



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA :
 :
 :
 -v- :
 :
 BERNARD B. KERIK, :
 :
 Defendant. :
 :
-----X

INDICTMENT

07 Cr. 1027

COUNT ONE

(Conspiracy to Deprive the City of New York and
its Citizens of Honest Services)

The Grand Jury charges:

1. On or about January 5, 1998, BERNARD B. KERIK, the defendant, was appointed Commissioner of the New York City Department of Corrections ("NYCDOC"). As the Commissioner of the NYCDOC, KERIK oversaw and managed all City institutions established for the care and custody of felons, misdemeanants, prisoners under arrest and awaiting arraignment, violators of local laws and ordinances, and, in some instances, witnesses.
2. On or about August 20, 2000, BERNARD B. KERIK, the defendant, left his post as the Commissioner of the NYCDOC and became the Commissioner of the New York City Police Department ("NYCPD"), where he remained until he resigned on or about January 1, 2002. As New York City's chief law enforcement officer, KERIK had a duty to prevent crime, detect and arrest

offenders, and enforce and prevent the violation of all laws and ordinances in force in the City. It was a part of KERIK'S official duties, as both the Commissioner of the NYCDOC and the NYCPD, to interact with other government employees and City officials.

3. At all times relevant to this Indictment:

(a) "John Doe #1" and "John Doe #2," unindicted coconspirators, were the principals of a number of related companies engaged in the construction and waste management industries ("XYZ"). XYZ, a New Jersey based company, did private, municipal and state work in both New York and New Jersey and sought to do additional public sector projects.

(b) "John Doe #3" was an employee of XYZ.

(c) The New York City Charter provided that: "No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant."

(d) The New York City Charter further provided that: "No public servant shall accept any valuable gift, as defined by rule of the [New York City Conflicts of Interest Board ("NYCCOIB")] from any person or firm which such public servant

knows is or intends to become engaged in business dealings with the city....."

(e) The Rules of the NYCCOIB prohibited, among other things, a public servant's receipt of any valuable gift which would "result in ... using his or her office for private gain..."

(f) The New York City Charter ("The Charter") further provided that "[a]ny person who violates [the aforementioned provisions of The Charter] shall be guilty of a [crime] and, upon conviction thereof shall forfeit his or her public office or employment."

(g) The Administrative Code of the City of New York ("The Code") required that certain persons, including the heads of all City agencies, file annual financial disclosure reports.

(h) The Code further required that financial disclosure report filers disclose in their reports, among other things, "the nature and amount of any income of one thousand dollars or more from each source derived during the previous calendar year;" any "gift, its value and nature, in the aggregate amount or value of one thousand dollars or more from any single source;" and any "outstanding loan in the amount of \$1,000 or more."

(i) The Code further provided that "any intentional violation of the [aforementioned requirements of The Code],

including but not limited to ... failure to include ... liabilities, and misstatement of ... liabilities [on a financial disclosure report], shall constitute a [crime] and shall constitute grounds for disciplinary penalties, including removal from office."

(j) At all times relevant to this Indictment, New York City and its citizens had an intangible right to the honest services of their public officials. As a public official for the City, the defendant BERNARD B. KERIK had a duty to: (i) perform his official duties honestly and refrain from influence peddling; (ii) refrain from receiving corrupt and illegal payments designed to affect the performance of official duties or coax favorable official action; (iii) refrain from accepting valuable gifts from those conducting business with or seeking to conduct business with the City; (iv) disclose conflicts of interest and other material information in matters that resulted in his direct or indirect personal gain; and (v) provide complete and accurate information on his financial disclosure filings.

Conspiracy

4. From in or about 1998, through 2006, in the Southern District of New York and elsewhere, BERNARD B. KERIK, the defendant, John Doe #1 and John Doe #2, unindicted coconspirators, together with others known and unknown, unlawfully, willfully, and knowingly did combine, conspire,

confederate and agree together and with each other to commit offenses against the United States, to wit, mail fraud and wire fraud, in violation of Title 18, United States Code, Sections 1341, 1343 and 1346.

Objects of the Conspiracy

5. It was a part and object of the conspiracy that defendant BERNARD B. KERIK, and unindicted coconspirators John Doe #1 and John Doe #2, together with others known and unknown, unlawfully, willfully and knowingly devised and intended to devise a scheme and artifice to defraud, and to deprive the City of New York and its citizens of their intangible right to the honest services of BERNARD B. KERIK, for the purpose of executing such scheme and artifice and attempting so to do would and did (1) transmit and cause to be transmitted by means of wire and radio communications in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, to wit, interstate telephone calls, faxes and e-mails, in violation of Title 18, United States Code, Sections 1343 and 1346 and (2) cause matters and things to be delivered by mail and private interstate carrier according to the directions thereon, to wit, correspondence, invoices, prequalification forms and bidding documents, in violation of Title 18, United States Code, Sections 1341 and 1346.

6. It was a further part and object of the conspiracy that XYZ, John Doe #1, John Doe #2, and others known and unknown gave money and other things of value to BERNARD B. KERIK, and that KERIK, while concealing material information -- namely, XYZ's, John Doe #1's, and John Doe #2's payment and KERIK'S receipt of these material benefits -- would agree to assist and endeavor to assist XYZ through the use of his public office, by, among other things, contacting on XYZ's behalf regulators and other public officials who were considering whether XYZ should be licensed to do business in New York City and awarded municipal-regulated business.

7. It was a further object of the conspiracy that XYZ obtain licenses, permits, clearances, and approvals to do business with one or more New York City agency or within an industry regulated by New York City.

Means and Methods of the Conspiracy

8. Among the means and methods used by BERNARD B. KERIK, John Doe #1 and John Doe #2, and their co-conspirators to achieve the unlawful object of the conspiracy were the following:

Corrupt Acceptance of Payments

9. XYZ was under investigation by several government agencies including the New York City Department of Investigation ("NYCDOI"), the New York City Business Integrity Commission ("NYCBIC"), the New York City Trade Waste Commission ("NYCTWC")

and the New Jersey Division of Gaming Enforcement ("NJDOGE"). These agencies sought to determine, among other things, whether the company had ties to organized crime and whether XYZ, its principals and key employees possessed the requisite integrity to perform publicly funded or regulated contracts.

10. In or about late 1998, XYZ enlisted the influence and assistance of BERNARD B. KERIK in its efforts to convince regulators that the company had rid itself of mob ties and otherwise possessed the requisite integrity to perform publicly funded or regulated contracts.

11. In or about April and May 1999, BERNARD B. KERIK advised John Doe #3 that he was purchasing a cooperative apartment in Riverdale, New York (the "Riverdale Apartment"), which he planned to renovate and asked for money to pay for the renovations.

12. After KERIK purchased the apartment, XYZ arranged and paid for an architect and an interior designer to redesign and renovate the apartment. The design and renovation of the apartment included demolishing old walls, and constructing new walls and floors, a new kitchen, new marble bathrooms with a jacuzzi, and a marble entrance rotunda. After the design was complete, XYZ hired and paid a general contractor to renovate BERNARD B. KERIK'S Riverdale Apartment. XYZ paid a total of more

than \$255,000 to contractors and subcontractors who renovated KERIK'S Riverdale Apartment.

13. On or about November 17, 1999, February 25, April 13, April 24, May 8, June 21, October 20, and December 5, 2000, XYZ made payments to the general contractor who renovated the Riverdale Apartment as payment for the substantial renovations completed on the apartment.

14. During the period that BERNARD B. KERIK requested and received these benefits from XYZ, he assisted the company by contacting regulators and other public officials on XYZ's behalf so that XYZ would be permitted to do municipal-regulated business.

15. In or about late 1998 through early 1999, BERNARD B. KERIK, at a meeting in his NYDOC office, introduced John Doe #3 to "John Doe #4," a private security consultant, as someone who XYZ should hire to provide security and other services.

16. In or about mid to late July 1999, BERNARD B. KERIK attended a prearranged meeting at a Manhattan restaurant between an official of the NYCTWC, a New York City agency charged with investigating XYZ, and an official of the NYCDOI, to discuss the XYZ investigation. During the meeting, KERIK questioned the first official's concern that XYZ had mob ties, vouched for John Doe #3 and John Doe #4, and offered to provide John Doe #3's assistance in the NYCTWC's investigation.

17. Shortly after attending this meeting, BERNARD B. KERIK sent John Doe #3 an email explaining that "I put my reputation and integrity on the line defending whatever [John Doe #3] asked without question." (Emphasis in original). Later, in that same email, KERIK complained that he felt like he was on "welfare" as compared to the life-style John Doe #3 lived. He explained that: "I'm walking on eggshells until this apartment is done. A bullshit \$170,000., [sic] I had to beg, borrow and [expletive] for the down payment and I'm still [expletive] over the \$5,000. [sic] I need for closing if it happens. Then the renovations."

18. In or about August or September of 1999, BERNARD B. KERIK facilitated a meeting between John Doe #3 and NYCTWC Investigators in his NYCDOC Office to discuss the investigation of XYZ.

19. In or about 1999, BERNARD B. KERIK telephoned the Assistant Commissioner for the NYCDOI who was working in conjunction with the NYCTWC on the XYZ Investigation, and attempted to vouch for John Doe #1, John Doe #2, and XYZ.

Concealment of the Corrupt Agreement

20. Because (1) XYZ was being investigated by a number of regulatory agencies who were seeking to determine whether the company had the requisite integrity to perform public contracts, and (2) defendant BERNARD B. KERIK was a high level public official at the time the corrupt payments were made, it was a

necessary part of the agreement to conceal the illegal payments from City officials and regulators while XYZ was seeking a determination that the company and its principals possessed the requisite integrity to engage in municipal work. Those efforts continued until at least through in or about 2005. KERIK and unindicted coconspirators John Doe #1 and John Doe #2 took the following steps, among others, to conceal the corrupt agreement:

(a) John Doe #1 and John Doe #2 concealed the payments made by XYZ to contractors working on KERIK'S apartment in the books and records of XYZ by, among other things, allocating the costs of the renovations to other XYZ jobs and overhead accounts and by "bartering," i.e., exchanging services XYZ provided to contractors for services the contractors provided in connection with the renovation of the Riverdale Apartment;

(b) KERIK deliberately omitted the payments made by XYZ on his behalf from financial disclosure forms he submitted to the NYCDOI and the NYCCOIB;

(c) KERIK concealed the payments by failing to report them as income on tax returns filed with the federal government;

(d) John Doe #1 and John Doe #2 concealed the payments by deducting them as business expenses on the XYZ tax return filed with the federal government;

(e) John Doe #1 and John Doe #2 made false statements on prequalification and background forms submitted to New York City agencies relating to the payments made by XYZ on KERIK'S behalf;

(f) KERIK, John Doe #1, and John Doe #2 made false statements about, and otherwise failed to disclose, the corrupt payments to federal,

state and local government agencies and officials, a state grand jury, the media and the public;

(g) KERIK attempted to cause and caused witnesses to make false statements to the NYCDOI and other local law enforcement officials investigating his receipt of corrupt payments, and otherwise attempted to obstruct a state grand jury investigation into his receipt of said payments.

(Title 18, United States Code, Section 1349)

COUNT TWO

(Mail Fraud - Theft of Honest Services)

The Grand Jury further charges:

21. The allegations contained in paragraphs one through twenty of this Indictment are repeated and realleged as though fully set forth herein.

22. From in or about late 1998 through and including 2006, in the Southern District of New York and elsewhere, BERNARD B. KERIK, the defendant, unlawfully, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and to deprive the City of New York and its citizens of their intangible right to the honest services of BERNARD B. KERIK, and, for the purpose of executing such scheme and artifice and attempting so to do, caused matters and things to be delivered by mail according to the directions thereon, to wit, correspondence, invoices, prequalification and background forms, and bidding documents.

(Title 18, United States Code, Sections 1341, 1346 and 2)

COUNT THREE

(Wire Fraud - Theft of Honest Services)

The Grand Jury further charges:

23. The allegations contained in paragraphs one through twenty of this Indictment are repeated and realleged as though fully set forth herein.

24. From in or about late 1998 through and including 2006, in the Southern District of New York and elsewhere, BERNARD B. KERIK, the defendant, unlawfully, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and to deprive the City of New York and its citizens of their intangible right to the honest services of BERNARD B. KERIK, and, for the purpose of executing such scheme and artifice and attempting so to do, transmitted and caused to be transmitted by means of wire and radio communications in interstate and foreign commerce signs, signals, pictures and sounds, to wit, correspondence, invoices, prequalification forms, and bidding documents, sent by fax and e-mail.

(Title 18, United States Code, Sections 1343, 1346 and 2)

COUNT FOUR

(Obstructing or Impeding the Administration of the IRS)

The Grand Jury further charges:

25. The allegations in paragraphs one through twenty of this Indictment are repeated and realleged as though fully set forth herein.

26. In or about January 2002, BERNARD B. KERIK, the defendant, caused the formation of Gryphon Strategic Group, LLC, a Delaware limited liability company ("Gryphon"). KERIK used Gryphon to receive income KERIK earned for speaking engagements, book royalties, and other miscellaneous sources. Gryphon maintained bank accounts controlled by KERIK. KERIK was required to report accurately Gryphon's income and expenses on an Internal Revenue Service ("IRS") Form Schedule C ("Profit or Loss from Business") attached to his U.S. Individual Income Tax Return IRS Form 1040.

Statutory Allegations

27. Beginning in or about 1999, and continuing thereafter up to and including the date of filing this Indictment, in the Southern District of New York and elsewhere, the defendant, BERNARD B. KERIK, did corruptly obstruct and impede, and endeavor to obstruct and impede, the due administration of the Internal Revenue Laws.

Means and Methods

28. Among the means and methods by which BERNARD B. KERIK, the defendant, corruptly obstructed and impeded, and attempted to obstruct and impede, the due administration of the Internal Revenue laws, were the following: over a six year period, from 1999 through 2004, KERIK (1) failed to report in excess of \$500,000 in income received from the sources described below; (2) provided false information to his accountants; (3) failed to disclose to his accountants and return preparers substantial income he had received personally and through Gryphon; (4) subscribed to and caused to be filed false U.S. Individual Income Tax Returns, IRS Forms 1040; (5) failed to provide information to the IRS about a household employee; and (6) structured his financial transactions to avoid generating documentation which would have alerted the IRS to the falsity of his tax returns.

29. Among the items of income BERNARD B. KERIK failed to report are the following:

(a) BERNARD B. KERIK failed to report as income approximately \$255,000 in illegal payments made for his benefit in 1999 and 2000 when John Doe #1, John Doe #2, and XYZ paid for the renovations of his personally owned cooperative apartment as described in Counts One through Three.

(b) In or about October 2001, while BERNARD B. KERIK was the Police Commissioner of the City of New York, he approached a New York City real estate developer whom he anticipated doing business with in the future ("John Doe #5") and requested his assistance

in locating an apartment situated on the upper east side of Manhattan. In anticipation of their future business relationship, John Doe #5 located a luxury apartment for KERIK and made monthly rental payments on KERIK'S behalf from December 2001 through December 2003. The monthly payments in the amount of \$9,650 totaled \$236,269.36 over the approximately 2 year period. Despite his receipt of this substantial income, KERIK failed to disclose such income to his tax return preparers and failed to report such income on his 2001, 2002, and 2003 U.S. Individual Income Tax Returns.

(c) In or about February 2002, BERNARD B. KERIK, through Gryphon, entered into an agreement with a computer software company to provide consulting services in exchange for a monthly consulting fee of \$10,000 and a percentage of the company. In or about April 2002, the company paid KERIK approximately \$20,000. Kerik failed to disclose the contract and income he received from the company to his return preparer and failed to report such income on his 2002 U.S. Individual Income Tax Return.

(d) In or about January 2002, BERNARD B. KERIK signed a contract with a book publisher to write a forward for a book. The publisher paid KERIK a total of approximately \$75,953 in fees and royalties over a three year period from 2002 to 2004 in exchange for these services. Kerik never told his return preparers about the fees and royalties he earned from the book and failed to report such income on his 2002, 2003 and 2004 U.S. Individual Income Tax Returns.

30. Among the false deductions BERNARD B. KERIK claimed on his U.S. Individual Income Tax Returns are the following:

(a) In early 2003, BERNARD B. KERIK falsely advised his accountant that he made \$80,000 in charitable contributions. Based on this false information, KERIK'S accountant

prepared a false U.S. Individual Income Tax Return deducting those contributions, which KERIK signed and caused to be filed with the IRS.

(b) In or about early 2004, BERNARD B. KERIK signed and caused to be filed a 2003 New Jersey Resident Income Tax Return which falsely claimed that he resided in New Jersey during the 2003 tax year when he actually lived on the upper east side of Manhattan in an apartment paid for by John Doe #5. At or about the same time, KERIK caused to be filed a U.S. Individual Income Tax Return for the tax year 2003 which deducted as a business expense a home office that he claimed to have maintained in the state of New Jersey when in fact he did not even live in the state during the 2003 tax year.

31. During the 2002 and 2003 tax years, BERNARD B. KERIK employed a regular domestic employee, who served as a nanny for his children. As such an employer, BERNARD B. KERIK was required to report to the IRS the wages he paid to his employee, and was also required to remit to the IRS certain amounts for, among other things, Social Security and Medicare taxes. BERNARD B. KERIK failed to report and to remit to the IRS any FICA and Social Security and Medicare taxes due and owing for the said employee.

(Title 26, United States Code, Section 7212(a))