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FILED CLERK, U.S. DISTRICT COURT	
JUL 19 2007	
BY	CENTRAL DISTRICT OF CALIFORNIA DEPUTY

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 SOUTHERN DIVISION

THE HONORABLE ALICEMARIE STOTLER, JUDGE PRESIDING

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JAMES BENNETT,
Defendant.

SACR-03-25 (B) -AHS

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Santa Ana, California

October 6, 2006

SHARON A. SEFFENS, RPR
 United States Courthouse
 411 West 4th Street, Suite 1-1053
 Santa Ana, CA 92701
 (714) 543-0870

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1 APPEARANCES OF COUNSEL:

2 For the Plaintiff:

3 DEBRA W. YANG

United States Attorney

4 WAYNE R. GROSS

Assistant United States Attorney

5 Chief, Santa Ana Branch Office

BRETT A. SAGEL

6 Assistant United States Attorney

U.S. District Courthouse

7 411 West Fourth Street, 8th Floor

Santa Ana, CA 92701

8 (714) 338-3541

9 For the Defendant:

10 JAMES DAVIS BENNETT, PRO SE

#32589-112

11 FCI Victorville Medium 1

Federal Correctional Institution

12 P.O. Box 5300

Adelanto, CA 92301

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1 SANTA ANA, CALIFORNIA; OCTOBER 6, 2006; A.M. SESSION

2 THE CLERK: Item No. 3, SACR-03-25(B)-AHS,
3 United States of America versus James Davis Bennett.

4 Appearances, please.

5 MR. SAGEL: Good morning, Your Honor. Brett Sagel
6 on behalf of the government, and with me at counsel table is
7 Special Agent Michael Rollings.

8 THE COURT: Thank you.

9 MR. BENNETT: Good morning, Your Honor. James
10 Bennett, pro se.

11 THE COURT: Mr. Bennett is present as well.

12 This matter is set down for the sentencing hearing
13 in the defendant's case, and we have issued a tentative
14 ruling which the parties received this morning and which I
15 have been advised the parties have had time to review.

16 As you can determine, based upon the parties'
17 filings and the presentence report, the Court has indicated
18 that a sentence for the defendant in the range of ten years
19 is approximately a just and reasonable sentence under the
20 advisory Guidelines.

21 We would invite the defendant to make additional
22 comments concerning the matter of his sentencing, hear from
23 Mr. Bennett, then hear from Mr. Sagel, and then the Court
24 will pronounce judgment.

25 Mr. Bennett, let's start with you first.

1 MR. BENNETT: Thank you.

2 I guess the first place where I would like to
3 start with the sentencing is I am a little bit confused
4 about the counts. I understand that you did eliminate Count
5 12. That left Counts 1 through 10, so if you could --
6 actually I guess I should start by saying that there are
7 several -- in the Indictment, the counts are indicated as --
8 Counts 1 through 4 are indicated as 1343 and subsection
9 (2) (b), which is wire fraud and causing an act to be done.
10 Counts 5 through 7 -- on page five of the Indictment, it's
11 indicated as Section 1344 and Section (2) (b). Section 1344
12 is bank fraud. Section (2) (b) is causing an act to be done.

13 Now, I guess my confusion comes probably with the
14 first part. Once I read your opinion dated May 24, you
15 indicated in that opinion there were a number of properties
16 that -- I guess I have been trying to find out what the
17 charges were related to those properties, and actually they
18 were part of the 25 properties that were Exhibit 258 that
19 the government brought in at trial, but let me direct your
20 attention specifically to Count 1.

21 THE COURT: I know what they are, Mr. Bennett.

22 MR. BENNETT: I just wanted to kind of go over
23 this with you, so before I leave here, at least I can have a
24 clear understanding of exactly what those charges were
25 because they are different from the Indictment.

1 THE COURT: I read all of that in your objections
2 to the presentence report.

3 MR. BENNETT: I understand that but if I can
4 continue. On Count No. 1, I noticed in your opinion when
5 you analyzed -- I think it's about 15 properties. You
6 analyzed about 15 properties in that opinion. Absent within
7 those 15 properties was Count 1.

8 The properties that you did analyze within those
9 15 properties were properties that you were analyzing to
10 determine if the jury had returned convictions on violations
11 that had somehow affected financial institutions. Absent
12 within that analysis was Count 1, which indicated that you
13 yourself had agreed with the jury's verdict of guilty of
14 Count 1, that Count 1 had affected in some way a financial
15 institution. As I look at the Indictment, Count 1 is not
16 charged in any way, shape, or form as being connected with a
17 financial institution. It's simple wire fraud.

18 In your jury instructions for Counts 1 through
19 4 --

20 THE COURT: Mr. Bennett, I read all of that in the
21 papers, so you don't have to recount it.

22 MR. BENNETT: I am trying to find out before you
23 pass sentence what the sentence is going to be and what are
24 the charges you are going to pass the sentencing on, so if
25 you could give me an opportunity to just --

1 THE COURT: It will be on all the counts of
2 conviction that remain.

3 MR. BENNETT: What were those counts, and what
4 were the charges?

5 THE COURT: Counts 1 through 10 of the Second
6 Superseding Indictment.

7 MR. BENNETT: What were the violations that were
8 returned?

9 THE COURT: I believe you were here, sir.

10 MR. BENNETT: I would like you to tell me exactly
11 what 1 through 4 -- the convictions were. I would like to
12 see the verdict form if I could. Just so that the record is
13 clear, Counts 1 through 4 in your instructions to the
14 jury -- you instructed the jury that Counts 1 through 4 were
15 Section 1343, wire fraud. They had a choice of picking
16 either Section 1343 --

17 THE COURT: Mr. Bennett, let's try it this way.

18 Is there any legal cause why the sentence should
19 not now be pronounced?

20 MR. BENNETT: I would like to finish if I could.

21 THE COURT: Is that legal cause?

22 MR. BENNETT: Yes.

23 THE COURT: Please continue.

24 MR. BENNETT: Counts through 4 -- let's be
25 perfectly clear about Counts 1 through 4. You instructed

1 the jury --

2 THE COURT: Yes, I know what the instructed the
3 jury.

4 MR. BENNETT: -- on Counts 1 through 4 that they
5 had an opportunity -- or their decision was to rest on
6 either conviction of wire fraud which is Section 1343 or
7 aiding and abetting which is Section (2) (A).

8 THE COURT: You have covered this in your papers.

9 MR. BENNETT: I understand that, but what I need
10 to know is since you instructed the jury to a charge that
11 was not in the Indictment, what was the conviction in Counts
12 1 through 4 that you plan to sentence me for today?

13 THE COURT: Anything else you care to say?

14 MR. BENNETT: No, I am not finished, but I would
15 like to know that first, and then I would like to go and
16 find out -- on Counts 5 through 10, we have the same problem
17 with those counts also. Counts 5 through 10 appear on the
18 Indictment as Section 1344 which is bank fraud, and in the
19 conjunctive -- and -- Section (2) (b), which is causing an
20 act to be done, something similar to what I explained to you
21 about in Counts 1 through 4.

22 THE COURT: And which you covered in your papers.

23 MR. BENNETT: Absolutely, and which I would like
24 to know before you pass sentence today. In Counts 5 through
25 10, we have the same problem. In Jury Instruction No. 7 and

1 Jury Instruction No. 24 --

2 THE COURT: Which you covered in your papers.

3 MR. BENNETT: Yes, and which you denied -- I felt
4 that the Court had no jurisdiction to give that
5 instruction -- those two instructions or to allow the jury
6 to consider convictions in counts or charges that weren't
7 appearing in the Indictment the same way that --

8 THE COURT: And so your papers indicate, sir.

9 MR. BENNETT: So what we have here is Counts 5
10 through 10 which on the Indictment appear as bank fraud and
11 causing an act to be done, which bank fraud is Section 1344.
12 Causing an act to be done is Section (2)(b), and it's in the
13 conjunctive. You gave jury instruction -- or Court
14 Instruction No. 7 to the jury. You gave them a choice in
15 the disjunctive of selecting bank fraud, Section 1344, or
16 aiding and abetting bank fraud which is Section (2)(A).

17 THE COURT: And so you indicated in your papers.

18 MR. BENNETT: If we had no difference in the jury
19 instructions and the Indictment and since you have declined
20 my request for the verdict form, which I don't see any
21 reason why -- I would like to take a look at the verdict
22 form.

23 If there was no variance between the Indictment
24 and the jury instruction, then we would have no problem. I
25 would think we wouldn't have a problem. If the 25 counts

1 that you allowed the government to bring in during trial --
2 if that never occurred, I don't think we would have a
3 problem either, but you did. You allowed 25 counts to come
4 in to this court, 25 counts. We only started off with 12
5 counts in the Indictment. Count 11 was dismissed. That
6 left us with Counts 1 through 10 and Count 12. I don't know
7 where the 25 counts came from.

8 I also do not know -- Jury Instruction or Court
9 Instruction No. 26, what are the properties and lenders that
10 Court instruction applies to.

11 So if you can answer those questions for me, and I
12 realize that you decline to provide me the verdict form on
13 all the charges. I would once again request the verdict
14 form just so we know exactly what we are doing here and just
15 so that I know exactly what happened.

16 THE COURT: Is there anything else?

17 MR. BENNETT: If you could tell me exactly what
18 the convictions were? The Court instructions were not --
19 did not match the Indictment, so I am trying to find out if
20 -- I just read your tentative on the sentencing. I am
21 trying to find out what are the charges you plan to sentence
22 me on? Is it going to be the indicted charges, or is it
23 going to be the charges that you told -- you gave
24 instructions to the jury on?

25 THE COURT: Let me advise you that you are

1 entitled to take an appeal of the Court's judgment by filing
2 a Notice of Appeal within ten days from today's date, and if
3 you fail to file a Notice of Appeal within that time, there
4 will be no review of the Court's judgment.

5 Do you have questions about your right to appeal?

6 MR. BENNETT: I think at this point I need an
7 attorney. I am requesting assistance of a Court-appointed
8 attorney because you refuse to explain to me on the record
9 what the convictions are and what the violations are. I
10 don't think I need to leave here without knowing that.

11 If you are going to give me a sentence to prison,
12 I think you have an obligation not only to this court but to
13 this government to tell me before I leave out of here. The
14 Fifth Amendment demands that you tell me exactly what you
15 plan to sentence me on since you changed the charges from
16 what was indicted.

17 So I don't think it's something that you can tell
18 me that I need to finish and shut up and get moving. I
19 think you need to do that, Your Honor, and I think that
20 justice demands it.

21 THE COURT: Do you have any questions about your
22 right of appeal?

23 MR. BENNETT: I am requesting at this point
24 Court-appointed counsel to complete this sentencing.

25 THE COURT: Do you have any questions about your

1 right of appeal?

2 MR. BENNETT: I would like to say right now that I
3 do -- if you could, I have got an appeal set up here. If I
4 could give this to you and you can have your clerk stamp
5 this. This is my Notice of Appeal, but I am still
6 requesting -- I am at a point now where I need to have
7 appointed counsel, so I would like to find out what your
8 answer is in response to that. Also, I have got copies of
9 the Notice of Appeal prepared, which if you could have your
10 clerk stamp it.

11 THE COURT: We will accept it. The clerk is to
12 accept from the defendant the Notice of Appeal, and I will
13 hold for the moment your request for counsel because I
14 regard it this point as a delay tactic and hear from
15 government counsel.

16 Mr. Sagel, if would you address the Court's
17 tentative ruling. Any of the defendant's remarks that you
18 wish to address, you may.

19 MR. SAGEL: Thank you, Your Honor.

20 I won't belabor our points. We still believe in
21 what we filed in our papers, but we would concur -- or we
22 would not object to Your Honor sentencing the defendant to
23 121 months. We would stick by our recommendation of 168
24 months, however.

25 I am afraid to say this, but I also would ask Your

1 Honor to ask the defendant if he wishes to allocute as well,
2 so that there is no doubt of whether he was speaking as
3 himself or as his lawyer at that point. Other than that, we
4 rest on our papers.

5 THE COURT: Thank you.

6 Yes, the defendant was being asked to speak on his
7 behalf concerning sentencing and tell us if there was any
8 legal cause why sentence should not be pronounced, and
9 neither has been particularly helpful so far.

10 Mr. Bennett, I believe the clerk has now accepted
11 your Notice of Appeal. Is that correct?

12 MR. BENNETT: Yes.

13 THE COURT: Mr. Bennett, the Notice of Appeal has
14 to be filed in the District Court, so what I am going ask
15 you to do is line out where it says "Ninth Circuit Court of
16 Appeals" and say "District Court," and then we will go ahead
17 and take the Notice of Appeal.

18 MR. BENNETT: Absolutely. They have taken my pen,
19 so if I could get --

20 THE COURT: I will have the clerk do that. It's
21 going to say in the Central District Court.

22 MR. BENNETT: That's fine. Also, all the comments
23 that I made prior, those comments were actually directed
24 from a pro se standpoint.

25 The comments that -- I think you kind of confused

1 that I was making my legal arguments in addition to my
2 allocution.

3 THE COURT: Let's break it up then, so that you
4 have it clear that you have been telling me about legal
5 cause I think why sentence should not be pronounced. Let me
6 state to you that I do believe that your request for counsel
7 is a delay and dilatory tactic, and as the government has
8 pointed out in the papers, you appear to be utilizing your
9 own advice that was given to one of the witnesses concerning
10 delay, so as much as I know it's your right to have counsel,
11 on this very eleventh-plus hour, I am not going to delay the
12 proceedings further and have counsel come in. As I pointed
13 out to you and in the tentative ruling, we have taken
14 account of the various objections and motions that you have
15 filed.

16 MR. BENNETT: Also, Your Honor, I have a -- if I
17 could get you to take a look -- this is actually a
18 document -- this is a document that I had already filed with
19 you. If I could get you to take a look at that and get a
20 signature so I can order the transcripts on this.

21 THE COURT: That's something that can be given to
22 the clerk after the hearing. Once you file a Notice of
23 Appeal, I think that form will routinely come to me, so I
24 don't think you have to worry about the transcripts being
25 ordered. I assume it has a designation.

1 MR. BENNETT: Yes.

2 One additional thing, I had requested -- actually,
3 as you know, I have made a number of requests for bail.
4 There has been some difference in opinion. Initially, I
5 think it was the April 21 or the April 24 hearing where you
6 indicated that your reason for denying bail was a lack of
7 employment or my putting up some property.

8 I did after that point submit another bail motion
9 which covered those issues that you were concerned about.
10 At that point, you brought up another issue about your
11 concern about my fleeing or clear and convincing evidence.
12 As you put it, you wanted clear and convincing evidence that
13 I would not flee.

14 I believe I submitted another bail motion after
15 that, which I thought would -- which included electronic
16 monitoring, so I am a little bit -- I am trying to find out
17 what is your definition of "clear and convincing evidence,"
18 so that I might be able to satisfy that for you, Your Honor?

19 THE COURT: We do not have a notice motion per se
20 about bail pending appeal or otherwise, but to the extent
21 that's what your request is, it's likewise denied. The
22 burden has always been on you to show that you are not a
23 risk.

24 MR. BENNETT: I guess that still doesn't answer my
25 question, but going back to the question, your primary

1 reason for denying bail in the last bail motion denial was I
2 had not presented clear and convincing evidence that I
3 wouldn't flee even after I had offered to the Court
4 electronic monitoring in addition to property secured.

5 So what is your definition of "clear and
6 convincing evidence"? Do you have a definition? I am not
7 certain.

8 THE COURT: This is the time for sentencing,
9 Mr. Bennett. That issue is not before the Court at this
10 time.

11 Is there anything else you want to say concerning
12 the matter of sentencing?

13 MR. BENNETT: Nothing other than the request that
14 the Court -- nothing other than to just tell me which one of
15 those charges on Counts 1 through 4 and Counts 5 through
16 10 -- what were the convictions, and what's the
17 sentencing -- what's the violation that the sentence will be
18 imposed for those counts?

19 THE COURT: Counts 1 through 4 will carry a
20 sentence of 60 months and then 121 months on Counts 5
21 through 10.

22 MR. BENNETT: I'm sorry. That wasn't the
23 question. The question was the identification of the
24 violations on those counts that the convictions were
25 sustained.

1 THE COURT: All right, anything else?

2 MR. BENNETT: No. If you could provide that
3 and -- that would be fine.

4 THE COURT: Those are the issues that you may wish
5 to take up on the appeal.

6 Are you sure that you have told me any legal cause
7 why the sentence should not be pronounced or other
8 allocution?

9 MR. BENNETT: To be totally honest with you, the
10 legal cause why the sentence should not be pronounced is for
11 all the foregoing reasons I have said, but, basically, I was
12 tried on violations that weren't returned by the Grand Jury.
13 The government brought in 25 counts, alleged at least three
14 violations of law per each count, which wasn't on the
15 Indictment. You allowed it to happen.

16 You in turn instructed the jury to convict me on
17 counts that weren't in the Indictment, so, therefore, it's
18 in violation of the Fifth Amendment. I have a right to be
19 tried on a Grand Jury indictment only. You changed it with
20 Jury Instructions Nos. 5, 7, and 24, and in addition added
21 25 counts to Jury Instruction No. 26, so, therefore, there
22 is a clear absence of jurisdiction for any sentencing today.

23 THE COURT: Does that conclude your statement?

24 MR. BENNETT: Yes.

25 THE COURT: All right.

1 Mr. Sagel, is there anything you wish to add in
2 light of the defendant's additional remarks?

3 MR. SAGEL: No, but in response to your tentative,
4 there are no victims here that wish to be heard prior to
5 sentencing.

6 THE COURT: Thank you.

7 The Court rules in accordance with the tentative
8 ruling.

9 First, it is ordered that the defendant pay to the
10 United States a special assessment of \$1,000, which is \$100
11 per count of conviction due immediately.

12 Second, the defendant shall pay restitution in the
13 total amount of \$751,050 under Section 3663A.

14 The restitution ultimately consists of the
15 following:

16 As to Count 1, CIT Group, also known as Chase
17 Manhattan, \$90,000.

18 Equicredit, a Division of Bank of America, Count
19 2, \$88,750.

20 Flagstar Bank, \$493,014, and this is as reflected
21 in Counts 5, 6, and 7.

22 Greenpoint Mortgage based on a conviction in Count
23 3 for \$79,285.

24 I have rounded off the change of 18 cents from
25 what's contained in the presentence report for a total of

1 \$751,050.

2 The defendant should make restitution forthwith,
3 and if he makes a partial payment, then each payee shall
4 receive approximately proportional payment.

5 The defendant shall be held jointly and severally
6 liable for all restitution ordered against his
7 co-participants: Steven Brian Rogers, Benny Ibarra, Ricardo
8 Omar Garcia, and Bernardo Fernandez, in related cases in
9 Docket Nos. 03-25 and 02-122, and for the amount of
10 restitution ordered in this judgment.

11 The defendant is ordered to pay a total fine of
12 \$12,500, which shall bear interest as provided by law. Both
13 the restitution and fine are ordered to be paid in full
14 immediately.

15 In addition defendant shall comply with General
16 Order 01-05.

17 It is the judgment of the Court that defendant
18 James Davis Bennett be committed on Counts 1 through 10 of
19 the Second Superseding Indictment to the custody of the
20 Bureau of Prisons to be imprisoned for a term of 121 months.
21 This term consists of 60 months on each of Counts 1 through
22 4 and 121 months on each of the Counts 5 through 10 in the
23 Second Superseding Indictment, all to be served
24 concurrently.

25 Upon defendant's release from imprisonment, he is

1 placed on supervised release for a term of five years. This
2 consists of three years on each of the Counts 1 through 4
3 and five years on Counts 5 through 10, all such terms to run
4 concurrently under the following terms and conditions:

5 1. The defendant shall comply with the rules and
6 regulations of the U.S. Probation Office and General Order
7 318 and 01-05;

8 2. Defendant shall refrain from any unlawful use
9 of a controlled substance. The defendant is ordered to
10 submit to one drug test within 15 days of release from
11 imprisonment and at least two periodic drug tests
12 thereafter, not to exceed eight tests per month, as directed
13 by the probation officer;

14 3. The defendant shall participate in an
15 outpatient substance abuse treatment and counseling program
16 that may include urinalysis, saliva and/or sweat patch
17 testing, as directed by the probation officer. The
18 defendant is ordered to abstain from using illicit drugs,
19 alcohol, and abusing prescription medications during
20 supervision;

21 4. As directed by the probation officer, the
22 defendant shall pay all or part of the costs of treating
23 defendant's drug dependency and/or alcohol dependency to the
24 aftercare contractor during the period of community
25 supervision under 3672. The defendant shall provide payment

1 and proof of payment as direct by the probation officer;

2 5. During the period of community supervision,
3 the defendant shall pay a special assessment, fine, and
4 restitution in accordance with this judgment if not
5 previously paid;

6 6. The defendant shall truthfully and timely file
7 and pay taxes owed for the years of conviction and shall
8 truthfully and timely file and pay taxes during the period
9 of community supervision. Further, defendant shall show
10 proof to the probation officer of compliance with this
11 order;

12 7. The defendant shall not be employed or
13 engage, as whole or partial owner or otherwise, in any
14 business that involves real estate, loan programs,
15 telemarketing activities, investment programs or any other
16 business involving the solicitation of funds or cold-calls
17 to customers without the express written approval of the
18 probation officer prior to engagement in such employment.
19 Further, defendant shall provide the probation officer with
20 access to any and all business records, client lists, and
21 other records pertaining to the operation of any business
22 owned, in whole or in part, by the defendant as directed by
23 the probation officer;

24 8. The defendant shall notify the Department of
25 Real Estate and the Department of Appraisers of his

1 conviction within 30 days of this judgment, and shall
2 provide proof of compliance to the probation officer;

3 9. As directed by the probation officer, the
4 defendant shall apply monies received from income tax
5 refunds, lottery winnings, inheritance, judgments and any
6 anticipated or unexpected financial gain to the outstanding
7 Court-ordered financial obligation; and

8 10. Defendant shall cooperate in the collection
9 of a DNA sample from his person.

10 The Court having sat through trial of the
11 defendant's case disagrees with the probation officer's
12 recommendation for a sentence at the low end of the Advisory
13 Guidelines. As I have indicated in the tentative ruling,
14 nearly all of the government's arguments in support of a
15 high-end sentence apply in Mr. Bennett's case.

16 Certainly the fact that the proof may not show by
17 a preponderance that defendant received over a million
18 dollars personally -- I believe that is certainly one good
19 argument and very much an argument in support of a high-end
20 sentence along with all the others that show his
21 responsibility in this scheme.

22 The Court has previously advised the defendant of
23 his right of appeal, and the clerk is holding that notice to
24 be filed.

25 We have some other motions that the defendant has

1 filed. As indicated in the tentative ruling, those motions
2 are denied.

3 Mr. Bennett, do you have anything else that you
4 wish to add?

5 MR. BENNETT: Yes, just one thing. You indicated
6 that you were sentencing me on Counts 1 through 4 and Counts
7 5 through 10 on the Indictment. Those weren't the charges
8 that you charged the jury.

9 So what specifically am I being sentenced for?
10 What are the Counts 1 through 4 that you are sentencing me
11 for, and what are Counts 5 through 10?

12 THE COURT: I think we have covered that
13 sufficiently, sir.

14 MR. BENNETT: I don't think so.

15 THE COURT: Mr. Sagel, is there anything else?

16 MR. SAGEL: No, Your Honor.

17 THE COURT: All right, that concludes the
18 proceedings at this time. We stand adjourned.

19 *(Proceedings were adjourned.)*

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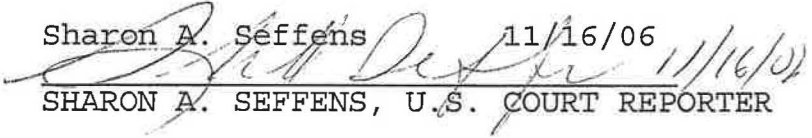
CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: November 16, 2006

Sharon A. Seffens

11/16/06


SHARON A. SEFFENS, U.S. COURT REPORTER

