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Office of the Attorney General
Washington, D. C. 20530

April 26, 1983

Honorable Brent W. Ward
United States Attorney
Salt Lake City, Utah 84110

Dear Brent:

I was delighted to receive your letter and supporting materials concerning Utah's recently enacted Child Kidnaping and Sexual Abuse Act and the role that your Law Enforcement Coordinating Committee (LECC) played in its development and adoption. As you pointed out, the type of joint effort involved in this case is unique and is to be applauded. Such cooperative activities truly exemplify the objectives of the LECC program.

Thank you for providing such fine leadership in this endeavor. I hope you will convey my appreciation to members of the Law Enforcement Coordinating Committee and to Assistant United States Attorney Richard Lambert for their individual and collective efforts in making the concept of local-state-federal cooperation a truly viable model for the improvement of law enforcement.

I wish you continued success in furthering the goals of this most important program.

Sincerely,

Bill

William French Smith
Attorney General

COMMENDATIONS

Assistant United States Attorney FRANCES HULIN, Central District of Illinois, has been commended by Mr. Ira S. Loeb, District Director, Internal Revenue Service, Department of the Treasury, Springfield, Illinois, for the successful prosecution of the Percival case, dealing with narcotics involving over 250 pounds of cocaine.

Assistant United States Attorney LAWRENCE J. LEIGH, District of Utah, has been commended by Mr. J. E. Murdock, III, Chief Counsel, Federal Aviation Administration, Department of Transportation, Washington, D.C., for the fine handling of Roy Citizens Association Inc., v. Elizabeth Dole, which resulted in the lifting of a comprehensive ten-year old injunction preventing the FAA and the city of Ogden, Utah, from proceeding with a project involving the extension of the principal runway at Ogden Municipal Airport.

Assistant United States Attorney ROBERT W. RODRIGUES, Southern District of Texas, has been commended by Mr. Henry W. Flagg, Jr., Chief Counsel, National Aeronautics and Space Administration, Lyndon B. Johnson Space Center, Houston, Texas, for his excellent cross-examination and outstanding post-trial brief involving the Federal Torts Claims Act case of Simpson v. NASA.

Assistant United States Attorney NEIL G. TAYLOR, Southern District of Florida, has been commended by Mr. John R. Simpson, Director, United States Secret Service, Department of the Treasury, Washington, D.C., for his extraordinary accomplishment in the prosecution of Raymond Leon Koon for the first degree murder of Joseph Edward Dino, a witness in a Federal counterfeit investigation.

United States Attorney BRENT W. WARD, District of Utah, has been commended by Attorney General William French Smith, for his fine leadership in connection with Utah's recently enacted Child Kidnapping and Sexual Abuse Act and the role of the Law Enforcement Coordinating Committee (LECC). This letter has been reproduced on the following page to give recognition to this endeavor.

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EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS
William P. Tyson, Director

POINTS TO REMEMBER

False Identification Crime Control Act Of 1982

On December 31, 1982, the President signed the False Identification Crime Control Act of 1982, P.L. 97-398, 96 Stat. 2009. It was enacted in response to the growing criminal use of false identification, a multi-billion dollar national problem. Criminal use of false identification is prevalent in illegal immigration and drug trafficking, as well as fraud against the Government and private citizens. Existing Federal laws prohibit the use of certain types of Federal identification documents but do not provide effective tools with which Federal law enforcement officials can inhibit the manufacture, transfer, possession and use of all Federal identity documents. Moreover, the states have little authority or power to protect identification documents other than their own and, in any event, are generally unable to control counterfeiting or criminal use of their documents in another state. The new legislation gives Federal prosecutors an important vehicle to help attack these problems. (A complete copy of the new Act was reprinted at Points to Remember, 31 USAB 85-87 (No. 2, 2/4/83).)

The Act created two new sections in Title 18, United States Code: (1) Section 1028 - Fraud and related activity in connection with identification documents; and (2) Section 1738 - Mailing private identification documents without a disclaimer.

Section 1028 prohibits the production or transfer of false governmental identification documents, possession of five or more false documents, and possession of one such document with the intent to use it to defraud the United States. It also prohibits possession or transfer of a document-making implement with the intent to produce false identification documents and the possession of a United States identification document that was stolen or produced without lawful authority. Section 1028 also applies to any attempts to accomplish the acts listed above.

Penalties specified in Section 1028 vary in severity. For the production or transfer of a false Federal identification

document (e.g., a Social Security card, alien registration card), a state driver's license, birth certificate, or personal identification card, five other identification documents, or a document-making implement, the punishment extends to imprisonment for five years and/or a $25,000 fine. An intermediate level of punishment of imprisonment for three years and/or a $15,000 fine is set out for producing or transferring less than five non-Federal identification documents (other than state birth certificates, driver's licenses, or personal identification cards) or for possessing with intent to use or transfer five or more identification documents (other than those issued lawfully for the use of the possessor). For simple possession of a false or stolen Federal identification document or for possession of any false identification document with the intent to defraud the United States, the penalty is imprisonment for one year and/or a $5,000 fine. Attempts are punishable at the same level as the substantive offense.

Section 1028 is applicable to all governmental identification documents. Hence, it covers any such documents issued by any Federal, state, county, or municipal agency, any foreign government or a political subdivision of such foreign government (e.g., Ontario Province in Canada, City of London), or any international or quasi-international organization (e.g., UN, NATO, OAS, etc.). It does not, however, cover identification documents issued by private industry or non-public educational institutions. There is Federal jurisdiction over the governmental documents under the provisions of Section 1028 if: (1) they appear to be issued by the United States or one of its agencies (i.e., Federal identification document); (2) were used to defraud the United States (regardless of which government issued it), or (3) the prohibited production, transfer, or possession (a) was in or affected interstate or foreign commerce or (b) involved the use of the mails. The section contains numerous terms and uses the legislative format of several proposed revisions to the Federal Criminal Code during the past decade. Hence, drafting of indictments to include the prohibited act, the proper penalty, and the appropriate Federal jurisdictional basis could require some care. Some of the statutory terms are defined in Section 1028 itself, but many others are described in the excellent House Report (No. 97-802, 97th Congress) which accompanied H.R. 6946, the main bill. Section 1028 should become an important

prosecutive tool in the years ahead for any false identification violation occurring on or after January 1, 1983. This legislation was strongly supported by the Department before the Congress.

Section 1738 makes it a misdemeanor for a business which sells private identification documents to transport through the mail or in interstate or foreign commerce any private identification document which bears a birth date or age purported to be the person named in such document unless the disclaimer "NOT A GOVERNMENT DOCUMENT" is clearly and indelibly printed on the front and back of the document. (If the private ID does not contain a birth date or age, it is not covered by this section.) This provision is in direct response to Congress' growing concern about the drunk driving problem and, in particular, the youthful driver aspect of that problem. Section 1738 was not part of H.R. 6946 as it passed the House and is a result of a compromise between the Senate and the House. Primary targets of this section are those businesses which sell private ID's through the mails. The U.S. Postal Service has investigative responsibility when the mails were used and may shortly be presenting to your office certain meritorious instances where these businesses are not in compliance with section 1738. No warning to the perpetrator is required before any prosecution is pursued. However, if a violation has occurred after the perpetrator had been advised by your office or the investigative agency of the existence of section 1738, vigorous prosecution should be pursued. While only a misdemeanor, a separate count is possible for each offense in order to obtain deterrent punishment. It should be noted, that if the identification document would appear to the average person to be a Government identification document, felony treatment under Section 1028 may be possible.

The Criminal Division is presently preparing a comprehensive background package concerning this new Act which will be incorporated into the U.S. Attorneys' Manual. This package will include draft indictments to cover the major kinds of offenses which may arise under Section 1028. In the meantime, if you have any questions about either Section 1028 or Section 1738, please contact the General Litigation and Legal Advice Section in the Criminal Division at FTS 724-7526. Copies of the relevant Congressional documents can be forwarded to you if needed. If you return any indictments for Section 1028 or

Section 1738 violations or have any jury trials concerning these offenses, it is requested that you furnish the Criminal Division a copy of the indictment and the jury instructions utilized as they will be of potential value to other U.S. Attorneys' Offices. The Criminal Division and Federal Bureau of Investigation have also started efforts to assign investigative responsibility under Section 1028 between the various Federal law enforcement agencies which have an interest in this matter.

(Criminal Division)

IRS Section 7609 Summons Cases And Foreign Documents Cases

The Tax Division's new procedures for handling of IRS summons cases under Internal Revenue Code Section 7609 and requests for foreign documents under Section 982 were outlined in a memorandum of December 29, 1982 (reprinted in VOL. 31, No. 2, P. 125 of the United States Attorneys' Bulletin). The memorandum requests that the Tax Division be notified immediately of the filing of petitions to quash under Section 7609 and Section 982 of the Internal Revenue Code and supplies the names and phone numbers of the persons to be contacted.

A proceeding to quash is a civil action and is subject to the normal filing fee and to the provisions of Rule 4 of the Federal Rules of Civil Procedure concerning service of the summons and complaint. These cases differ significantly, however, from cases in which the Government is in a purely defensive posture in a civil action because the filing of the petition to quash under Section 7609 or Section 982 stays compliance with the summons or document request. Since it is not in the best interest of the Government to delay resolution of the proceeding by insisting that the service of process rules be followed in all technical respects, absent compelling reasons to the contrary, the Tax Division will generally waive a technical insufficiency of service of process in cases otherwise properly brought on the authority of Section 7609 or Section 982. Thus, even where the service of process is defective, petitions to quash should be brought to the attention of the Tax Division immediately.

(Tax Division)

Assignment Of The Handling Of The Defense Of Appeals In Cases Where The Government Prevailed In The District Court

By memorandum of March 14, 1983, the Assistant Attorney General prescribed new procedures in case assignments. Under Title 2-3.210 of the United States Attorney's Manual, the Assistant Attorney General elects whether the Civil Division will handle a case that was tried by the United States Attorney in cases within the jurisdiction of the Civil Division. The Division's current

practice is that the assignment of the handling of each appeal is made by the Assistant Attorney General, Civil Division, through the Director of the Appellate Staff on a case-by-case basis. The Division sends a letter to the United States Attorney notifying him or her of the assignment in each case, including all cases where the assignment will remain with the United States Attorney.

In light of the large volume of cases, the procedure has now been streamlined. Henceforth, in cases tried by the U.S. Attorneys where the Government prevailed in the district court and the other side is appealing, the United States Attorneys should send a copy of the notice of appeal and the district court decision to the Director, Appellate Staff, Civil Division, Post Office Box 978, Washington, D.C. 20044. If the Civil Division elects to handle the case as specified by Title 2-3.210, the U.S. Attorney's office will be notified within 10 days following receipt of the notice of appeal and district court decision at the Post Office Box. If there is no communication from the Civil Division within that time, it may be presumed that the assignment of the defense of the appeal will remain with the U.S. Attorney. (The Civil Division reserves the right to elect to handle the case after the 10-day period has elapsed, but it is anticipated that such elections will be extremely rare.)

This procedure should eliminate unnecessary paperwork. Please note that the 10-day period runs from receipt of both the notice of appeal and the district court decision at the Appellate Staff's special post office box. On properly addressed mail, you may safely assume 3 days for mailing to the Appellate Staff. To invoke this streamlined procedure, you must send the notice of appeal and district court decision to the Appellate Staff even if the district court's decision was previously sent elsewhere in the Division.

This new procedure, of course, does not change the current practice with respect to the handling of appeals where the Government lost in the district court. See Title 2.

Please be aware that the new procedures can operate effectively only if the Appellate Staff receives prompt notification of the district court decision so that a timely determination of the case assignment can be made. Where no assignment letter is sent out by the Division, it is also imperative that the U.S. Attorney's office notify the Federal agency concerned in the case that the appeal is being handled by the U.S. Attorney.

(Civil Division)

CIVIL DIVISION
Assistant Attorney General J. Paul McGrath

Common Cause v. Bolger, _____ U.S. _____ No. 82-1141 (May 2, 1983). D.J. # 145-5-3771.

CONGRESSIONAL PRIVILEGE: SUPREME COURT AFFIRMS DISTRICT COURT DECISION HOLDING CONGRESSIONAL FRANKING STATUTE CONSTITUTIONAL.

In this case, plaintiffs sought a declaratory judgment that 39 U.S.C. 3210, which allows members of Congress to send franked mail, is unconstitutional. They claimed that the franking privilege afforded by the statute provides an unconstitutional subsidy to incumbent candidates for Congress because franked mail inevitably has the effect of aiding their reelection efforts. Plaintiffs argued that because nonincumbents are not afforded similar campaign advantages, section 3210 abridges their First Amendment rights of free association and deprives them of equal protection under the due process clause of the Fifth Amendment.

Applying a rational basis test, a three-judge district court concluded that the statute was not unconstitutional. Accordingly, the court entered summary judgment in favor of the Government. Common Cause filed a jurisdictional statement, and the Government moved to affirm. On May 2, 1983, the Supreme Court granted our motion.

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Kizas v. Webster, _____ F.2d _____ Nos. 82-1477 and 82-1511 (D.C. Cir. April 26, 1983). D.J. # 145-12-3690.

TITLE VII: D.C. CIRCUIT HOLDS THAT FBI CLERICAL EMPLOYEES HAD NO PROPERTY INTEREST IN INCIDENT OF EMPLOYMENT AND THAT EMPLOYEES FAILED TO SATISFY THE JURISDICTIONAL PREREQUISITES TO SUIT UNDER TITLE VII.

In this class action, plaintiffs challenged the FBI's discontinuation of a program whereby the FBI accorded its clerical and support personnel special preference in consideration for Special Agent positions. The district court held that the modification of the special preference constituted a "taking" of

CIVIL DIVISION
Assistant Attorney General J. Paul McGrath

the employees' property in violation of the Fifth Amendment and the Tucker Act. However, it dismissed on jurisdictional grounds the claim that the new selection system, which included an affirmative action element, constituted reverse discrimination in violation of Title VII and the Fifth Amendment. The court awarded $500,000 in damages to the 79 class members whose claims were less than $10,000 and transferred the claims of the remaining 700 class members to the Claims Court, where they are still pending (with a potential liability of $24,000,000).

The Government appealed the ruling that plaintiffs were deprived of a property right compensable under the Just Compensation Clause of the Fifth Amendment, and plaintiffs cross-appealed the dismissal of the discrimination claims. In a sweeping decision in which it accepted all of our arguments, the D.C. Circuit held that the clerical employees had no vested rights in the special preference accorded them under the former selection system. It stated that Title 5 and its implementing regulations are the exclusive source of employees' compensation rights and that while employees may receive additional perquisites -- such as career development programs, educational opportunities, and attractive office surroundings -- they have no indefeasible right to them. Moreover, the court went on to hold that even if the special preference had been created by statute or regulation, money damages for its rescission would be precluded because no statute or regulation can be fairly interpreted as mandating compensation for the damage sustained. In this connection, the court firmly rejected the suggestion that a property interest under the Due Process Clause is equivalent to a property interest under the Just Compensation Clause which might be compensable without statutory authorization.

As to the discrimination claims, the court held that: (1) Title VII is the exclusive remedy for claims of discrimination by Federal employees covered by the Act; (2) excepted service employees are covered by Title VII; (3) plaintiffs failed to satisfy the jurisdictional prerequisites to suit under Title VII, because they failed to file an administrative charge; (4) plaintiffs were not excused from filing a charge merely because an individual who fell within the technical definition of the class, but was not a class representative, filed a charge and initiated his own individual action in another jurisdiction; and (5) plaintiffs were not excused from filing a charge because their counsel wrote to the Director of the Bureau complaining of the change in the program, since the letter said nothing about discrimination.

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CIVIL DIVISION
Assistant Attorney General J. Paul McGrath

Housing Counseling Services, Inc. v. HUD and OMB, _____ F.2d _____ No. 82-1638 (D.C. Cir. April 21, 1983). D.J. # 145-17-3209.

AGENCY ACTION: D.C. CIRCUIT HOLDS THAT OMB'S REFUSAL TO WAIVE SPENDING LIMITATION IN HUD APPROPRIATION ACT IS COMMITTED TO AGENCY DISCRETION AND UNREVIEWABLE UNDER APA.

Plaintiff housing counseling organizations challenged: (1) the refusal of HUD to spend the $7 million remaining in funds appropriated by Congress for its housing counseling program, after a rescission of $3 million, and (2) OMB's refusal to waive a 30% fourth quarter spending limitation in the HUD Appropriation Act.

In a short memorandum opinion, the court of appeals affirmed the judgment in favor of the Government. The court held that plaintiffs had standing and that the case was not moot because of the lapse of the appropriation. However, the court agreed with us that the decision whether "to grant or deny a waiver [under the Appropriation Act] was left to the sole discretion of the OMB" and is unreviewable under the Administrative Procedure Act, 5 U.S.C. 701(a)(2). Alternatively, the D.C. Circuit agreed with the district court that the refusal to grant a waiver was not arbitrary or capricious because "the Director has 'considered the factors required for a waiver and had a rational basis for his decision.'" The court also agreed that plaintiffs had no private claim for relief under the Impoundment Control Act, 31 U.S.C. 1400 et seq.

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Portsmouth Redevelopment and Housing Authority v. Pierce, et al., _____ F.2d _____ No. 82-2138 (4th Cir. April 27, 1983). D.J. # 130-79-1152.

CLAIMS COURT JURISDICTION: FOURTH CIRCUIT REVERSES DISTRICT COURT'S ASSUMPTION OF JURISDICTION OVER A CONTRACT CLAIM DISGUISED AS A CLAIM FOR EQUITABLE RELIEF.

Portsmouth Redevelopment and Housing Authority (PRHA) refused to execute an amendment to its operating subsidy contract

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with HUD as required by the Secretary's regulation, 24 C.F.R. 869.105(a). The required amendment incorporates a statutory amendment to the operating subsidy authorization law which provides that public housing authorities which receive operating subsidies must continue to operate a subsidized housing project for ten years after it receives its last Federal subsidy for that project. PRHA claimed that the statute did not apply to existing operating subsidy contracts, or, that if it did, such application amounted to a due process violation of its contract rights. When PRHA refused to sign the amendment, HUD withheld PRHA's operating subsidies.

PRHA then sued in district court ostensibly for declaratory and injunctive relief to prevent HUD from applying the statutory amendment to PRHA and also to recover the withheld subsidies. The district court took jurisdiction despite the monetary claim in excess of $10,000 because it viewed the principal issue as a statutory construction question and because it believed the United States Claims Court could not render complete relief. The court then held against HUD on the merits.

HUD filed an expedited appeal to the Fourth Circuit, which has just vacated the district court's judgment and remanded with instructions to transfer the case to the Claims Court. The court of appeals did not reach the merits, but the jurisdictional decision will be helpful to the Government in a variety of situations. The court recognized that all the elements of the Claims Court's exclusive jurisdiction were present in this case, namely a monetary claim in excess of $10,000 which must be satisfied from the public treasury and which in essence derives from a contract. The court held that PRHA's effort to characterize the relief sought as equitable cannot undermine the Claims Court's exclusive jurisdiction and that the Claims Court can issue declaratory relief that "is tied to and subordinate to a monetary award."

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CIVIL DIVISION
Assistant Attorney General J. Paul McGrath

Committee for an Independent P-I v. Smith, _____ F.2d _____
Nos. 82-3488, etc. (9th Cir. April 21, 1983). D.J. # 145-12-5184.

ANTITRUST: NINTH CIRCUIT REVERSES DISTRICT COURT AND REINSTATES ATTORNEY GENERAL'S ORDER UNDER THE NEWSPAPER PRESERVATION ACT.

In this case, two metropolitan newspapers in Seattle sought immunity from certain aspects of the antitrust laws pursuant to the terms of the Newspaper Preservation Act. This Act empowers the Attorney General to grant such a limited immunity when a newspaper is shown to be in probable danger of financial failure. If the Attorney General approves, the newspapers involved can merge their printing and distribution functions. Over the opposition of the Antitrust Division, which is by regulation a party in the administrative proceedings, the Attorney General granted the application in this case. A group of competitor suburban newspapers, labor unions, and advertisers brought suit challenging the Attorney General's order and his interpretation of the Act. The district court overturned the Attorney General's decision. We appealed along with the applicant newspapers, and the Ninth Circuit panel has just unanimously reversed the judgment below and reinstated the Attorney General's order. The court accepted the Attorney General's view of the Act, which he found not to require that an applicant search for a buyer for the paper, agree to sell the paper, or show that the paper will definitely be closed if the application is denied. Further, in determining the probability of financial failure, the assets of the parent company (if any) are not to be considered. The court also agreed with the Attorney General that although there had been inquiries to purchase the applicant paper, the owners had shown that the financial and economic situation was such that new management did not offer a solution to the paper's problems. Finally, the court found the Act constitutional. We expect that the plaintiffs will now seek rehearing en banc and/or certiorari.

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CIVIL DIVISION
Assistant Attorney General J. Paul McGrath

United States v. Peter Gottheiner, _____ F.2d _____ No. 81-4557 (9th Cir. April 14, 1983). D.J. # 137-11-696.

BANKRUPTCY: NINTH CIRCUIT UPHOLDS APPLICATION OF COLLATERAL ESTOPPEL DOCTRINE TO ESTABLISH LIABILITY UNDER FEDERAL PRIORITY STATUTES.

In an adversary proceeding commenced prior to the Bankruptcy Reform Act (which eliminated certain Federal priorities formerly applicable in bankruptcy), the United States obtained a judgment against Gottheiner, the owner and chief officer of a corporation participating in the Medicare Program, for violating the Federal Priority Statutes (31 U.S.C. 191, 192, recodified at 31 U.S.C. 3713). The bankruptcy court further determined that those violations, which involved distribution of assets while the corporation was insolvent and indebted to the United States, were "defalcatory acts" by a corporate officer and thus non-dischargeable. Existence of the debt was established by collateral estoppel, based upon a judgment obtained against the corporation in prior litigation, and Gottheiner was found to have had knowledge of the debt when accomplishing distributions. On appeal, the district court affirmed.

The Ninth Circuit has recently affirmed the district court, holding that collateral estoppel was properly applied against Gottheiner personally, because: (1) his complete control of the corporate debtor put him in privity with it; and (2) the underlying judgment had been actually litigated. The finding concerning his knowledge was also upheld, both because he had received notice of the debt and because knowledge thereof could be inferred from his control of the corporation.

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Federal Rules of Criminal Procedure

Rule 4(c)(1). Arrest Warrant or Summons upon Complaint. Form. Warrant.

Defendant pled not guilty to narcotics charges and moved for suppression of statements and evidence, claiming that they were fruits of an illegal arrest based on an invalid warrant which described its subject only as: "John Doe a/k/a Ed." The Government conceded that the warrant did not on its face meet the requirements of Rule 4(c)(1) which states that the defendant be described "with reasonable certainty," but contended that the facial insufficiency of the warrant was cured since the law enforcement officer who executed the warrant had independent personal knowledge that the arrestee was the person for whom the warrant was intended. The district court denied defendant's suppression motion and defendant entered a conditional plea of guilty, reserving the right to appeal the suppression ruling. The court accepted the plea and defendant appealed.

The Court held that "John Doe" warrants are illegal, and that use of the first name "Ed" did not render the warrant sufficiently specific since it did not reduce to a tolerable level the number of potential subjects. The Court further held that an agent's independent knowledge that defendant was the person named in the warrant could not supplement the description, and thus suppression was required. In arriving at these conclusions, the Court stated that the reasonable certainty requirement of Rule 4(c)(1) insures that a sufficient showing of probable cause has been made to the issuing magistrate and minimizes the risk of error by the executing officer who is not vested with discretion to determine the scope of a warrant.

(Vacated and remanded.)

United States v. John Doe, a/k/a Ed, a/k/a Edward Carr, ____ F.2d ___, No. 82-5194 (3d Cir. March 31, 1983).

Federal Rules of Evidence

Rule 404(a). Character Evidence Generally.

Rule 404(b) Other Crimes, Wrongs or Acts.

Defendant was arrested as a result of an undercover operation in which several businesses were targeted for investigation by Federal agents. During defendant's trial his attorney inquired into the Government's targeting procedures. In order to show the basis for defendant's selection as a target, the prosecution introduced evidence of defendant's role in previous investigations, claiming that since the defense had initially raised the targeting issue the prosecution was entitled to introduce evidence of other crimes in response. The trial court instead admitted the evidence pursuant to Rule 404(b). Defendant appealed his conviction on the ground that admission of such prejudicial evidence was not justified under Rule 404(b) and violated Rule 404(a) by allowing the prosecution to show that he had acted in conformity with criminal character.

The court of appeals reversed the decision and held, inter alia, that evidence admitted under Rule 404(b) must precisely articulate its relationship to issues raised at trial; broad statements which fail to make a logical connection between alleged earlier offenses and the case being tried do not suffice. Additionally, defendant's inquiry into targeting procedures did not put the question of his character into issue sufficiently to permit introduction of the evidence pursuant to Rule 404(a).

(Reversed. Dissent filed discussing Rule 404(b).)

United States v. Loran Anthony Biswell, 700 F.2d 1310 (10th Cir. Feb. 22, 1983).

Federal Rules of Evidence

Rule 404(b) Other Crimes, Wrongs or Acts.

See Rule 404(a) Federal Rules of Evidence, this issue of the Bulletin for syllabus.

United States v. Loran Anthony Biswell, 700 F.2d 1310 (10th Cir. Feb. 22, 1983).

U.S. ATTORNEYS' LIST EFFECTIVE June 3, 1983

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