


January 17, 1990

MEMORANDUM FOR JOHN H. SUNUNU

THROUGH: Frederick D. McClure 

FROM: Brian Waidmann, , Special Assistant for Legislative Affairs

SUBJECT: Recess appointment for Margot Machol

Fred McClure asked you to raise in your meeting with Senator Lugar today the issue of a recess appointment for Margot Machol to the Commodity Futures Trading Commission. Presidential Personnel recommends the appointment because her nomination is stalled in the Senate. She is a victim of unfounded concerns that she is unqualified. Senator Lugar is delaying committee action and objects to a recess appointment.

The issue is whether the threat of a recess appointment will get Senator Lugar to commit to getting within 30 days a favorable hearing and vote. If Senator Lugar does not commit, is the recess appointment made? Without a recess appointment, this nomination may be dead.

It is important to point out that the CFTC currently has a quorum. Thus, the larger principle to be resolved is whether recess appointments to commissions should be used when they are not needed to establish quorums even though they may be the only means available to implement Presidential appointments.

Fred McClure asked me to prepare the following background memo and talking points for today's meeting.

BACKGROUND

Margot Machol's attached resume shows that she has the requisite political, regulatory, academic and substantive experience for the CFTC. She also has heavyweight supporters in Janet Steiger, Jim Miller, Beryl Sprinkel, David Bates and Roger Porter.

Yet Senator Lugar, ranking Republican on the Agriculture Committee, has delayed her confirmation. He says the CFTC -- which he helped create -- faces a crisis requiring strong commissioners. He criticizes recent CFTC actions that have hurt American farmers, particularly the collapse this summer of the soybean market. He indirectly says Ms. Machol is not the right person for the job in part because she does not come from the futures industry. He believes that he was not properly consulted before she was nominated.

Also, Senator Lugar through his staff has indirectly expressed support for another candidate whom he'd hoped might someday be chairman.

Senator Lugar has not fairly handled this nomination. Senator Lugar did not recommend a candidate for the CFTC post until after she was nominated. Though Senator Lugar says he was not consulted, Ms. Machol's nomination was cleared with his committee staff -- as all Agriculture nominees are -- before it was submitted in September. Since then, Senator Lugar has been unavailable to meet with Ms. Machol, has not asked Ms. Machol nor White House staff to address any concerns he may have and has not sought a hearing let alone approval by the committee or the full Senate. Because of Senator Lugar's views, we have not pressed Committee Chairman Leahy to schedule committee consideration of the nomination.

Senator Lugar has said he is too involved with the CFTC Reauthorization bill to work on the Machol nomination. But at precisely the time when Senator Lugar could not meet with Ms. Machol, the President's Republican nominee, the Senate Agriculture Committee, with the approval of Senator Lugar, approved the nomination of William Albrecht, a Democrat sitting commissioner of the CFTC.

In fairness, Senator Lugar is not the sole source of Ms. Machol's problems. She has been the victim of anonymous allegations that she is unqualified (only one group has opposed her). In fact, these untrue allegations may have prompted an amendment included in the House version of the CFTC bill calling on the President to appoint qualified persons to the CFTC. Also, Senator Leahy before the nomination was submitted, expressed doubts about her qualifications.

As a result of Senator Lugar's delay and the likelihood that she would not be confirmed, Presidential Personnel recommends a recess appointment. In checking with Senator Lugar, he says that would be unwise. Without a recess appointment, her nomination appears dead.

Thus, the issue is whether Senator Lugar can be encouraged not to delay the nomination further. If he does not, is the recess appointment made?

Attached are talking points and a copy of Ms. Machol's resume.

TALKING POINTS FOR MEETING WITH SENATOR LUGAR

SUBJECT: RECESS APPOINTMENT FOR MARGOT MACHOL TO THE CFTC

Senator Lugar, one issue we are going to resolve around here in the next day or so is a recess appointment for Margot Machol. I understand you have concerns about the nomination and about a recess appointment. Is that true?

From our perspective, Margot is qualified. She has the necessary regulatory, academic, political, and government experience. She has been a commissioner at the Federal Trade Commission the past year. The chairman there -- you know her -- Janet Steiger says she was a great commissioner...a hardworking, tough regulator. Others say she is superb...including former OMB Director Jim Miller, and CEA Chairman Beryl Sprinkel.

We don't like recess appointments. But if a recess appointment is the only means to get into office people the President has nominated, we have to consider it. What's your view...is it possible to get a commitment for a favorable hearing and vote within 30 days?

The Honorable Margot E. Mochol

- Nominated by President Bush to be a Commissioner of the Commodity Futures Trading Commission for a term expiring April 13, 1994.
- Received both an MBA (1976) in finance, marketing and public management and a BA (1970) from Northwestern University.
- Appointed by President Reagan in November 1988 to be a Commissioner of the Federal Trade Commission, where she set agency policy in the regulation and enforcement of mergers and consumer fraud.
- Led the FTC's efforts to increase daily civil penalties for violating pre-merger filing laws from \$10,000 to \$100,000.
- Served as staff director of the Council of Economic Advisers, coordinating economic policy advice to the President and senior White House staff.
- As Special Assistant to the Under Secretary of the Treasury for Monetary Affairs, gained extensive experience in government securities and foreign exchange markets.
- Was a member of the Treasury financing group, which determined the size and composition of market borrowing; a member of the Yen-Dollar Committee, which negotiated with the Japanese to open their financial markets; and a member of the team which designed and marketed the first foreign targeted Treasury bonds.
- Spent four years working in the Congress, first for the House Banking Committee, then as the Chief LA to Rep. Marc L. Marks (R-PA).
- Grew up in the Midwest, is married, and has two young sons.
- Is the 73rd woman nominated by President Bush this year, breaking the previous record for the most women nominated by any President in one year.