGE R. NETHERCUTT, JR.
Representative in Congress


DOC HASTINGS
Representative in Congress

cc: Alberto R. Gonzales, Counsel to the President

2003 JAN -9 PM 1:14
EXEC. OFC. PRESIDENT
COUNSEL TO THE PRESIDENT