

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF TEXAS**  
**DALLAS DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	<b>Criminal No. 3-95CR-294-R</b>
	)	
<b>v.</b>	)	<b>Filed: 12/4/95</b>
	)	
<b>MRS. BAIRD'S BAKERIES, INC. and</b>	)	<b>Violation: 15 U.S.C. § 1</b>
<b>FLOYD CARROLL BAIRD,</b>	)	
	)	
<b>Defendants.</b>	)	

**GOVERNMENT'S RESPONSE TO DEFENDANTS' JOINT MOTION FOR**  
**NOTICE OF EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS IN**  
**ACCORDANCE WITH FED. R. EVID. 404(b)**

The United States of America, through its attorneys, hereby responds to Defendants' Joint Motion for Notice of Evidence of Other Crimes, Wrongs, or Acts in Accordance with Fed. R. Evid. 404(b).

The government objects to the Defendants' request for sixty (60) days notice of evidence of other crimes, wrongs, or acts. Rule 404(b) requires only "reasonable notice" of the general nature of such evidence prior to trial . No specific time period is mentioned by either the Rule or by the Advisory Committee Note on the 1991 Amendment to the Rule. To the contrary, insofar as notice would conflict with other disclosure requirements, the Advisory Committee stated the following:

" . . . The Committee does not intend that the Amendment will supercede other rules of admissibility or disclosure, such as the Jencks Act, 18 U.S.C. §3500, et seq. nor require the prosecution to disclose directly

or indirectly the names and addresses of its witnesses, something it is currently not required to do under Federal Rule of Criminal Procedure 16."

As applied to the pending indictment, Rule 404(b) would therefore not require notice of evidence of other crimes, wrongs, or acts contained in a Jencks Act statement prior to the disclosure deadline for such material. In this case, such material is to be disclosed the day before a witness testifies (Pretrial Order, paragraph 4, dated October 13, 1995). The rule is clearly intended not to conflict with the Court's discretion in establishing timetables for discovery.

The government intends to provide to the Defendants notice of such evidence contained in Jencks Act statements, if any, on the date prior to the testimony of the witness in whose statement the information is contained.

Time periods ranging from less than one week to as long as one month have been ordered by different courts in connection with the notice requirement of Rule 404(b). In U.S. v. Sutton, 41 F.3d 1257, 1258 (8th Cir. 1994), the District Court ordered notice to be given four days prior to trial, but excused the government's late two day notice because the defendant was actually aware of the evidence for about one month prior to trial. The trial court in U.S. v. Williams, 792 F. Supp 1120, 1133 (S.D. Ind. 1992), ordered the government to give notice ten days before trial. A magistrate judge ordered that notice be given fourteen days prior to trial in U.S. v. Kern, 12 F.3d 122, 124 (8th Cir. 1993), but the government's late notice was excused because the defendant had been made aware of the evidence at a prior hearing. In U.S. v. Green, 144 F.R.D. 631, 645 (W.D.N.Y. 1992), a 26 defendant narcotics and racketeering conspiracy case, the trial court ordered that notice be given thirty days prior to trial to coincide with the date that Jencks

Act statements were to be disclosed.

Based upon the above-cited cases, there is no consensus on the specific notice period required by Rule 404(b). As stated in the Advisory Committee Note, " . . . no specific time limits are stated in recognition that what constitutes a reasonable request or disclosure will depend largely on the circumstances of each case."

In this case, considering that Jencks Act statements are to be provided one day prior to testimony of the witness, the government believes that notice pursuant to Rule 404(b) should be relatively short. With respect to any Rule 404(b) evidence not contained in Jencks Act statements, and to the extent the evidence is not contained in Fed R. Crim. P. 16(a) materials, the government agrees to provide notice of its general nature to the Defendants one week prior to trial.

WHEREFORE, the government respectfully requests that the Defendants' Joint Motion for Notice of Evidence of Other Crimes, Wrongs, or Acts in Accordance with Fed. R. Evid 404(b) be denied to the extent that it requests an Order of the Court requiring the government to give the Defendants sixty (60) days notice of such evidence.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
DAVID B. SHAPIRO  
DUNCAN S. CURRIE  
GLENN A. HARRISON  
WILLIAM C. MCMURREY

Attorneys  
U.S. Department of Justice  
Antitrust Division  
1601 Elm Street, Suite 4950  
Dallas, Texas 75201-4717  
(214) 655-2700

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<b>Defendants.</b>	)	

**ORDER**

The Court, having considered the Defendants' Joint Motion for Notice of Evidence of Other Crimes, Wrongs, or Acts in Accordance with Fed. R. Evid. 404(b) and Brief in Support Thereof and the Government's Response, hereby finds that the motion should be denied in its entirety, and that the government shall provide notice pursuant to Fed. R. Evid. 404(b) of evidence not contained in Jencks Act statements no later than one week prior to trial.

IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 1995.

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JERRY BUCHMEYER, CHIEF JUDGE  
UNITED STATES DISTRICT COURT

**CERTIFICATE OF SERVICE**

This is to certify that true and correct copies of the foregoing Government's Response to Defendants' Joint Motion for Notice of Evidence of Other Crimes, Wrongs, or Acts in Accordance with Fed. R. Evid. 404(b) and proposed Order were mailed via Federal Express on the \_\_\_\_ day of December 1995, to

R. H. Wallace, Esq.  
Shannon, Gracey, Ratliff & Miller, L.L.P.  
2200 First City Bank Tower  
201 Main Street  
Fort Worth, Texas 76102-9990

Tim Evans, Esq.  
Sundance Square  
115 West Second, Suite 202  
Fort Worth, Texas 76102

\_\_\_\_\_/s/\_\_\_\_\_  
DAVID B. SHAPIRO  
Attorney