

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,) **INDICTMENT**
)
Plaintiff,) (18 U.S.C. § 371)
) (18 U.S.C. § 1341)
v.) (18 U.S.C. § 1952)
) (18 U.S.C. § 2)
(1) TERENCE MICHAEL CLARKE,)
a/k/a "T. MICHAEL CLARKE",)
a/k/a "MIKE CLARKE",)
)
(2) KERRY K. BAUBIE, and)
)
(3) RAYMOND H. WIRTZ,)
)
Defendants.)

THE UNITED STATES GRAND JURY CHARGES THAT:

INTRODUCTION

1. At all times material and relevant to this Indictment:
 - a. Terence Michael Clarke, a/k/a "T. Michael Clarke" or "Mike Clarke" was a resident of Eden Prairie, Minnesota. From 1978 until approximately June 2000, Clarke served as the Chairman of the Board of Directors, President and Chief Executive Officer of Katun Corporation ("Katun" or "Corporation"). Katun, a privately-owned Minnesota corporation, manufactures and sells parts and supplies for photocopiers and office equipment throughout the United States and the rest of the world.
 - b. T. Michael Clarke and David G. Jorgensen, a California resident, co-founded Katun in 1978. Through stock purchases in about 1987 and 1992, Xerox Corporation acquired an approximate total 30% ownership in Katun from Clarke and Jorgensen. By 1996, Clarke and Jorgensen each retained an approximate one-third ownership in Katun, with Katun's remaining shares owned by Xerox and a few former and current Katun senior executives. Between 1995 and April 2000, Katun paid Clarke more than \$17 million in compensation. During that same time, Clarke also spent more than \$3 million of additional Katun funds for personal purposes. On April 24, 2000, Katun's Board of Directors placed

Clarke on a paid leave of absence while the Corporation conducted an internal investigation into alleged financial improprieties involving Clarke's use of corporate funds for personal purposes. On June 22, 2000, Katun's Board of Directors terminated Clarke as an officer and employee of Katun. In July 2002, Clarke received approximately \$68 million in net proceeds for his Katun stock.

- c. Kerry K. Baubie, a resident of Apple Valley, Minnesota, was employed at Katun from 1982 until January 10, 2003. Baubie served as Katun's Chief Financial Officer and Senior Vice President from May 1994 until January 10, 2003. Between 1995 and 2000, Baubie also served on Katun's Board of Directors. Between 1995 and 2000, Katun, at Clarke's direction, paid Baubie more than \$1.8 million in salary and bonuses. In addition to Baubie's regular compensation, between 1995 and 2000, Clarke provided Baubie certain stock options as well as "other compensation", including three luxury automobiles, a boat, jewelry and \$300,000 in "forgivable loans", all paid with Katun funds. In July 2002, Baubie received approximately \$1.7 million for his Katun stock and stock options.

- d. Raymond H. Wirtz, a resident of Chaska, Minnesota, was hired by T. Michael Clarke in 1982 to work at Katun. Wirtz previously had been employed by Xerox Corporation in Toledo, Ohio. Wirtz was employed at Katun from 1982 until April 30, 1999, and then from August 7, 2000 until June 3, 2003. Wirtz served as Katun's Senior Vice President in charge of Katun's Sales Department from 1988 until 1998, and Senior Vice President in charge of Katun's Marketing Department from 1998 until 1999. In August 2000, Wirtz returned to Katun as a Senior Vice President in charge of Katun's Corporate Development Department, where he served until June 2003. Between 1995 and mid-1999, Katun, at Clarke's direction, paid Wirtz more than \$850,000 in salary and bonuses. In addition to Wirtz's regular compensation, between 1995 and mid-1999, Clarke provided Wirtz certain stock options as well as "other compensation", including a luxury automobile, jewelry, and "forgivable loans", all paid with Katun funds. In July 2002, Wirtz

received approximately \$1.5 million for his Katun stock and stock options.

- e. Robert A. Knutson, a resident of Anoka, Minnesota, was employed at Katun from approximately late 1989 until he resigned in 1991. He reported to Raymond Wirtz during 1990 and early 1991, and later reported directly to T. Michael Clarke.
- f. John (Jack) Lafferty, a resident of Oregon, Ohio, was employed at Xerox Corporation from approximately 1969 until he retired in 1987. He last served as a field manager in a Xerox facility in Toledo, Ohio.
- g. Steve Adams, a resident of Sylvania, Ohio, was employed by Xerox Corporation from approximately 1976 until he retired in 2003. He served as a sales representative in a Xerox facility in Toledo, Ohio.
- h. Andrew J. Valiante, a resident of Flanders, New Jersey and later Stockholm, New Jersey, was employed at Minolta Business Systems, Inc. ("MBS") from approximately 1980 until he resigned in November 1993. He served as MBS's Vice President of Operations from approximately 1987 until November 1993.
- i. Michael F. Deliberto, a resident of Algonquin, Illinois, was employed at MBS from prior to 1987 until he resigned in November 1993. He served as MBS's National Service Manager from approximately 1987 until November 1993.

COUNT 1

**(Conspiracy to Commit Offenses
Against the United States)**

2. Beginning prior to 1986, at a time unknown to the Grand Jury, and continuing until about June 2000, in the State and District of Minnesota and elsewhere, the defendants,

**TERENCE MICHAEL CLARKE,
a/k/a "T. MICHAEL CLARKE",
a/k/a "MIKE CLARKE",
KERRY K. BAUBIE, and
RAYMOND H. WIRTZ,**

did unlawfully, willfully and knowingly conspire, combine, confederate, and agree with one or more other defendants and other persons known and unknown to the Grand Jury, to commit the following offenses against the United States, that is:

- a. to knowingly and intentionally place and caused to be placed in the United States mail to be sent and delivered by mail according to the direction thereon by the United States Postal Service, certain matters or things for the purpose of executing a scheme and artifice to defraud, and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1341; and
- b. to knowingly and intentionally use and cause the use of a facility in interstate commerce, that is, the United States mail, to mail and cause the delivery of mail matter, that is, Katun checks, with the intent to promote and carry on, and facilitate the promotion and carrying on, of unlawful activity, that is, commercial bribery, in violation of Minnesota Statute § 609.86, all in violation of Title 18, United States Code, Section 1952(a)(3).

OBJECT OF CONSPIRACY

The unlawful object of this conspiracy was to enable the defendants and others to obtain additional sales revenues and profits through the payment of kickbacks to MBS executives and the secret purchase of Xerox pricing information through the payment of bribes to Xerox employees, all for Katun to use for its commercial

advantage and purposes. The unlawful object of the conspiracy was accomplished through a pattern of illegal activities including mail fraud and acts of commercial bribery, including so-called "commissions" and "consulting payments" secretly paid to employees of Minolta Business Systems and Xerox Corporation, respectively.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means, among others, of this conspiracy were as follows:

3. It was part of the conspiracy that, prior to 1986 at a time unknown to the Grand Jury, at defendant Clarke's direction, defendant Wirtz contacted John (Jack) Lafferty, a former fellow Xerox Corporation employee who still was employed by Xerox at a Xerox facility near Toledo, Ohio. Defendant Wirtz arranged for Lafferty to secretly provide certain Xerox pricing information to Katun in exchange for a so-called "consulting payment" or bribe, consisting of \$500 in Katun funds, all without Xerox's knowledge or authorization. Between approximately late 1985 and early 1988, defendant Wirtz and others secretly provided Lafferty at least eight Katun checks, each consisting of \$500 in Katun funds mailed to Lafferty's home address, in exchange for certain Xerox pricing information, all without Xerox's knowledge or authorization. In approximately late 1987, Lafferty retired as a Xerox employee. At that time, with the knowledge and approval of defendants Clarke and Wirtz and others, Lafferty arranged for Steve Adams, another Xerox

employee, to continue to provide Xerox pricing information to Katun in exchange for so-called "consulting payments". Lafferty thereafter opened a car dealership near Toledo, Ohio, with substantial financial support from defendants Clarke and Wirtz.

4. It was further part of the conspiracy that, between approximately mid-1988 and June 2000, with the knowledge and approval of defendant Clarke, defendants Wirtz and Baubie and others secretly provided Adams more than 40 so-called "consulting payments" or bribes, each consisting of \$500 in Katun funds mailed to Adams' home address, totaling more than \$20,000, in exchange for certain Xerox pricing information, all without Xerox's knowledge and in violation of various Xerox policies. Defendant Clarke and others thereafter used or provided the Xerox pricing information in connection with Katun's dealings with other business entities, all without Xerox's knowledge or authorization. In mid-1999, when defendant Wirtz first left his employment at Katun, other senior Katun executives continued to approve payments to Adams until defendant Clarke's termination by Katun in June 2000. Shortly thereafter, Katun discontinued sending payments to Adams.

5. It was further part of the conspiracy that, between approximately late-1989 and early-1990, defendants Clarke and Wirtz and others established a wholly-owned subsidiary of Katun under the name of Manufacturing Resources Inc. ("MRI") in an effort to sell

Katun products and supplies, without Katun labeling, to the affiliated distributors of Katun's direct competitors, that is, the original equipment manufacturers ("OEMs") of office copiers. For example, Katun sought to sell replacement parts to dealerships affiliated with Minolta Business Systems, Inc., which was a subsidiary of Minolta Corporation ("Minolta"). At the same time, defendants Clarke and Wirtz and others assigned Robert Knutson, not charged herein, a Katun employee, the responsibility of operating MRI. Although Knutson's office was located at Katun's headquarters in Bloomington, Minnesota, post office boxes for MRI were opened in Anoka, Minnesota and St. Paul, Minnesota, to provide MRI a separate business address and mask MRI's connection to Katun, using Katun funds obtained by defendant Baubie.

6. It was further part of the conspiracy that, beginning in approximately February 1990, with the knowledge and approval of defendants Clarke, Wirtz, and Baubie and others, Knutson and others arranged with Andrew Valiante and Michael Deliberto, two Minolta Business Systems, Inc. ("MBS") executives, for MBS to purchase Katun products from MRI in exchange for so-called "commissions" or kickbacks, consisting of 8% of MRI's gross sales to MBS, to be divided equally and then to be mailed to their home addresses, without Minolta's or MBS's knowledge or authorization.

7. It was further part of the conspiracy that, between approximately April 1990 and July 1991, after MBS had purchased

more than \$1.75 million of Katun products from MRI, defendants Wirtz and Baubie, with the knowledge and approval of defendant Clarke, arranged for MRI to make the corresponding "commission" payments to Valiante and Deliberto. As part of the payment scheme, defendant Baubie signed more than 20 MRI checks, totaling more than \$140,000, payable to Valiante or Deliberto at their home addresses, pursuant to check requests approved by defendants Wirtz and Baubie, and others.

8. It was further part of the conspiracy that, in approximately late-November 1993, after Minolta had learned of MRI's kickback payments to Valiante and Deliberto and made a demand on Katun for payment of damages, defendant Clarke directed Katun's corporate counsel to conduct private settlement negotiations with Minolta's counsel. In early-December 1993, defendant Clarke approved a \$100,000 confidential settlement payment to Minolta, consisting of a \$60,000 cash payment and \$40,000 of free Katun products. Defendants Wirtz and Baubie, with defendant Clarke's knowledge and approval, thereafter disguised the \$60,000 cash settlement payment in Katun's business records.

OVERT ACTS

In furtherance of the conspiracy and in order to accomplish its object, the following overt acts were committed by at least one of the defendants or co-conspirators:

9. On or about June 18, 1990, defendant Baubie signed the first MRI checks made payable to Valiante and Deliberto, each in the amount of \$4,080.70, as so-called "commission" payments for MRI sales to MBS, which checks were then mailed to Valiante's and Deliberto's home addresses.

10. On or about June 23, 1990, defendant Baubie signed an MRI check made payable to "Postmaster", for MRI's P.O. Box 428 in Anoka, Minnesota.

11. On or about April 15, 1991, defendant Baubie signed an MRI check made payable to Deliberto in the amount of \$17,725.57, as a so-called "commission" payment for MRI sales to MBS, which check was then mailed to Deliberto's home address.

12. On or about December 9, 1993, defendant Clarke approved Katun providing Minolta with \$60,000 cash and \$40,000 of free products in connection with a confidential settlement agreement relating to MRI's kickback payments to Valiante and Deliberto.

13. On or about December 23, 1993, with the knowledge and approval of defendant Clarke and others, defendant Wirtz prepared and signed a false and misleading memorandum indicating that Katun was "releasing our final rebate to Minolta for past business. It will be paid 60% as a cash credit and 40% as a product credit with the total payout equaling \$100,000 . . .".

14. On or about January 21, 1994, Katun's corporate counsel sent a Katun check to Minolta Business Systems, Inc., in the amount

of \$60,000 as payment pursuant to their confidential settlement agreement, and defendant Baubie characterized the payment on the attached check stub as a supposed "payment against customer account credit".

15. On or about May 11, 1994, defendant Baubie approved payment of a \$500 "consulting fee" to Steve Adams, the Xerox employee, which was then mailed to Adams' home address.

16. On or about January 3, 1997, defendant Baubie approved payment of a \$500 "consulting fee" to Steve Adams, which was then mailed to Adams' home address.

17. On or about November 6, 1997, defendant Wirtz directed Katun personnel to process payment of a \$500 "consulting fee" to Steve Adams, which had been on hold since mid-September 1997, and which was then mailed to Adams' home address.

18. On or about September 21, 1998, following verbal approval by defendant Wirtz, defendant Baubie approved payment of a \$500 "consulting fee" to Steve Adams, which was then mailed to Adams' home address.

19. On or about February 11, 1999, based upon a February 2, 1999 verbal approval by defendant Wirtz, Katun mailed a \$500 "consulting fee" check, stamped with defendant Baubie's signature, to Steve Adams at his home address.

20. On or about September 23, 1999, based upon earlier verbal approval by defendant Wirtz and approval by others, Katun mailed a

\$500 "consulting fee" check, stamped with defendant Baubie's signature, to Steve Adams at his home address.

21. On or about June 29, 2000, based upon earlier verbal approval by defendant Wirtz and approval by others, Katun mailed a \$500 "consulting fee" check, stamped with defendant Baubie's signature, to Steve Adams at his home address.

All in violation of Title 18, United States Code, Section 371.

COUNTS 2-3
(Mail Fraud)

22. The Grand Jury realleges Paragraphs 1-21 of Count 1 of this Indictment and makes them part of these Counts.

23. Beginning prior to 1986, and continuing until in or about June 2000, in the State and District of Minnesota and elsewhere, the defendants,

TERENCE MICHAEL CLARKE,
a/k/a "T. MICHAEL CLARKE",
a/k/a "MIKE CLARKE",
KERRY K. BAUBIE, and
RAYMOND H. WIRTZ,

aided and abetted by each other, and others not indicted herein, did knowingly and intentionally devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations, and promises.

24. On or about the dates set forth below, in the State and District of Minnesota and elsewhere, the defendants named as to each Count, aided and abetted by each other and others not indicted

herein, for the purpose of executing the above-described scheme to defraud and to obtain money and property by means of false and fraudulent pretenses, did knowingly cause to be sent and delivered by mail according to the direction thereon by the United States Postal Service, certain matters or things as described below:

<u>COUNTS</u>	<u>DEFENDANTS</u>	<u>APPROX. DATE OF MAILING</u>	<u>ADDRESSEE</u>	<u>DESCRIPTION OF MATTER MAILED</u>
2	Terence Michael Clarke, Kerry K. Baubie, and Raymond H. Wirtz	February 11, 1999	Steve Adams 4404 Candlewood Sylvania, OH 43560	Katun Corp. Check No. 66834, dated February 11, 1999, in the amount of \$500.00
3	Terence Michael Clarke and Kerry K. Baubie	September 23, 1999	Steve Adams 4404 Candlewood Sylvania, OH 43560	Katun Corp. Check No. 72567, dated September 23, 1999, in the amount of \$500.00

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS 4-5
(Travel Act Violations)

25. The Grand Jury realleges Paragraphs 1-21 of Count 1 of this Indictment and makes them part of these Counts.

26. The laws of the State of Minnesota, specifically Minn. Statute § 609.86, provides that commercial bribery is a violation of the laws of the State of Minnesota.

27. On or about the dates set forth below, in the State and District of Minnesota and elsewhere, the defendants,

**TERENCE MICHAEL CLARKE,
a/k/a "T. MICHAEL CLARKE",
a/k/a "MIKE CLARKE",
KERRY K. BAUBIE, and
RAYMOND H. WIRTZ,**

aided and abetted by each other, and others not indicted herein, did knowingly use and cause to be used a facility in interstate commerce, that is, the United States mail, to mail and cause the delivery of mail matter, that is, Katun Corporation checks in the amount of \$500.00, with the intent to promote and carry on, and facilitate the promotion and carrying on of an unlawful activity, that is, commercial bribery, in violation of Minn. Stat. § 609.86, and thereafter did perform and attempt to perform acts to promote and carry on, and facilitate the promotion and carrying on, of that unlawful activity as described below:

<u>COUNTS</u>	<u>DEFENDANTS</u>	<u>APPROX. DATE OF MAILING</u>	<u>ADDRESSEE</u>
4	Terence Michael Clarke, Kerry K. Baubie, and Raymond H. Wirtz	February 11, 1999	Steve Adams 4404 Candlewood Sylvania, OH 43560
5	Terence Michael Clarke and Kerry K. Baubie	June 21, 1999	Steve Adams 4404 Candlewood Sylvania, OH 43560

All in violation of Title 18, United States Code, Sections 1952(a)(3) and 2.

UNITED STATES ATTORNEY

FOREPERSON