

The requirement of Rule 404(b) notice is among the discovery obligations that are covered by Standing Order 534. Standing Order 534 requires that the Government must provide Rule 404(b) notice along with other discovery covered in that Standing Order. *See* Standing Order 534, Section I(H). Standing Order 534 requires the Government to provide this information by arraignment or other date set by the Court. (This is also provided in the more recent revisions to the Court's Local Rule 16.1.)

This Court set dates for the Government to fulfill its discovery obligations. [Doc. 132, pp. 2-3 (requiring Government to disclose the materials covered in Standing Order 534 by October 22, with certain supplemental information to be disclosed by October 29)]. The Government has even emphasized this fact. [Doc. 282, p.2: "On October 18, 2010, the Court filed a scheduling order requiring that the United States finish producing its discovery to the defense by October 22, 2010..."]. The Court has since extended the dates for the Government to fulfill its obligations in various respects. [*See, e.g.,* Doc. 288: "the Government shall, on or before December 20, 2010, turn over all non-contested discovery."]. Those dates have come and gone. It is not four months after indictment, three and a half months after arraignment, and every deadline for the Government's discovery has passed. The Government has not provided any Rule 404(b) notice.

Mr. Preuitt's counsel has discussed that issue with the Government, during meet-and-confer discussions about discovery matters. Government counsel have stated during at least one such discussion that the Government gave some written notice early in the case that it did intend to utilize Rule 404(b). Mr. Preuitt's counsel has no recollection or

record of any such notice. But most importantly, the Government has undisputedly never gone beyond giving (orally or in writing) anything other than the generic assertion that it intends to use Rule 404(b) somehow. The Government has never given any notice, not even in general terms, or the nature of any evidence that the Government will seek to introduce under Rule 404(b).

The most reasonable inference therefore is that the Government does not actually plan to introduce any evidence under Rule 404(b). That is important information for trial-preparation purposes, and information on which Mr. Preuitt should be entitled to rely in making his trial preparation. The alternative inference is that the Government does want the opportunity to offer evidence under Rule 404(b). But the Government has not complied with the schedule that the Court imposed.

Accordingly, Mr. Preuitt requests that the Court issue an order confirming that the Government will not be allowed to introduce evidence at trial under Fed.R.Evid. 404(b).

Respectfully submitted this the 3rd day of February, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s Ronald W. Wise
OF COUNSEL