

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA )  
 )  
 v. ) Criminal No. 01-455-A  
 )  
 ZACARIAS MOUSSAOUI )  
 a/k/a "Shaqil," )  
 a/k/a "Abu Khalid )  
 al Sahrawi," )  
 )  
 Defendant. )

ORDER

Before the Court is a pleading by the pro se defendant (Docket #471), which we have interpreted as a motion to strike surplusage from the Second Superseding Indictment. Specifically, Mr. Moussaoui argues that the following language is inflammatory and irrelevant to the charges against him:

- "At various times from at least as early as 1992, Usama Bin Laden, and others known and unknown, made efforts to obtain the components of nuclear weapons." (Count I, Overt Acts ¶ 4.)
- "At various times from in or about 1992 until in or about 1993, Usama Bin Laden, working together with members of the fatwah committee of al Qaeda, disseminated fatwahs to other members and associates of al Qaeda that the United States forces stationed in the Horn of Africa, including Somalia, should be attacked." (Count I, Overt Acts ¶ 6.)
- "On or about May 29, 1998, Usama Bin Laden issued a statement entitled 'The Nuclear Bomb of Islam,' under the banner of the 'International Islamic Front for Fighting the Jews and the Crusaders,' in which he stated that 'it is the duty of the Muslims to prepare as much force as possible to terrorize the enemies of God.'" (Count I, Overt Acts ¶ 10.)

The United States concedes that not all of the allegations in the indictment are directly relevant to the September 11 attacks; but argues that the specific allegations about which the

defendant complains are, nevertheless, relevant to the "core allegation in the indictment: that members and/or associates of al Qaeda declared war on the United States and sought to use virtually any means available to murder Americans en masse." (Response at 3.) According to the Government, the allegation about Bin Laden's efforts to obtain the components of nuclear weapons is relevant because the indictment does not limit "what type of weapon of mass destruction the defendant and his co-conspirators intended to use, and how the defendant and his co-conspirators planned to murder United States employees and to destroy property." (Id.) As to the fatwah against American troops in Somalia and Bin Laden's endorsement of the "Nuclear Bomb of Islam," the United States claims these allegations "are important to understanding the methods al Qaeda uses to motivate its adherents and... reveal that al Qaeda has declared war... against the United States, among other reasons, because of the American presence in the Saudi Peninsula and the Horn of Africa."<sup>1</sup> (Id. at 4.) Further, the Government contends that trial testimony will reveal that the fatwah regarding American troops in Somalia specifically described the acceptability of collateral casualties. (Id.)

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<sup>1</sup> The defendant has not moved to strike allegations concerning "the fatwahs against American troops in Saudi Arabia and Yemen," (Count I, Overt Acts ¶ 5), "the fatwah regarding the deaths of nonbelievers," (Count I, Overt Acts ¶ 7) or "the February 1998 fatwah against American civilians," (Count I, Overt Acts ¶ 9).

Pursuant to Fed. R. Crim. P. 7(d), upon a motion by the defendant, a district court has the discretion to strike surplusage from an indictment. The purpose of Rule 7(d) is to protect a defendant against inflammatory or prejudicial allegations that are neither relevant nor material to the charges. See United States v. Poore, 594 F.2d 39, 41 (4<sup>th</sup> Cir. 1979).

The precise nature and scope of the conspiracies alleged in this case are questions of fact for the jury to resolve. See United States v. Smith, 2003 U.S. App. LEXIS 2864, \*10 (6<sup>th</sup> Cir. Sept. 19, 2003); United States v. Alvarez-Moreno, 874 F.2d 1402, 1414 (11<sup>th</sup> Cir. 1989). Because the allegations to which the defendant objects are arguably relevant to the broadest construction of the charges, we do not find that the defendant is unduly prejudiced by their remaining in the indictment. Accordingly, the defendant's motion is DENIED.

The Clerk is directed to forward copies of this Order to the defendant, pro se; counsel for the United States; and standby defense counsel.

Entered this 28th day of February, 2003.

/s/

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Leonie M. Brinkema  
United States District Judge

Alexandria, Virginia