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TESTIMONY



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POST-EMPLOYMENT ACTIVITIES OF DR. JUNE Q. KOCH,
FORMER ASSISTANT SECRETARY FOR POLICY
DEVELOPMENT AND RESEARCH, DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

STATEMENT OF
JOHN M. OLS, JR., DIRECTOR, HOUSING AND COMMUNITY
DEVELOPMENT ISSUES
RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION

BEFORE THE
EMPLOYMENT AND HOUSING SUBCOMMITTEE
COMMITTEE ON GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES

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Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today at your request to discuss the post-employment activities of Dr. June Q. Koch, former Assistant Secretary for Policy Development and Research at the Department of Housing and Urban Development (HUD). Specifically, we examined the propriety and legality of Dr. Koch's post-employment activities relative to restrictions on former employees of the executive branch of the federal government and reviewed HUD's oversight of Dr. Koch's activities relative to her role as a HUD consultant following her employment with HUD. As you know, these issues are related to our August 3, 1988, testimony before your Subcommittee on HUD's commercial trade activities at the 1987 HUD-sponsored trade show in the Soviet Union.

HUD's commercial trade promotions grew out of its role as the U.S. executive agency responsible for implementing the U.S.-U.S.S.R. bilateral agreement on cooperation in the field of housing and other construction. The original objective of this agreement, which was first signed in 1974, was to carry out a mutually beneficial program of technical cooperation on housing, construction, and urban development projects. Emphasis on commercial activities was a new dimension of the agreement that was initiated with the direct support of the former Secretary of HUD, Mr. Samuel R. Pierce, Jr., in September 1985.

In summary, we found that:

- Certain of Dr. Koch's post-employment activities appear to have violated the Ethics in Government Act and, therefore, should be referred to the Department of Justice for further investigation.

- HUD did not properly monitor Dr. Koch's activities to ensure that her work as a consultant did not result in a conflict of interest.

- Although HUD officials considered certain contacts by Dr. Koch with HUD officials to be inappropriate, they took no action because they believed the violations were minor.

PRIOR GAO TESTIMONY

On August 3, 1988, we testified before your Subcommittee on HUD's commercial trade promotion activities. Our testimony dealt specifically with activities relating to HUD's sponsorship of U.S. companies' participation in a Moscow trade show (Stroyindustriya '87) for construction equipment and technology.

We concluded that HUD did not have the authority to spend appropriated funds for commercial trade promotion activities--about \$1.6 million--and as a result violated the Anti-deficiency Act.

The former Secretary of HUD, while disagreeing with our opinion, reported the Anti-deficiency Act violation to the President and the Congress.

DR. KOCH'S EMPLOYMENT AT HUD

In 1981, Dr. Koch was employed by HUD, serving initially in the Office of the Secretary, principally as the Deputy Under Secretary for Intergovernmental Relations. In July 1984, Dr. Koch was appointed as Assistant Secretary for Policy Development and Research. In addition to her duties of leading the Department's in-house research, Dr. Koch was also responsible for representing HUD in two key aspects of the U.S.-U.S.S.R. bilateral agreement. One, Dr. Koch was the co-chairman of the working group on utility systems (one of six working groups under the agreement). Two, she was designated by the Secretary of HUD to lead all commercial activities under the agreement and was specifically responsible for organizing and managing HUD's sponsorship of about 110 U.S. firms that participated in Stroyindustriya '87. Dr. Koch had no experience in the area of international trade prior to her designation as the leader for commercial activities.

On September 23, 1987, Dr. Koch notified the Secretary that she intended to return to the private sector and resigned effective October 30, 1987. On January 25, 1988, she was appointed as a

consultant to HUD for a 6-month period. Her appointment, subsequently extended twice, was terminated on January 20, 1989.

DR. KOCH ESTABLISHED A
PRIVATE CONSULTING FIRM

Dr. Koch began to establish a private consulting firm before she left HUD. On October 29, 1987, in her capacity as Assistant Secretary for Policy Development and Research, she wrote the Soviet Deputy Minister of Foreign Trade informing him of her impending resignation and the formation of her company. Dr. Koch stated that her firm would provide domestic marketing and international trading services for construction-related products and processes and that she would like to continue working with the Soviets in a private capacity. Also, according to a promotional brochure published by her firm, Dr. Koch's company (1) has been designated by the U.S.S.R. Chamber of Commerce and Industry as "collective organizer" of American firms for exhibitions, conferences, and seminars in the Soviet Union, and (2) is the worldwide representative of the U.S.S.R. State Committee for Construction for the sale and licensing of innovative Soviet construction equipment and technology.

On November 1, 1987, 2 days after she resigned from HUD, Dr. Koch was elected president and treasurer and became one of two stockholders in the firm known as Construction, Marketing and

Trading, Inc. The firm had been incorporated on October 2, 1987. Officers of the company at the time of its formation included Mr. Noel C. Koch, her husband, and Mr. Kenneth J. Beirne, who later resigned as an officer of the company and succeeded Dr. Koch as HUD Assistant Secretary for Policy Development and Research. Mr. Beirne served as Assistant Secretary from April 15, 1988, to April 7, 1989.

Dr. Koch said when her firm was established she did not expect that representing American companies in the Soviet Union would be a primary focus. She added that the decision to enter the U.S.-Soviet trade area resulted primarily from information she obtained from Soviet officials in October 1987, while still employed by HUD. Dr. Koch went to the Soviet Union for the annual joint committee meeting held October 4-14, 1987. She said that during this trip, the Soviets expressed their desire to continue working with her--after she left HUD--as a representative of American firms that could provide construction products and services to meet Soviet needs.

Dr. Koch said it was, in part, because of this meeting that she began to identify U.S. firms to do business with the Soviets. Dr. Koch said with the exception of one client, M.I.C. Industries, Inc., a manufacturer of steel buildings, she did not solicit any clients until after she left HUD. She said her representation of this client, however, did not extend to business involving the

Soviet Union. Dr. Koch said that 10 of the firms that had participated in Stroyindustriya '87 are now her clients.

DR. KOCH'S POST-EMPLOYMENT ACTIVITIES APPEAR
TO HAVE VIOLATED THE ETHICS IN GOVERNMENT ACT

After resigning from HUD, Dr. Koch maintained contact with HUD officials, specifically on matters involving Soviet activities. Dr. Koch said her contacts were solely informational requests, such as obtaining copies of the Soviets' official itineraries on their visits to the United States. She said these contacts were not made with the intent to influence HUD personnel.

Our review showed, however, that a number of Dr. Koch's contacts with HUD were for the purpose of securing meetings and receptions on behalf of herself and her clients with members of the visiting Soviet delegations. These contacts appear to have been made with the intent to influence HUD personnel, involved particular matters in which HUD had a direct and substantial interest and, in some cases, involved matters that Dr. Koch had participated in prior to resigning. As a result, Dr. Koch appears to have violated the Ethics in Government Act and, therefore, this matter should be referred to the Department of Justice for further investigation.

The visits of the Soviet delegations were made pursuant to the U.S.-U.S.S.R. bilateral agreement. The official itineraries were

prepared and controlled by HUD. For the most part, they included technical conferences and meetings with public officials. There were also opportunities for meetings with representatives of American companies. Changes in the itineraries, whether at the request of the Soviets or other parties, could only be made with HUD's consent. The details of the itineraries plainly were particular matters in which HUD had a direct and substantial interest. Dr. Koch's contacts with HUD officials appear to have been made with the intent to persuade them to change the official itineraries to secure the special benefit of access to the Soviets for herself and her clients. Let me provide some details of these questionable activities.

Contacts With HUD to Arrange
Client Meetings in Ocala, Florida

In November 1987, Dr. Koch contacted HUD officials for information about the Soviets' December 1987 visit to the United States for a working group meeting on utility systems. Dr. Koch said she called HUD to request a copy of the Soviets' itinerary and to inquire about setting up meetings between the Soviets and one of her clients--Augers Unlimited, Inc.,--a manufacturer of tunneling equipment.

Dr. Koch said she contacted Mr. C. Duncan MacRae, the General Deputy Assistant Secretary for Policy Development and Research, who

told her that a meeting could be arranged but only if it was requested by the Soviets. Dr. Koch said he told her that HUD would not change the official itinerary to accommodate meetings with her clients but that he would allow such meetings in "open spots" or "free time." Dr. Koch said Mr. MacRae told her there was free time on the itinerary in Orlando, Florida--one of the cities that was on the official Soviet itinerary for this trip.

Dr. Koch said that she had assumed that agreement had been reached with Mr. MacRae concerning the meetings she wanted to arrange for her client, including a trip to Ocala, Florida, where the Soviets were to view her client's construction equipment. Dr. Koch said, however, that a few days before the meeting was to take place, Mr. Jerome Rothenberg, then HUD Associate Deputy Assistant Secretary for Policy Development and Research, told her that because Ocala was more than 25 miles from Orlando, a revised visa would be needed from the State Department to permit the Soviets to make the trip.

Mr. Rothenberg said that Dr. Koch called him several times to persuade him to arrange the Ocala trip. He characterized Dr. Koch's telephone calls as requests for action and not just requests for information. Also, Mr. Conrad C. Arnolts, the HUD representative designated to accompany the Soviet delegation on this visit, said he received several calls from Mr. Rothenberg concerning the proposed trip to Ocala. He said that Mr. Rothenberg

told him that Dr. Koch had asked that the itinerary be changed to facilitate meetings between the Soviets and her client.

Mr. Rothenberg said he told Dr. Koch that he would not permit a change in the itinerary unless a formal Soviet request was made. He said Dr. Koch told him that the Soviets wanted to visit Ocala and that he should help arrange the trip.

After considerable discussion between Dr. Koch and HUD officials, the trip to Ocala was cancelled. The meetings between the Soviets and Dr. Koch's client were then held in Orlando on December 19, and 20, 1987.

Dr. Koch's Contacts With HUD to
Arrange Receptions and Other Meetings

Dr. Koch said she contacted Mr. MacRae and asked to host a reception at her home for the Soviets visiting the United States in December 1987, and wanted to know if it would be permissible for HUD employees to attend. Dr. Koch said Mr. MacRae accepted her invitation on HUD's behalf with the understanding that HUD employees could not discuss official HUD business at the reception. Dr. Koch added that this matter had been reviewed by HUD's Office of General Counsel. On November 19, 1987, Dr. Koch wrote to the Soviets advising them that HUD had accepted her invitation.

Mr. MacRae said he was not aware how the arrangements for the reception were initiated. He also said he did not receive a call from Dr. Koch offering to host the reception and suggested that the arrangements may have been made through Mr. Rothenberg. HUD's records indicate, however, that Mr. MacRae called HUD's Office of General Counsel to ascertain whether HUD employees could attend the reception. Office of General Counsel officials said the only question presented to them concerned the propriety of HUD employees attending the reception. They did not know how the reception was arranged and said they were not asked to comment on the propriety of Dr. Koch hosting the reception. Mr. Rothenberg said he believed the reception was included on the itinerary prepared by Dr. Koch as co-chairman of the working group before she left HUD.

Dr. Koch held the reception at her home on December 21, 1987. This reception was listed as an official function on the Soviets' itinerary, and at least one of Dr. Koch's clients--M.I.C. Industries, Inc.,--attended the reception.

In August 1988, after we began our review, Dr. Koch called HUD's Office of International Affairs concerning the Soviets' upcoming visit in September 1988. Office of International Affairs officials said Dr. Koch offered to personally host a reception for the Soviet delegation in Washington, D.C., and also wanted to arrange a construction site tour and meeting in New York City, which would include a luncheon or dinner reception sponsored by her client--

Tishman-Speyer Properties, Inc.--a real estate development firm. HUD Office of International Affairs personnel brought this matter to the attention of the then Secretary of HUD, who said they should contact HUD's Office of General Counsel to determine if these activities would be ethically and legally permissible.

HUD's Office of General Counsel said Dr. Koch was under the 1-year no-contact ban that prohibits contacts of a representational nature by a former employee with personnel of their former agency. Office of General Counsel officials said Dr. Koch should not have contacted HUD officials within 1 year after leaving the agency to suggest or to try to influence HUD to designate her or one of her clients to host a reception. According to HUD's Office of General Counsel, her contact represented a violation of post-employment restrictions. They added, however, that this violation was only minor and, therefore, took no action to refer the matter to HUD's Office of Inspector General for investigation.

Type of Violations

Dr. Koch's contacts as described above appear to have violated the 1-year no-contact ban contained in the Ethics in Government Act, 18 U.S.C. Section 207(c). This section prohibits a former senior federal employee, for 1 year following termination of employment, from communicating, orally or in writing, with his or her former agency with the intent to influence it on any particular matter in

which the agency has a direct and substantial interest. Dr. Koch's contacts with HUD concerning the visits of Soviet delegations were all within 1 year of her resignation from HUD. They appear to have been made with the intent to persuade HUD officials to make certain changes in the Soviets' itinerary--that is, particular matters in which HUD had a direct and substantial interest. Further, these contacts appear to have been made with the intent to secure a special benefit for Dr. Koch and her clients that was not afforded to competitors--access to the Soviets.

In addition, her attempts to have the official itinerary for the Soviets' December 1987 visit changed to include a trip to Ocala and to arrange the reception held at her home may have also violated both the life-time prohibition of Section 207(a) and the 2-year ban of Section 207(b)(i). The Section 207(a) prohibition applies if the former employee participated personally and substantially in the particular matter when employed by the federal government, whereas the Section 207(b)(i) ban applies if the particular matter was pending under the employee's official responsibility within 1 year prior to termination of that responsibility.

The evidence shows that, immediately prior to her resignation from HUD, Dr. Koch had responsibility for, and participated personally and substantially in, preparing the itinerary for the December 1987 visit of a Soviet delegation to the United States. During the visit, Dr. Koch, who had resigned from HUD less than 2 months

earlier, communicated with HUD officials in an apparent attempt to persuade them to alter the itinerary she had played a role in preparing to include a trip to Ocala and a reception at her home. This appears to have violated the statutory prohibitions relating to contacts concerning the same particular matters involving specific parties that she was involved with while at HUD. Again, these contacts appear to have been made with the intent to secure the special benefit of access to the Soviets.

In the appendix to this testimony we describe in detail the applicable sections of the Ethics in Government Act that we believe Dr. Koch may have violated.

HUD HIRED DR. KOCH

AS A CONSULTANT

Shortly after Dr. Koch resigned, HUD initiated action to hire her as a consultant to advise it on commercial activities under the bilateral agreement. Dr. Koch said that the then Secretary of HUD asked if she would continue as a consultant to the Department after she resigned as Assistant Secretary. Dr. Koch said the Secretary wanted her to continue to advise him on commercial matters. Mr. MacRae said Dr. Koch advised him that the Secretary wanted her to serve as a consultant to HUD. He stated, however, that he did not personally verify this with the Secretary. In our discussions with the former Secretary of HUD, he said that although he had no

objections to Dr. Koch serving as a consultant, he did not specifically request that she be hired to serve in this capacity.

On November 4, 1987, Mr. MacRae told the HUD Office of General Counsel that he and the Secretary wanted Dr. Koch to serve as a consultant on commercial activities associated with the agreement. He requested a legal opinion to determine what restrictions might apply relative to her consultant duties. In response, HUD's General Counsel said Dr. Koch should not perform any assignments that could affect any company she was representing in dealings with the Soviet Union and added that Dr. Koch should be prohibited from having any outside financial interest that created a conflict with her official duties.

The General Counsel stated that hiring Dr. Koch as a consultant would be legally permissible provided certain limitations were observed. The limitations provided that Dr. Koch's advice on commercial activities not involve specific products and technology, companies, organizations, proposals, specific business, or the choice of experts or commercial representatives. The General Counsel concluded that if Dr. Koch was hired as a consultant HUD should "closely monitor" her activities to ensure that they did not exceed the limitations set forth in her statement of work.

On January 25, 1988, Dr. Koch was appointed as a consultant reporting to the Secretary of HUD and the General Deputy Assistant