

UNITED STATES OF AMERICA  
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA ) Case No. 97-0853-CR-Middlebrooks  
)  
v. ) Magistrate Judge Robert L. Dubé  
) (May 7, 1998, amended Order of Reference)  
ATLAS IRON PROCESSORS, INC., )  
*et al.*, )  
Defendants. ) **NOTICE OF FILING**  
) **MEMORANDUM OF**  
) **UNITED STATES OPPOSING**  
) **DEFENDANTS' JOINT MOTION**  
) **TO SUPPRESS CERTAIN TESTIMONY**  
) **AND EVIDENCE WHICH THE**  
) **GOVERNMENT INTENDS TO**  
) **INTRODUCE AT TRIAL**

On December 10, 1998, the United States filed its Memorandum of United States Opposing Defendants' Joint Motion to Suppress Certain Evidence Which the Government Intends to Introduce at Trial ("Memorandum"). One copy was sent via federal express to Magistrate Judge Dube's chambers; two copies were sent via federal express to the Clerk of Courts.

Pursuant to Magistrate Dube's Order (dated November 30, 1998), Magistrate Dube, the Court and all defense counsel were to have a copy of the Memorandum by 4:00 p.m. on December 11, 1998. Counsel for the United States instructed his secretary to send each defense counsel a copy of the Memorandum via Federal Express in order to meet the deadline. A certificate of service, however, was prepared indicating service upon defense counsel by regular U.S. mail. Thus, copies were inadvertently sent on December 10, 1998, to all defense counsel via regular U.S. mail.

On December 11, 1998, at approximately 4:25 p.m., counsel for the United States received a telephone call from Robert Josefsberg (counsel for Defendant Anthony J. Giordano, Sr.) Mr. Josefsberg stated that he had not received the Memorandum and asked about the status. Counsel for the United States responded that it had been sent via

Federal Express and that he should have received it 4:00 p.m. Mr. Josefsberg requested that we track the Federal Express number to locate the document. In tracking the document, we learned that copies of the Memorandum had inadvertently been mailed to all defense counsel, rather than sent Federal Express as believed.

After learning of the mistake, the United States hand-delivered a copy of the Memorandum to John F. McCaffrey (counsel for Defendant Atlas Iron Processors, Inc.) and Ralph E. Cascarilla (counsel for Defendant Anthony J. Giordano, Jr.). These copies were delivered between 4:45 p.m. and 5:20 p.m. Messrs. McCaffrey and Cascarilla are both located in downtown Cleveland.

Counsel for the United States then telephoned Mr. Josefsberg and explained what happened. Mr. Josefsberg was gracious and asked that we forward a copy of the Memorandum to him in Beaver Creek, Colorado, via Federal Express. In addition to doing so, we also faxed a copy of the Memorandum to his office.

Counsel for the United States also telephoned Ben Kuehne (counsel for Defendant Randy Weil) and explained what happened. Mr. Kuehne said that as long as he had the Memorandum by Monday, that would be fine for him. We faxed a copy of the Memorandum to his office.

Counsel for the United States was unable to reach either Roberto Martinez (counsel for David Giordano) or Marc Nurik (counsel for Sunshine Metal Processors, Inc.). The United States faxed a copy of the Memorandum to their respective offices.

Magistrate Dube's Order was clear and required the United States to have served copies of its Memorandum upon him, the Court, and all defense counsel by 4:00 p.m. Though counsel for the United States had instructed that all copies be served via Federal Express on December 10, 1998, and thought that this was done, it was not. The United States did not knowingly or willfully violate Magistrate Dube's Order, but apologizes for any inconvenience this mistake may have caused the Court or the parties. Thanks to Mr. Josefsberg's telephone call on December 11, the United States, hopefully, was able to eliminate any prejudice to defense counsel by taking swift corrective action and either

hand-delivering or faxing the Memorandum to all defense counsel. The United States began faxing the Memorandum and its attachments to respective defense counsel beginning at approximately 4:45 p.m. on December 11, 1998.

Respectfully submitted,

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