**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF ILLINOIS**

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| UNITED STATES OF AMERICA, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | No. 07-CR-30193-JPG |
| | ) | |
| TARA PRINCE, | ) | |
| | ) | |
| Defendant. | ) | |

**DEFENDANT'S MOTION TO STRIKE SURPLUSAGE**

Comes now Defendant by her attorneys John D. Stobbs II, and Grant Shostak and for her Motion to Strike Surplusage states:

1. Motions to strike surplusage are expressly authorized by Rule 7(d) of the Federal Rules of Criminal Procedure.

2. On the last line of the first page of the three page Introduction, the Government was able to find space to set out that "**LAURA KRPAN** was convicted of Mail Fraud on September 25, 2000 for using the mail to further a scheme to defraud insurance companies, and thereby fraudulently obtaining insurance."

3. In order to insert co-Defendant's prior conviction on the first page of the 16 page Indictment, the Government has included Count 8 which references this application made by Laura Krpan, for a company, ***LT Properties***, that was separate from and independent of LT Consulting.

4. Paragraphs 14 and 22 are used to provide a factual basis in the guise of a "scheme" and "an act in furtherance of conspiracy" so that Count 8 can be pleaded. Paragraph 14 states that:

> "it was further part of the scheme to obtain insurance for properties owned by LT Properties, Inc., an entity created by **TARA MORGAN** and the husband of **LAURA ZOLLER**, through the submission of false information sent by United States Mail and private commercial carrier."

5. Paragraph 22 claims that:

> "on or about February 3, 2005, the defendants caused to be mailed an application on behalf of **LAURA KRPAN** for property owned by LT Properties, Inc., a company established by **TARA MORGAN** and **LAURA KRPAN's** husband. Such application asked, "Has the applicant or any person having financial interest in the policy been indicted or convicted of fraud, bribery, arson or any other crime for the purpose of defrauding an insurance company?" The anser was falsely marked "No," and the application was signed by **LAURA KRPAN**."

**ARGUMENT**

Federal Rule of Criminal Procedure 7(d) provides that "[u]pon the Defendant's motion, the court may strike surplusage from the indictment." The related Advisory Committee Notes explain that the rule "introduces a means of protecting the Defendant against immaterial or irrelevant allegations in an indictment . . . which may, however, be prejudicial."

The aforesaid language which Defendant seeks to strike is inflammatory and prejudicial. Moreover, the language is irrelevant as it does not tend to prove the charges made against any of the three Defendants. In reality what has occurred is that the Government has cleverly found a way to insert 404(b) evidence into the Indictment. The only way to contest the introduction of this "back door" 404(b) evidence is through this Motion.

Admittedly, the caselaw regarding Rule 7(d) is not "Defendant friendly." See *U.S. v. Bucey*, 691 F. Supp. 1077, 1081 (N.D. Ill. 1988) "Simply put, legally relevant information is not surplusage [and] due to the exacting standard, motions to strike information as surplusage are rarely granted." The reason no doubt is that so few Indictments contain clearly prejudicial and inflammatory language like the one at bar.

Is it *legally relevant* for the jury to be told on the opening day of trial, before ***any*** evidence is adduced that Ms. Krpan has a previous conviction for mail fraud? For 404(b) purposes it might be relevant but 404(b) would come in after opening statements and the Government begins to present its evidence.

Any defense to filling out the insurance application would fall on deaf ears because by wording paragraph 22 in such a way to include Ms. Krpan's prior conviction, the jury would hear at the outset that she is a felon who has been convicted of mail fraud.

The Government will no doubt try to persuade this Honorable Court that it is crucial to its case, or at least to Count 8, that the Indictment contain Ms. Krpan's prior felony convictions in two separate sections. In all candor, the real issue is whether or not the aforesaid paragraphs are "relevant" for purposes of Count 8. "Motion to strike portions of the indictment should be granted 'only if the targeted allegations are clearly not relevant to the charge and are inflammatory and prejudicial.'" *U. S. v. Andrews*, 749 F. Supp. 1517, 1518 (N.D. Ill. 1990)

As any first year law school student is taught, Federal Rule of Evidence 401 defines relevant evidence to mean "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." Arguably, the Government could pass this test, but under Rule 403, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion or the issues, or misleading the jury. . ." There is a very real danger, even likelihood, that the inclusion of the language in paragraphs 14 and 22 will confuse the jury. "The inclusion of clearly unnecessary language in an indictment that could only serve to inflame the jury, confuse the issues, and blur the elements necessary for conviction under the separate counts included surely can be prejudicial." *U.S. v. Climatemp*, 482 F.Supp. 376, 391 (N.D.Ill. 1979) The language which Defendant seeks to strike is clearly "prejudicial and unnecessarily loaded." *U.S. v. Hubbard*, 474 F.Supp. 6483 (D.C. 1979)

## Conclusion

In short, the Government's case does not fall apart if the aforesaid sections are stricken. Of the approximately 45,000 documents produced in discovery thus far perhaps 4 or 5 pages deal with the offensive paragraphs. As such Defendant requests that the aforesaid surplusage be stricken from the Indictment.

TARA PRINCE

STOBBS LAW OFFICES

BY:

/s/ John D. Stobbs, II
John D. Stobbs II, NO. 06206358
Attorney for Defendant
307 Henry St. Suite 211
Alton, Illinois 62002
Telephone: (618)462-8484
FAX: (618)462-8585
Email: stobbsjohn@hotmail.com

**CERTIFICATE OF SERVICE**

I hereby certify that on December 5, 2008 a copy of the attached *Defendant's Motion*

*to Strike Surplusage* was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

Mr. Jim Crowe, III
Assistant U.S. Attorney
Nine Executive Drive
Fairview Heights, Illinois 62208

STOBBS LAW OFFICES

/s/John D. Stobbs, II
307 Henry St. Suite 211
Alton, Illinois 62002