UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA	)
	) Case No. 97-0853-CR-Middlebrooks
v.	)
	) Magistrate Dubé
ATLAS IRON PROCESSORS, INC., et al.,	) (Amended order of reference dated May 7, 1998)
	)
	)
Defendants.	) **MEMORANDUM OF THE**
	) **UNITED STATES OPPOSING**
	) **DEFENDANTS' JOINT MOTION**
	) **FOR CONTINUANCE OF**
	) **TRIAL DATE AND REQUEST**
	) **FOR TELEPHONIC**
	) **STATUS CONFERENCE**

The United States opposes the Defendants' motion to have the trial in this matter continued.

1. The trial is set to begin on January 25, 1999. The defendants were indicted on November 13, 1997. This matter was originally set for trial in February, 1998. The trial date was then moved to November 23, 1998. The current trial date was set at the hearing on September 9, 1998. This is the second recent attempt by the defendants to try to have this trial continued.

2. Although the defendants have recently filed a number of discovery-related motions, the United States believes each such motion is poorly taken and should be denied. At least one of these motions has been fully briefed and is pending before Magistrate Judge Dubé. See Joint Motion of the Atlas Defendants to Suppress Certain Evidence Which the Government Intends to Introduce at Trial; Memorandum of United States Opposing Defendants' Joint Motion to Suppress Certain Testimony and Evidence Which the Government Intends to Introduce at Trial. The United States is currently responding to other discovery-related motions recently filed by the defendants.

3. The United States also has opposed the defendants' joint motion to

preclude or limit the United States' use of *Trial Director*, a commercial software program used to present and display evidence at trial. See Memorandum of the United States Opposing Defendants' Joint Motion to Preclude the Use of Trial Director; or, in the Alternative for an Order Setting the Terms and Conditions on the Use of *Trial Director*. For the reasons stated in its Memorandum, the defendants' motion to preclude or limit the use of *Trial Director* is poorly taken and should be denied.

4. The United States currently is in the process of responding to the defendants' motion to suppress documents and tangible things at trial because of an alleged violation of Rule 16 and the Standing Discovery Order. The United States believes that it has complied fully with its obligations under Rule 16 and the Standing Discovery Order. Neither Rule 16 nor the Standing Discovery Order require the United States pre-trial to identify and segregate each and every trial exhibit intended for use in its case-in-chief. The United States has confirmed with the U.S. Attorney's office in the Southern District of Florida that its position regarding Rule 16 and the Standing Discovery Order is consistent with the local practice. Thus, the defendants' motion is poorly taken and should be denied.

5. The discovery motions recently filed by the defendants demonstrate a calculated strategy to make it appear as if the United States has withheld discoverable information or has unfairly prejudiced the defendants. Not only has the United States fulfilled its obligations under Rule 16 and the Standing Discovery Order, it has also fulfilled its obligations under *Brady*, *Giglio* and Fed. R. Evid. 404(b). Apparently, after more than a year of pre-trial discovery and litigation, the defendants are not ready to try this case. The defendants are unready, however, as the result of their own neglect and procrastination. If a continuance is granted, the defendants will unfairly profit from their neglect and the United states' case will be further prejudiced by the resulting delay.

6. The defendants' instant motion to continue the trial is out of rule. The defendants have not followed Local Rule 7.6, requiring that an affidavit be

submitted setting forth a full showing of good cause.

7. Throughout this litigation, the defendants' counsel have raised every conceivable motion and inundated this Court and the United States with an avalanche of paper (including at least five surreplies). They have left no stone unthrown in railing against the United States at every turn. Moreover, these defense counsel apparently believe rules and fairness run only one way -- their way. Though these defense counsel have lost every significant motion (*e.g.*, polygraph tests; 404(b) evidence; request for bill of particulars; request for further particularization; motion for protective order covering grand jury materials; continuance), they have assaulted the government's every move from pre-Indictment through the present. Fortunately, counsel for the United States has become immune to their tactics and pattern of obfuscation.

8. The United States does not believe a hearing is necessary at this point. All of the issues related to discovery are either fully briefed or will be shortly. If these pending motions are decided in favor of the United States, as expected, then a hearing is not necessary. If a hearing is scheduled, however, counsel for the United

States would like to appear in person if possible. Accordingly, counsel for the United States respectfully requests that in the event a hearing is scheduled, the United States be given sufficient lead time to travel to Miami and appear in person.

Respectfully submitted,

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