

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CRIMINAL NO. SA-13-CR-420-OLG
)	
WISSAM ALLOUCHE,)	
)	
Defendant.)	

GOVERNMENT'S AMENDED NOTICE PURSUANT TO F.R.E. 404(B) TO CORRECT DATE

COMES NOW, the United States of America, by and through its undersigned counsel, Mark T. Roomberg, Assistant United States Attorney, and hereby files its Amended Notice Pursuant to Federal Rule of Evidence 404(b) to Correct Date on the Original Notice, and states:

1. The defendants are hereby cautioned that, consistent with the Judiciary Committee report, Rule 404(b) does not cover other bad acts that are intrinsic or inextricably intertwined with other conduct relevant and material to this criminal cause. The Senate Judiciary Committee declared in its comment to Rule 404(b) that

[t]he amendment does not extend to evidence of acts which are "intrinsic" to the charged offense, *see United States v. Williams*, 900 F.2d 823 (5th Cir. 1990) (noting distinction between 404(b) evidence and intrinsic offense evidence). Nor is the amendment intended to redefine what evidence would otherwise be admissible under Rule 404(b). Finally, the Committee does not intent through the amendment to affect the role of the court and the jury in considering such evidence. *See United States v. Huddleston*, 485 U.S. 681, 108 S. Ct. 1496 (1988).

Fed. R. Evid. 404(b), Notes of Committee on the Judiciary, Senate Report No. 93-1227, 1991 Amendment.

2. The Fifth Circuit has held that
" 'Other act' evidence is 'intrinsic' when the evidence of the other act and evidence of the crime charged are 'inextricably intertwined' or both acts are part of a 'single

criminal episode' or the other acts were 'necessary preliminaries' to the crime charged." *United States v. Williams*, 900 F.2d 823, 825 (5th Cir.1990). This evidence is admissible to complete the story of the crime by proving the immediate context of events in time and place. *United States v. Kloock*, 652 F.2d 492, 494-95 (5th Cir.1981); *see also, United States v. Royal*, 972 F.2d 643, 647 (5th Cir.1992), cert. denied, 507 U.S. 911, 113 S.Ct. 1258, 122 L.Ed.2d 655 (1993) (intrinsic evidence admissible so the jury may evaluate all the circumstances under which the defendant acted). Intrinsic evidence does not implicate Rule 404(b), and "consideration of its admissibility pursuant to Rule 404(b) is unnecessary." *United States v. Garcia*, 27 F.3d 1009, 1014 (5th Cir.), cert. denied, --- U.S. ---, 115 S.Ct. 531, 130 L.Ed.2d 435 (1994).

United States v. Coleman, 78 F.3d 154 (5th Cir. 1996).

3. It is the position of the United States that the discussions the defendant had and the information received from immigration authorities regarding his application for naturalization dated on May 5, 2005, and with a denial stamp dated March 11, 2008,¹ and based on the Section 319 provision allowing for naturalization after three years if and only if the defendant met the requirements that he had to be married to and living with the same United States citizen for at least three years, and was a Lawful Permanent Resident of the United States for at least three years are intrinsic to the crime charged in Count Two, and are not extrinsic.

4. The United States intends to use evidence during the trial in the above captioned case relating to other crimes, wrongs, and acts of the Defendant as listed in Paragraph 3 of this document, *supra*, whether convicted of these crimes or not, occurring prior to the times set forth in the indictment, to show motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident. Furthermore, the United States intends to use evidence during the trial in the above captioned case relating to other crimes, wrongs, and acts of the Defendant in that the on his 2007 Form N-400, his Form-400 Application for Naturalization, Part 10, Question 9.c, "No" in response to the question "Have you ever been a member of or in any way associated (*either directly or indirectly*) with a terrorist organization?" when in truth and fact the

¹ This application was referred to in the original F.R.E. 404(b) notice as the "2007 application for naturalization." This document was previously turned over in discovery.

Defendant was a fighter in the Amal militia in Lebanon during the early to mid-1980s and after his release as an Israeli prisoner of war, the Defendant was made a commander in the Amal militia; as an Amal commander, the Hizballah fighters in his sector had to notify the Defendant of their operations, whether convicted of these crimes or not, occurring prior, during, or subsequent to the times set forth in the indictment, to show motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident regarding Count One of the indictment.

5. The Fifth Circuit has stated that

The exclusion of evidence under Rule 403 should occur only sparingly:

Relevant evidence is inherently prejudicial; but it is only unfair prejudice, substantially outweighing probative value, which permits exclusion of relevant matter under Rule 403. Unless trials are to be conducted on scenarios, on unreal facts tailored and sanitized for the occasion, the application of Rule 403 must be cautious and sparing. Its major function is limited to excluding matter of scant or cumulative probative force, dragged in by the heels for the sake of its prejudicial effect. As to such, Rule 403 is meant to relax the iron rule of relevance, to permit the trial judge to preserve the fairness of the proceedings by exclusion despite its relevance. It is not designed to permit the court to "even out" the weight of the evidence, to mitigate a crime, or to make a contest where there is little or none.

United States v. McRae, 593 F.2d 700, 707 (5th Cir.), *cert. denied*, 444 U.S. 862, 100 S.Ct. 128, 62 L.Ed.2d 83 (1979).

Respectfully submitted,

ROBERT PITMAN
United States Attorney

/s/
MARK T. ROOMBERG
Assistant United States Attorney
State Bar 24062266
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7140

