

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	No. 09 CR 002-2
v.	)	Judge Glen H. Davidson
	)	Magistrate Judge S. Allan Alexander
BOBBY B. DELAUGHTER,	)	
	)	
Defendant.	)	

**DEFENDANT’S MOTION FOR PRODUCTION OF 404(B) MATERIAL**

Defendant, **BOBBY B. DELAUGHTER**, by and through his attorneys, **THOMAS ANTHONY DURKIN, JOHN D. CLINE, and LAWRENCE L. LITTLE**, pursuant to Rule 404(b) of the Federal Rules of Evidence, as well as the Due Process and Effective Assistance of Counsel provisions of the Fifth and Sixth Amendments to the Constitution of the United States, respectfully moves this Court to require the government to disclose immediately all allegedly similar crimes, wrongs or acts allegedly committed by Defendant on which it intends to rely at trial to prove motive, scheme, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident .

In support of this motion, Defendant, through counsel, shows to the Court the following:

1. Defendant requests that this Court enter an order requiring the government to disclose immediately the following particulars of any “other crimes” evidence:
  - a. The dates, times, places and persons involved in said crimes, wrongs, or acts;
  - b. A detailed description of said crimes, wrongs or acts;

- c. The statements of each participant in said other crimes, wrongs, or acts;
- d. The documents which contain evidence of said other crimes, wrongs or acts, including a statement describing when the documents were prepared, by whom the documents were prepared, and who has had possession of the documents since the alleged commission of the crimes, wrongs or acts; and,
- e. A statement of the issue or issues to which the government believes such other crimes, wrongs, or acts evidence may be relevant under the Fed. R. Evid. 404(b).

2. This request, it must be noted, includes evidence that the government intends to use in any fashion whatsoever, including, but not limited to, use in cross-examination, rebuttal and its case-in-chief.

3. Rule 404(b) requires reasonable notice in advance of trial of the general nature of any such evidence the government intends to introduce at trial. While Rule 404(b) provides neither a specific time of notice nor a specific form of notice, the advisory committee notes to the 1991 amendment make clear that the time and form of disclosure depend largely on the circumstances of the particular case. *See also, United States v. Charles et al.*, 3 F.3d 436 (5<sup>th</sup> Cir. 1993). While the government has orally indicated to counsel that it may seek to attempt to introduce 404(b) evidence with respect to matters purportedly occurring in the Hinds Circuit court case of *Eaton Corp, et al., v. Robert D. Frisby, et al.*, no formal notice or materials have been provided.

4. In light of the proximity of the upcoming trial date and the complexity of the potential *Eaton v. Frisby* issues, counsel cannot possibly be adequately prepared for trial without the immediate production of these materials should the government seek to use 404(b) evidence.

Respectfully submitted,

/s/ Thomas Anthony Durkin  
**THOMAS ANTHONY DURKIN,**

/s/ John D. Cline  
**JOHN D. CLINE,**

/s/ Lawrence L. Little  
**LAWRENCE L. LITTLE,** Attorneys for  
the Defendant, Bobby B. DeLaughter.

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Defendant's Motion For Production of 404(b) Material was served on July 10, 2009, in accordance with Fed.R.Crim.P.49, Fed.R.Civ.P.5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

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