

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

UNITED STATES OF AMERICA) FILED 97 FEB 26 AM 10:13
)
 v.)
) Criminal No.: 96-8043-002-
 AGOSTINO J. MONASTRA,) CR-RYSKAMP
)
 Defendant.) Violation: 15 U.S.C. § 1

GOVERNMENT'S OPPOSITION TO DEFENDANT'S
MOTION TO SUPPLEMENT RECORD ON APPEAL

By motion served February 21, 1997, defendant Monastra moved this Court to include in the record on appeal the transcript of an arraignment in an unrelated case, United States v. Dean, (S.D. Fla, No. 93-8106-CD-NCR.) The government opposes this motion on the ground that the transcript is not part of the record of this case. The transcript was not before the Court when it sentenced defendant, or at any other time, as defendant states in his Memorandum of Law in Support of Defendant's Motion to Supplement Record at p. 3-4. Defendant asserts that the Court would have been interested in reading the transcript at sentencing if it had been available, but the transcript was not introduced into evidence or otherwise provided to the Court, and accordingly it is not part of the record of the case.

We do not doubt that the court of appeals can take judicial notice of the transcript, if it chooses to do so. Defendant may wish to explore whether the court of appeals will permit him to lodge a copy of the transcript with that court. However, the

transcript should not be presented to the court of appeals as part of the record of this case.

CONCLUSION

For the foregoing reasons, the defendant's motion to supplement the record should be denied.

Respectfully submitted.

_/s/_____

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DATE: February 25, 1997