

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal Action No.: 12-cr-231 (RC)
	:	
JAMES HITSELBERGER,	:	Re Document No.: 34,38,39,50
	:	
Defendant.	:	

ORDER

**DENYING DEFENDANT’S MOTIONS TO SUPPRESS TANGIBLE EVIDENCE SEIZED, DENYING
DEFENDANT’S MOTION TO DISMISS COUNTS FOUR, FIVE AND SIX OF THE SUPERSEDING
INDICTMENT, AND GRANTING IN PART AND DENYING IN PART THE GOVERNMENT’S MOTION
FOR 404(B) EVIDENCE**

For the reasons stated in the Court’s Memorandum Opinion separately issued this 4th day of March, 2014, it is hereby:

ORDERED that Defendant’s Motion to Suppress Tangible Evidence Seized Pursuant to the Search of the Backpack (ECF No. 39) is **DENIED**; and it is

FURTHER ORDERED that Defendant’s Motion to Suppress Tangible Evidence Seized Pursuant to the Search of the Quarters (ECF No. 38) is **DENIED**; and it is

FURTHER ORDERED that Defendant’s Motion to Dismiss Counts Four, Five, and Six of the Superseding Indictment (ECF No. 50) is **DENIED**; and it is

FURTHER ORDERED that the Government’s Motion to admit evidence under 404(b) (ECF No. 34) is **GRANTED IN PART AND DENIED IN PART**:

1. Correspondence between Mr. Hitselberger and the Hoover Institution **will be admissible under 404(b)** so long as it satisfies the normal evidentiary requirements;

2. The three paragraphs from a statement made in 2005 regarding the handling of sensitive materials in Iraq **will be admissible under 404(b)** so long as they satisfy the normal evidentiary requirements;
3. The letter dated July 8, 2005 from Mr. Hitselberger to the Hoover Institution **will not be admitted under Rule 404(b)**;
4. The three reports marked classified that were discovered in Mr. Hitselberger's collection at the Hoover Institution **will not be admitted under Rule 404(b)**.

It is **FURTHER ORDERED** that the Government's Motion for 404(b) Evidence (ECF No. 34) is **PARTIALLY HELD IN ABEYANCE**. The Court defers ruling on the remainder of the Government's motion involving other letters from Mr. Hitselberger to the Hoover Institution, and expressly identified in this Court's Memorandum Opinion, until the parties have discussed whether they can reach an accommodation by which the remaining letters would be redacted, selectively introduced, or coupled with a jury instruction that would satisfy both the Government's justifications for introducing the letters, and the Defendant's concerns of unfair prejudice.

SO ORDERED.

Dated: March 5, 2014

RUDOLPH CONTRERAS
United States District Judge