

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA	)
	) CASE NO. 97-0853-CR-NESBITT
v.	)
	) Magistrate Judge Robert L. Dubé
ATLAS IRON PROCESSORS, INC.,	) (February 11, 1998, Order of Reference)
et al.,	)
	) <b>MEMORANDUM IN SUPPORT OF</b>
Defendants.	) <b>UNITED STATES' MOTION <i>IN LIMINE</i></b>
	) <b>TO PREVENT DEFENDANTS FROM</b>
	) <b>INTRODUCING EVIDENCE</b>
	) <b>REGARDING THE EFFECTS OF</b>
	) <b><u>PUNISHMENT OR A CONVICTION</u></b>

Evidence regarding punishment or the effects of conviction has traditionally been held to be irrelevant, and therefore, inadmissible before the jury. As the Eleventh Circuit's criminal pattern jury instructions provide, "[T]he question of punishment should never be considered by the jury in any way in deciding the case. If the Defendant is convicted the matter of punishment is for the Judge to determine." Devitt and Blackmar concur: "The punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the court and should never be considered by the jury in any way in arriving at an impartial verdict as to the offenses charged." Devitt and Blackmar, Federal Jury Practice and Instructions, § 20.01 (4th ed. 1992). In a criminal prosecution, the jury's sole function is to determine guilt or innocence, for the applicable statutes do not lodge with the jury the responsibility of imposing sentence. See United States v. McCracken, 488 F.2d 406, 423 (5th Cir. 1974).<sup>1</sup>

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<sup>1</sup> The McCracken court held,

Generally speaking, jurors decide the facts in accordance with the rules of law as

Evidence which relates to the issue of punishment upon conviction of a criminal violation has no bearing on the only question the jury will be called upon to decide -- that of the defendants' guilt or innocence. Evidence dealing with any collateral consequences of conviction, such as the future bankruptcy of a defendant corporation or the insinuation that the defendant corporation's employees will lose their jobs is similarly not probative of the issue of guilt or innocence. Since such evidence would not tend to prove or disprove any fact of consequence to the jury's determination of guilt or innocence, such evidence is irrelevant, as defined by Rule 401 of the Federal Rules of Evidence. Such evidence should, therefore, be excluded under Rule 402, which provides that irrelevant evidence is inadmissible.

Respectfully submitted,

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stated in the instructions of the court. . . . To inform the jury that the court may impose minimum or maximum sentence, will or will not grant probation, when a defendant will be eligible for a parole, or other matters relating to disposition of the defendant, tend to draw the attention of the jury away from their chief function as sole judges of the facts, open the door to compromise verdicts and to confuse the issue or issues to be decided.

McCracken, 488 F.2d at 423 (quoting Pope v. United States, 298 F.2d 507, 508 (5th Cir. 1962)) .

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## CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the following:

- 1) *Demand Of Notice Pursuant To Rule 12.1 Of Defendant Anthony J. Giordano, Sr.'s Intention To Offer Defense Of Alibi;*
- 2) *Demand Of Notice Pursuant To Rule 12.1 Of Defendant Anthony J. Giordano, Jr.'s Intention To Offer Defense Of Alibi;*
- 3) *Demand Of Notice Pursuant To Rule 12.1 Of Defendant David Giordano's Intention To Offer Defense Of Alibi;*
- 4) *Demand Of Notice Pursuant To Rule 12.1 Of Defendant Randolph J. Weil's Intention To Offer Defense Of Alibi;*
- 5) *Memorandum In Support Of United States' Motion In Limine To Exclude Evidence Of Reasonableness; and*
- 6) *Memorandum In Support Of United States' Motion In Limine To Prevent Defendants From Introducing Evidence Regarding The Effects Of Punishment Or A Conviction.*

were sent via Federal Express to the Office of the Clerk of Court on this 20th day of April, 1998. Copies of the above-captioned pleadings also were served upon the defendants via Federal Express on this 20th day of April, 1998.

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