

THE WHITE HOUSE
WASHINGTON

January 4, 1990

APPOINTMENT MEMORANDUM

NAME OF CANDIDATE: Philip Raymond Lochner
POSITION: Member Securities and Exchange
Commission
DATE OF INTERVIEW: January 2, 1990
INTERVIEWER: Marilyn G. Wagner *MLW*
COMMENTS:

Philip Lochner is currently General Counsel, Secretary and Vice President of Time Warner Inc. He has been in a series of legal positions with increasing responsibilities at Time Warner since 1978. He was elected Vice President in October, 1986 and he also headed the company's corporate law department. Prior to his employment with Time Warner, Mr. Lochner served as an associate with the firm of Cravath, Swaine & Moore from 1973 to 1978. Before practicing law he was an associate dean and assistant professor of law at the State University in Amherst, N. Y. from 1971 to 1973.

Mr. Lochner received a B.A. degree from Yale University in 1964 and an L.L.B. degree from Yale University Law School where he was on the board of editors of the Yale Law Journal. Mr. Lochner studied at the University of London as a Fulbright Fellow from 1967 to 1968 and he earned a PH.D. from Stanford University in political science in 1971.

Authority

15 U.S.C. 78d(a) authorizes the President to appoint five Commissioners of the Securities and Exchange Commission with the advice and consent of the Senate. Not more than three of such Commissioners shall be members of the same political party. The statute provides that in making the appointments the members of different political parties shall be appointed alternately as nearly as may be practicable. Mr. Lochner is a member of the Republican Party. Currently, two Republicans are serving (Fleischman and Breeden) in terms which expire in '92 and '93. A Democrat is serving in a term which expires in '94 (Shapiro). One Republican (Ruder) resigned within the last two months and an Independent is scheduled to resign at the end of this month. Mr. Lochner will fill the unexpired term of Republican, David Ruder who recently resigned until June 5, 1991 with a recess appointment. This appointment will make three Republican members out of the total of five permitted, satisfying the statutory

limit of three from one political party. The law provides that terms last for five years and until a successor is appointed and qualified, except that an appointee shall not continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office and except that any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which a predecessor was appointed shall be appointed for the remainder of such term. Mr. Lochner's recess appointment until June 5, 1991 for the duration of the unexpired term of Mr. Ruder will comply with this requirement.

Financial Disclosure Review

The statute provides that no commissioner shall engage in any other business, vocation, or employment than that of serving as commissioner, nor shall any commissioner participate, directly or indirectly, in any stock-market operations or transactions of a character subject to regulation by the Commission. I spoke with Paul Gonson, Solicitor of the Securities and Exchange Commission who is also the Designated Ethics Official for the Agency. He stated that regulations issued by the Commission provide that Commissioners may hold stock traded on the major exchanges, but that they may not hold stock in entities which are specifically regulated by the SEC. An example of a prohibited holding would be stock in a brokerage house. Mr. Lochner holds stock in a number of widely traded companies such as Time Warner and IBM, but he holds no interests in entities which would create a problem under the SEC statute or conflict regulations.

Mr. Lochner's attorney, Fred Fielding, states that Mr. Lochner will sever or terminate all his ties with Time Warner upon resignation to assume his recess Presidential Appointment. He will retain only those pension and other benefits which are already vested. No further benefits or increased rights will accrue after his resignation. He will retain Time Warner stock, but as stated above, the holding, or trading of equity investments is not prohibited and no appearance or other conflict problem exists at the present time in connection with Time Warner and Mr. Lochner's projected responsibilities at the Commission. If a problem arises, Mr. Lochner can readily recuse himself according to Mr. Gonson. Mr. Gonson has reviewed Mr. Lochner's SF 278 and agrees with me that there is no asset listed which creates a real or apparent conflict of interest under 18 U.S.C. 208. Mr. Lochner lists several partnerships and Lyn Blatch, a staff attorney at the SEC will annotate Mr. Lochner's form after conferring with him to show actual partnership income. She will also discuss the limitations applicable to partners of employees under 207g since these limitations will still be in effect for the coming year.

Other Information

Mr. Lochner is currently the Chairman of the Corporate Counsel Section of the New York State Bar Association. I discussed this association with Mr. Fielding, Mr. Gonson, and Ms. Blatch. The SEC has imposed guidelines on participation in Bar activities when employees serve on committees which deal in issues that may overlap or include issues dealt with in their government positions. We have agreed that Mr. Lochner can continue to be active in the Bar Association and in the Section of Corporate Counsels but that he may not continue in his leadership role. Mr. Lochner has agreed to follow these guidelines. He states that the term of his section chairmanship of the New York State Bar Association ends on January 17, 1990 and that he will resign from his Director's position on the Cable Television Company's Board upon appointment to the Commission. I posed Mr. Lochner the standard seven interview questions. His answers, which are recorded on the form in his file, revealed no notable information.

Conclusion

No other matters of a controversial or embarrassing nature were revealed during my review and interview. Accordingly, assuming successful completion of all other background checks, I recommend that the nomination be allowed to proceed.

cc: Jane Dannenhauer