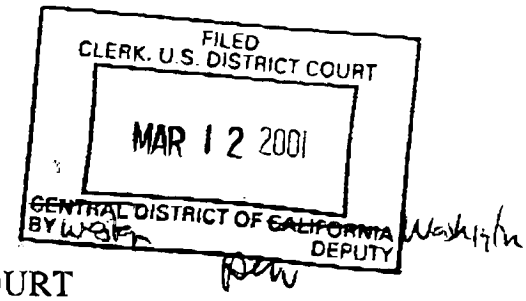
CERTIFICATE OF SERVICE
I, certify that a copy of the foregoing document to which this certificate is attached was delivered to the attorneys of record of plaintiff defendant on the 12th day of March, 2001
United States Attorney
By Janet K. Vos

Chief Judge Coughenour



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

AHMED RESSAM,

Defendant.

NO. CR99-666C

GOVERNMENT'S RESPONSE TO DEFENDANT'S TRIAL BRIEF

Comes now the United States of America, by Katrina C. Pflaumer, United States Attorney, and Francis J. Diskin, Andrew R. Hamilton and Steven C. Gonzalez, Assistant United States Attorneys for the Western District of Washington, and files this response to the trial brief filed by the defendant.

1. Motion For Reconsideration:

The defendant has renewed in his trial memorandum several of the pretrial motions he has previously filed in this case. These motions include: (1) a motion to dismiss Counts 1, 6 and 8 of the Second Superseding Indictment; (2) a motion for a bill of particulars; (3) an objection to the drawing of blood and saliva samples from his person and an accompanying challenge to the admissibility of these items and any analysis resulting therefrom; and (4) a motion to strike from the Second Superseding Indictment the substantial step involving the attempted car-jacking. The defendant has not provided the Court with any new facts or law in support of his request for reconsideration. Instead, he has merely restated his arguments from earlier briefs. The United States opposes this motion for reconsideration and relies upon the authority previously set forth by the Government in its original responses to these motions.

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2. Jencks Act Material:

The Government has now provided virtually all of the Jencks Act materials to the defense. These materials include law enforcement reports of witness interviews.

3. Stipulations:

The parties have agreed that the video tape depositions from Vancouver and Montreal may be presented at trial without any further foundational showing. The parties have also stipulated to the testimony of FBI Special Agent Ramon Garcia and Dr. Jean-Louis DesLauriers.

The defense has offered to stipulate at trial that his true name is Ahmed Ressam. This stipulation by itself, however, is essentially meaningless because the Government will still be required to introduce at trial all of its proof concerning the defendant's use of false documentation and false statements in this case. Unless the defendant is willing to enter pleas of guilty to Count 3 (possession of false identification documents), Count 4 (use of a fictitious name for admission into the United States), and Count 5 (false statements) of the Second Superseding Indictment, the Government declines to enter into this particular stipulation.

4. Evidence of Airline Reservation:

Defense counsel has now had the opportunity to interview Special Agent Calonita in detail about the individual who initially observed the airline reservation in the name of Benni Noris on the computer screen. Defense counsel has been provided with leads on how to locate this individual. The government does not object to the testimony of this individual setting forth what he saw on the computer screen. The Government does, however, object to the defense's request for Special Agent Calonita to be the witness who provides the details of this reservation. Whatever Special Agent Calonita learned about this reservation is at best third-hand hearsay and inadmissible at trial. United States v. 0.59 Acres of Land, 109 F.3d 1493, 1496 (9th Cir. 1997) (holding that third-hand hearsay is inadmissible at trial); Colvin v. United States, 479 F.2d 998, 1003 (9th Cir. 1973) (holding that entries in a police report attributing statements to others is inadmissible hearsay).

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5. Jury Instructions:

The defense has made a number of requests to present modified jury instructions in this case. The Government disagrees with the defense's statement of law regarding these instructions. The Government will analyze defendant's request for modified jury instructions in more detail in a supplemental legal memorandum.

6. Motion in Limine:

The defendant has made a sweeping motion in limine seeking to preclude the United States from introducing at trial evidence concerning a number of topics. With two exceptions, the United States opposes this motion.

The law has recognized that all evidence which is harmful to a defendant's case may be considered to be "prejudicial." United States v. Hicks, 103 F.3d 837, 844 (9th Cir. 1996), cert. denied, 520 U.S. 193 (1997). Evidence is unfairly prejudicial, however, when it has an undue tendency to suggest to the jury it should make its decision on an improper basis or it elicits a response from the jury that is not justified by the evidence. United States v. Ellis, 147 F.3d 1131, 1135 (9th Cir. 1998). Evidence is unfairly prejudicial when it has minimal probative value which could cause jurors to decide the case on legally irrelevant grounds. United States v. Unruh, 855 F.2d 1363, 1377 (9th Cir.), cert. denied, 488 U.S. 974 (1988).

There is no error in introducing evidence that is prejudicial to a defendant's case if the evidence has significant probative value that relates directly to the elements of the charged offense. Hicks at 844. The introduction of such evidence is not improper because it permits the government to offer a consistent and comprehensible story regarding the commission of the crime and it saves the jury from having to deliberate in a vacuum. Id. Furthermore, any potential prejudice from such evidence may be curtailed by the giving of a limiting instruction. United States v. Nelson, 137 F.3d 1094 (9th Cir.), cert. denied, 525 U.S. 901 (1998).

Rule 403 of the Federal Rules of Evidence provides that, "although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 401 of the Federal

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Rules of Evidence provides that, "relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." A trial court's decision regarding admission or exclusion of evidence under Rule 403 is reviewed for an abuse of discretion. United States v. Crespo deLlano, 838 F.2d 1006, 1018 (9th Cir. 1987).

Defendant's reliance upon several cases where convictions were reversed because of unfair prejudicial evidence is misplaced. In United States v. Irwin, 87 F.3d 860 (7th Cir.), cert. denied, 519 U.S. 903 (1996), for example, several defendants were convicted of possession with intent to distribute methamphetamine. At trial, the prosecutor was allowed to introduce evidence that the defendants were members of the Diablos motorcycle gang. The Seventh Circuit reversed the conviction holding that this evidence was not an element of any charge the prosecutor was required to prove:

> The fact that [defendants] are members of a motorcycle club is not especially probative of whether they jointly ventured to distribute drugs, unless the motorcycle club is shown to be involved with drugs. In this case, we are missing that critical connection linking the motorcycle gang with drug trafficking, or any criminal activity for that matter.

United States v. Irwin, 87 F.3d at 864.

A similar holding was set forth in United States v. Dickens, 775 F.2d 1056 (9th Cir. 1985), in which the Ninth Circuit ruled that it was error for the prosecutor to extensively cross-examine the defendant about his affiliation with an East Oakland drug ring called "the Mob." The Ninth Circuit concluded that there was no evidence admitted at trial which connected the defendant with "the Mob," and that had such evidence existed, there was no contention that the evidence would have had any probative value in proving the commission of the crimes that had been charged. Dickins at 1058.

In contrast to Irwin and Dickins - and more directly aligned with the issues in the present trial against defendant Ressam - is the Tenth Circuit's opinion in United States v.Robinson, 978 F.2d 1554, 1561-62 (10th Cir. 1992), cert. denied, 507 U.S. 1034 (1993) In Robinson, the Tenth Circuit held that evidence of gang membership is allowable to prove the existence and purpose of a drug conspiracy when the evidence reveals that the main purpose

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of the gang was to traffic in drugs.

The defendant has also relied upon the case of United States v. Roark, 924 F.2d 1426 (8th Cir. 1991). In Roark, the Eighth Circuit concluded that the Government had engaged in a "relentless attempt" to convict the appellant of drug manufacturing through his association with the Hell's Angels Motorcycle Gang. The Eighth Circuit reversed the conviction and stated that proof of the appellant's membership in the Hell's Angels in no way proved that he was guilty of the crimes with which he had been charged. Roark at 1434.

Roark was distinguished, however, by the Ninth Circuit in the case of United States v. Santiago, 46 F.3d 885 (9th Cir.), cert. denied, 515 U.S. 1162 (1995). In Santiago, the defendant was convicted of murdering an inmate in federal prison. Testimony at trial revealed that the defendant wanted to gain entry into the "Mexican Mafia" at the penitentiary where he was incarcerated, and that he was told he would have to kill somebody before the gang would accept him. The Ninth Circuit held that, unlike the trial in Roark in which broad testimony on the Hell's Angels could not be linked to the defendant's motive to engage in the drug trade, the gang-related evidence in Santiago applied directly to motive and preparation. Furthermore, unlike Roark, the Mexican Mafia was not the entire theme of the trial so as to infect the trial with the threat of guilt by association. Santiago at 889.

The evidence that defendant Ressam is seeking to exclude in this motion – with only two exceptions – is relevant evidence which directly relates to the elements of the crimes charged in the Second Superseding Indictment. The United States has no intention of introducing any evidence related to item number 6 in the defendant's trial brief (documents in Arabic related to religion), or evidence related to item number 12 in the defendant's trial brief (defendant's refusal to be fingerprinted at Port Angeles). It should also be obvious that the United States will not suggest to the jury in any way that because the defendant is from Algeria, or is Middle Eastern, he is more apt to be a terrorist.

The remainder of the topics listed in defendant's trial brief, however, are probative and relevant to the issues in this trial – and evidence concerning these topics should be admissible in the Government's case-in-chief. The evidence at trial will show that the defendant engaged

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in a conspiracy to commit acts of terrorism in the United States. As part of this conspiracy, the defendant manufactured explosives and timing devices which he then attempted to smuggle into the United States. These were acts of terrorism directed against this country. It is fair for the Government to argue that the defendant is a terrorist.

The evidence will show that the defendant traveled to Pakistan, and that this route is the only route to Afghanistan where Osama Bin Laden conducts training camps for individuals who have agreed to participate in a holy "Jihad" against the governments and people of the Western world. The testimony of Judge Bruguiere will established that members of the defendant's terrorist cell in Montreal engaged in acts of terrorism in France and elsewhere. In addition, the evidence will show that the FBI filename for its investigation of this case is termed, "BorderBom." This filename is an accurate description of the defendant's actions in this case: He attempted to bring a bomb across the border between the United States and Canada.

The evidence will show that on the day defendant and codefendant Dahoumane left the 2400 Motel in Vancouver, B.C., it was discovered that the sink in the bathroom of their room had developed a substantial leak. A maintenance man found that the pipes under this sink had been eaten away by some corrosive element . Similarly, it was discovered that the table top in the kitchen of their room had a circular burn mark on the surface that was similar to an acid burn. This table top was undamaged prior to Ressam and Dahoumane checking into the room. Similar burn marks were found on defendant's leg, his pants and his shoes. The evidence will also establish that acid is an ingredient in the manufacture of some of the explosives recovered in defendant's car. The admission of this evidence does not require a detailed laboratory analysis as a prerequisite for its introduction. Defense counsel's objection to these items goes to their weight, and not their admissibility.

The Government has already addressed in its trial brief the issue of the gun found in defendant's apartment in Montreal. In addition to the fact that guns are tools of the trade in terrorism activities as well as other crimes of violence and drug trafficking, it will be shown that this particular gun had been reported stolen, and that members of the terrorist cell in

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Montreal stole items to support themselves and others involved in terrorism.

The defendant possessed a French guide to California at the time of his arrest, along with maps of Oregon and Washington. In this French guide to California, the defendant's fingerprints were found directly on photographs of San Francisco and Los Angeles. This evidence is direct proof of the defendant's plan, preparation, motive, knowledge and intent. It will not be unfairly prejudicial for the United States to suggest to the jury that defendant had designated targets along the West Coast for the placement of his bombs.

As set forth in the Government's trial brief, evidence will be introduced establishing that Ressam was previously arrested in Vancouver, B.C., Montreal, Quebec, France and Algeria. These arrests, along with the defendant's Canadian immigration file and social welfare file, which both contain defendant's true name, photographs and fingerprints, will establish defendant's true identity which is a crucial element that must be proven for Counts 3, 4 & 5 of the Second Superseding Indictment. Furthermore, defendant's admission of the Algerian arrest for selling firearms to terrorists, in addition to being terrorism conduct, is an admission against his penal interest. The entire Canadian immigration file should be introduced into evidence because it is the entire file that has been certified as a true and correct foreign document by the accompanying attestation.

Most importantly, however, is the requirement that Count 1 of the Second Superseding Indictment obligates the Government to prove that the defendant knowingly and intentionally engaged in acts of terrorism by entering into a conspiracy to destroy or damage real property within the United States, and to create a substantial risk of serious bodily injury to people in this country. The evidence sought to be excluded by the defendant in his motion relates directly to those crucial elements of defendant's knowledge and intent as required by Count 1.

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For all of these reasons, and with the exceptions previously noted, the United States requests that defendant's motion is limine be denied . The United States will not object to the Court giving the jury limiting instructions, as appropriate, when evidence related to these topics is introduced at trial.

Dated: this 12th day of March, 2001.

Respectfully submitted,

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