

UNITED STATES OF AMERICA
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA) Case No. 97-0853-CR-Nesbitt
)
v.	) Magistrate Judge Robert L. Dubé
	) (February 11, 1998 Order of Reference)
ATLAS IRON PROCESSORS, INC.)
et al.,)
	) MOTION FOR LEAVE TO FILE
Defendants.	) <i>INSTANTER</i> ENLARGED REPLY
	) BRIEF OF UNITED STATES
	) TO MEMORANDUM OF
	) THE GIORDANO DEFENDANTS
	) IN OPPOSITION TO MOTION <i>IN</i>
	) <i>LIMINE</i> OF THE UNITED STATES TO
	) EXCLUDE FROM ADMISSION
	) AT TRIAL ALL EVIDENCE
	) RELATED TO POLYGRAPH
	) <u>TESTS AND RESULTS</u>

The United States files the within Motion for leave to file *Instanter* the enlarged Reply Brief in response to the Giordano defendants' brief in opposition to the United States' Motion *in limine* to exclude the admission of polygraph evidence at trial. The local rules of the Southern District of Florida limit a Reply Brief to 10 pages, without prior leave of court. In this case, there is good cause shown for the enlarged Reply Brief.

The within Motion is necessitated by the complexity of the issues and the need to fully address the numerous factual and legal arguments that have been raised by the Giordano defendants. In addition to addressing numerous factual arguments which the United States believes to be ill-founded and inconsistent with the prevailing view of the relevant scientific community, the additional length is necessary to fully address their legal arguments, many of

which the United States believes to be misrepresented. The purpose of this enlarged Reply Brief is in no way intended to rehash or restate arguments previously made by the United States pursuant to its Motion.

In their defense, the Giordano defendants hired arguably the leading pro-polygraph proponent in the United States, Charles C. Raskin. They submitted a lengthy, detailed affidavit prepared by Dr. Raskin, citing numerous studies, reports and surveys which Dr. Raskin mistakenly believes support the validity and reliability of the Control Question Technique ("CQT") and the polygraph tests administered here. The Giordano defendants also filed a lengthy, detailed affidavit prepared by their private polygrapher, Clifford E. Cormany. In his affidavit, Cormany describes in detail the tests administered to the Giordano defendants and his testing methodology. Consequently, the enlarged Reply Brief is necessary to fully rebut the ill-founded factual claims made Dr. Raskin and Cormany.

Further, when the United States filed its Motion *in limine*, it was not clear what type of polygraph test was actually administered to the Giordano defendants. Nor did the United States have any inkling that the Giordano defendants had hired Dr. Raskin as their chief expert. Dr. Raskin has made a career out of testifying in favor of polygraph tests. Indeed, though discredited, Dr. Raskin has produced a voluminous body of pro-polygraph work, a substantial portion of which he relied upon in his affidavit. This enlarged Reply Brief is necessary to fully appraise the Court of the large body of materials rejecting his opinion and finding that the CQT method is not valid or reliable. Because a variation of the CQT method was used by Cormany, the validity and reliability of the CQT method is a core issue here.

In short, the purpose of the enlarged Reply Brief is not to waste this court's time with needless additional pages of argument, but to aid this Court in deciding the government's Motion *in limine*, which the United States believes to be the most critical pre-trial issue in this case. If this evidence is admitted, the United States will be substantially and unfairly prejudiced.

Accordingly, the United States respectfully requests that this Court grant the within Motion.

Respectfully submitted,

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