

12/14/87

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

Plaintiff, :

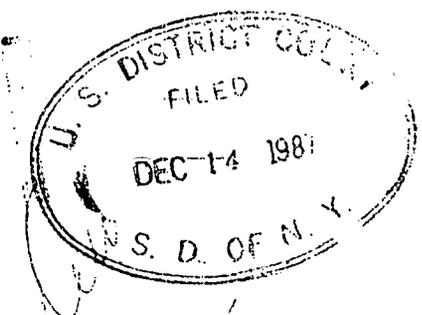
-against- :

IVAN F. BOESKY, :

Defendant. :

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87 CR 378(MEL)



DEFENDANT'S MEMORANDUM ON SENTENCING

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	87 CR 378
)	
IVAN F. BOESKY,)	
)	
Defendant.)	
_____)	

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DEFENDANT'S MEMORANDUM ON SENTENCING

Introduction and Summary.

Ivan F. Boesky is before the Court for sentence upon his plea of guilty to an information charging that he conspired to make false filings (Schedule 13D and amendments) with the Securities and Exchange Commission (SEC) concerning ownership of securities of Fischbach Corporation. His guilty plea is a part of his settlement with the U.S. Attorney and the SEC. That settlement includes: (1) consent to a civil injunction and an SEC administrative order that bars him for life as a securities professional; (2) his payment of \$50 million in personal funds to an escrow account to settle claims against him and the entities that he managed; (3) his payment of an additional \$50 million in personal assets as a civil penalty; and (4) his cooperation with the U.S. Attorney and the SEC, as detailed below and in the U.S. Attorney's Sentencing Memorandum.

The Court faces a most difficult task. Ivan Boesky has acknowledged his part in serious misconduct in the financial markets. This case has been the most highly publicized in recent years. The clamor for vengeance has been incessant.

Four major factors counterbalance the calls for revenge. First, Ivan Boesky voluntarily initiated contact with the U.S. Attorney. He made a proffer

Boesky substantiated all parts of his proffer. In addition, his actual cooperation extended far beyond the proffered evidence; he provided law enforcement authorities with additional information of incalculable value.

As the Court can fairly conclude from the Government's sentencing memorandum, Mr. Boesky's cooperation is unprecedented. He revealed that his own misconduct was but a part of a nationwide cancer eating at our securities and financial markets. He enabled the Government to interdict ongoing crimes that would otherwise have gone undetected and unpunished. The evidence and insights that law enforcement authorities gained through his cooperation are likely to play an important role in aiding them

to restore the integrity in our domestic and international securities markets.

Second, Mr. Boesky has already paid a devastating price for his wrongs, irrespective of the sentence imposed by this Court. He has humiliated the children he nurtured and the family he loves. He is permanently barred from the profession to which he devoted his adult life. He has forfeited virtually all of the wealth he worked to accumulate. He is mired in civil litigation which, even after the payment of \$50 million in restitution (plus \$50 million in civil penalties), will probably bankrupt him. He will be a witness in civil, regulatory, criminal, and perhaps congressional, hearings for years to come. He has forfeited his license from the Michigan State Bar. He has permanently tarnished the public reputation he sought. He has no business or social life left. He has been rejected by the charitable groups he supported and helped to fund. He must start life anew.

Third, Ivan Boesky is not the monster portrayed in the press. He has no prior record of criminal wrongdoing. He has been a devoted father and family man. He has actively pursued individual and organized charitable activities since he was a teenager. Over the years, he built an extraordinary record of philanthropy for the benefit of both individuals and organizations.

Fourth, Ivan Boesky is remorseful and repentant. He came forward long before charge, arrest or indictment to acknowledge his guilt. He has spent countless hours cooperating with the Government. He used virtually all his assets to make restitution to those who may be found to have been injured by his conduct. He is obtaining psychiatric treatment and pursuing intense religious study. Letters from friends and relatives attest to his soul-searching reexamination of his life and his deep remorse.

Ivan Boesky, a complex and imperfect human being, deserves consideration for the good acts he has practiced throughout his life. He deserves credit for the terrible penalties and humiliation that society has already imposed and will continue to impose for the rest of his life. Most significantly, he deserves this Court's recognition of the extent and vital importance of his extraordinary voluntary cooperation with law enforcement authorities. Unfortunately, that cooperation fuels society's cry for vengeance. Retribution on the basis of uninformed cries for vengeance and fueled by condemnation of cooperation can only prevent others from cooperating to the detriment of our criminal justice system.

Many individuals who know Ivan Boesky have written urging the Court to impose an alternative sentence involving minimal incarceration. We hope the Court will recognize that --

retribution_ aside -- societal interests would best be served by a mixed sentence involving a short prison term and extensive court-ordered community service. Ivan Boesky has been publicly humiliated and banished. He is a broken man, barred for life from regulated securities businesses. There is no prospect of repetition. Others surely have been, and will continue to be, deterred by the ignominy of his fall. His cooperation far surpasses the cooperation of others who have received mixed, alternative, or suspended sentences. A substantial period of enforced public service would benefit society. We have submitted with this Memorandum, and summarized below for the Court's consideration, an alternative proposal for court-ordered community service, as part of a split sentence under 18 U.S.C. § 3651 (1982 & Supp. 1985).

Under the proposal, Mr. Boesky would spend a minimum of 3,000 hours of unpaid community service over an extended period of supervised probation at the Community Food Bank of New Jersey, a Newark organization founded in 1980 by the Archdiocese of Newark. The Food Bank distributes free food to approximately 100,000 disadvantaged and elderly people each month. Mr. Boesky's principal assignment would be in the Food Bank warehouse, working with teenagers referred to the Food Bank program from either drug and alcohol programs or community mental centers for emotionally disturbed young adults. Kathleen DiChiara, the director of the program, has interviewed Mr. Boesky and agreed to

accept him into that program, supervise his performance, and report, as necessary, to the court probation authorities.

This community service program, combined with a short-term incarceration, would be appropriate punishment in light of the other punishments already imposed on Mr. Boesky, his cooperation, his previous record of philanthropic service, and his remorse.

Ivan Boesky's plea, ultimately, is a simple plea for human understanding and mercy, as well as recognition of his unique cooperation. He is guilty. He begs the Court's compassion in sentencing so that he may gather the pieces of his shattered life and be a productive citizen.

I. IVAN BOESKY'S COOPERATION WITH THE GOVERNMENT HAS BEEN EXTRAORDINARY.

Ivan Boesky's cooperation with the Government has been unique and extraordinary. When he approached the U.S. Attorney to initiate the process that led inevitably to his sentencing, he had not been trapped by any Government investigation. He had numerous factual and legal defenses and the resources to fight the Government for years. His decision to cooperate was fully informed. With full awareness of the terrible consequences, he himself made the decision to approach the Government, plead guilty to a felony, forfeit substantially all of his assets, and cooperate. Even the U.S. Attorney has acknowledged that it was an extraordinary decision. In a May 1987 interview, United States Attorney Rudolph Giuliani described Ivan Boesky's decision:

"Without being arrested, indicted, or convicted, and easily a year away from any realistic period in which he could've been convicted, Boesky agreed to confess to the crimes he committed, cooperate with the government and return more money than the SEC could've possibly recovered from him had we convicted him and taken the full limit to trial. A lot of people defrauded by him never would've gotten their money back because we would've only been able to prove a small portion of the criminality Boesky later revealed to us. I can't guarantee that we can convict anybody. And in Ivan's case, we were just at the beginning of investigating him. I believe we would've made a case on him, but I can't tell you how good the case would've been. There's at least a realistic chance that Boesky never would've been convicted had he not agreed to plead guilty. If

he was convicted, it would've happened two years from now. Many of the leads the government had to obtain for other convictions would've evaporated. And nothing says that after he was convicted he would've been inclined to cooperate." Collins, Gotcha! New York Magazine, May 25, 1987 at 30.

Ivan Boesky, through counsel, initiated contact with the SEC and the U.S. Attorney's Office At that time, the SEC had issued subpoenas as an initial step in an investigation of Mr. Boesky based on information provided by Dennis Levine, who had agreed to plead guilty on June 5, 1986 and began to cooperate with the Government. No documents had been produced. Neither Ivan Boesky nor any of his employees had testified in that SEC investigation. To the best of our knowledge, no grand jury investigation of Mr. Boesky was then pending.

Had he chosen to defend against the SEC investigation, that investigation and resulting litigation could have continued for years. Indeed, the production and analysis of millions of Boesky documents without Mr. Boesky's cooperation could by itself have taken years.

If charges had ultimately been initiated, they would almost certainly have been limited to the Boesky-Levine relationship. Levine, the Government's only witness with first-hand knowledge, would not have been a credible witness, since he had confessed to perjury, obstruction of justice, tax evasion, and securities fraud.

Iyan Boesky might have been able to mount a successful defense, given his then-enormous financial resources, the ambiguous state of the law, and Levine's previous perjury and obstruction of justice. At worst, Mr. Boesky would have remained in business for years before facing limited criminal charges. At best, he would have successfully defended SEC and criminal charges.^{1/} In either event, the Government would have invested years of investigative and enforcement effort and would not have gained access to the breadth of information that he provided through his early and complete voluntary cooperation.

Mr. Boesky chose not to resist the SEC investigation. He quickly reached interrelated plea and settlement agreements with the SEC and the U.S. Attorney. Despite the complexity of those agreements and the need for formal approval from both the SEC and the U.S. Attorney, the agreements were executed

His

early cooperation saved the Government years and tens of thousands of hours of investigative effort.^{2/} It also enabled the

^{1/} N.Y. Times, December 17, 1985, at D1, col. 6.
(Thomas C. Reed acquitted on insider trading indictment.)

^{2/} At the time of Boesky's April 23, 1987 guilty plea, U.S. Attorney Rudolph Giuliani stated that without Boesky's cooperation, it would have taken the Government two years to accomplish as much on its own "if we could have gotten to that stage." N.Y. Times, April 24, 1987, at D2, col. 4.

Government to stop or impede widespread violations of the federal securities laws and to investigate and prosecute numerous crimes that would have otherwise escaped detection.^{3/}

Mr. Boesky's early cooperation also made it possible for the Government to use him to collect evidence. An Assistant U.S. Attorney requested him to make and tape record telephone calls and to arrange and tape record meetings with other persons as directed by Government investigators in light of Mr. Boesky's disclosures. Although fearful for his safety, he complied with the Government's requests. He placed taped telephone calls and wore a body wire to meetings with other persons at the direction of Government agents. These activities were undertaken during a period in which the subjects of his efforts might easily have learned of his cooperation through an inadvertent leak. He was genuinely afraid for his safety. At that point in the investigation, Government agents were sufficiently concerned by the possibility of retaliation to offer him physical protection.

Surreptitious evidence collection of the nature requested by the Government is not an easy or simple matter. It is difficult to get sophisticated professionals in the securities

^{3/} U.S. Attorney Rudolph Giuliani stated: "I think it is fair to say, without [Boesky's] cooperation there would be substantial people, already convicted, who would be involved in ongoing fraudulent transactions." Associated Press, April 24, 1987.

business to discuss and corroborate their past wrongful acts without arousing suspicions. The encounters have to be carefully planned with detailed knowledge of the offense, the targeted individual, and the relationships between the participants. Mr. Boesky himself had to provide most of the information used to plan these encounters. He also had to act out his role to perfection to avoid arousing suspicions.

Despite these difficulties ~~and his fears for his~~ safety, Ivan Boesky undertook each evidence collection task requested by the Government. In no case did he warn the targeted individual of the Government's surveillance. In each case, he successfully completed the assignment. As a result, the Government secured immediate corroboration of several of his important revelations. This evidence substantially strengthened the Government's cases.

To the best of our knowledge, when Mr. Boesky began cooperating, there was then pending no active Government investigation of any of

Nor was there any suspicion of the persons who have pleaded guilty, have been indicted, or are under investigation by the U.S. Attorney's Office and the SEC.

Without his cooperation, Government investigators would never have unearthed what he told them in his very first

interview session.

The Boesky/Jefferies

transactions were regular on their face and would have been unlikely to trigger Government interest without Boesky's testimony.

Searching for these wrongs without help or guidance in Boesky's millions of documents would have been impossible.

Ivan Boesky's cooperation was exceptionally extensive, both in terms of his personal efforts and the quality and quantity of the information he furnished to the Government. He made cooperation his highest priority and devoted himself to providing the fullest possible information to the Government. His efforts have continued for fifteen months, and are not yet complete. The information he provided to the Government went far beyond the proffer that formed the basis of his negotiated plea bargain.

He provided the Government with a roadmap to pervasive misconduct by Wall Street professionals in domestic and international securities market places. This information exposed corrupt behavior at the highest levels of Wall Street and in

international securities markets on a scale that Government investigators had never imagined. Boesky's information detailed a pervasive disregard for the federal securities laws by some of the nation's largest investment banking firms.

He revealed the misuse of foreign securities markets to conceal securities law violations.^{4/} He disclosed substantial misconduct in one of the largest takeover transactions in British history.^{5/} All of this information was previously unknown to the Government. Without Ivan Boesky's cooperation, it is unlikely that the Government would ever have obtained comparable information. Significant continuing abuses in the securities markets would have gone undetected and unpunished.

Mr. Boesky's revelations initiated Government investigations of numerous individuals and transactions that were not previously subject to Government scrutiny. Faced with the strength of the evidence he provided, some of those wrongdoers quickly pleaded guilty and cooperated with Government

^{4/} See United States v. Michael Davidoff, 87 Cr. 78 (S.D.N.Y.); SEC Litigation Release No. 11390 (April 7, 1987).

^{5/} See Letter from the United Kingdom Crown Prosecution Service, attached to the Presentence Report.

authorities. Martin A. Siegel, former head of the Kidder, Peabody & Co., Incorporated, Mergers and Acquisitions Department, pleaded guilty on February 13, 1987.^{6/} Boyd L. Jefferies, head of Jefferies & Company, Inc., the largest over-the-counter market-maker in the country, pleaded guilty on April 16, 1987.^{7/} Both immediately began cooperating with the Government, triggering several additional criminal and civil investigations, including the criminal investigations of Robert Freeman of Goldman, Sachs & Co., Richard B. Wigton of Kidder Peabody, & Co., Inc., and Timothy Tabor, formerly of Merrill Lynch, Pierce, Fenner & Smith, Inc. While we are necessarily unaware of all the indirect fruits of Boesky's cooperation, the indirect fruits are obviously enormous and likely to continue to grow in the future.

Information that Boesky provided concerning the contest between Guinness PLC and Argyll Group PLC for control of Distillers Company PLC enabled the SEC to demonstrate dramatically the value of information-sharing agreements among international securities enforcement authorities. Based on information that Boesky gave to the SEC and the SEC gave to U.K. authorities, they

^{6/} United States v. Martin A. Siegel, 87 Cr. 118 (S.D.N.Y.); SEC v. Martin A. Siegel, No. 87 Civ. 963 (S.D.N.Y.); SEC Litigation Release No. 11354 (Feb. 13, 1987).

^{7/} United States v. Boyd L. Jefferies, 87 Cr. 339 (S.D.N.Y. April 16, 1987); SEC v. Boyd L. Jefferies, No. 87 Civ. 1804 (S.D.N.Y.); SEC Litigation Release No. 11370 (March 19, 1987).

launched the largest securities investigation in British history, prompting numerous resignations at Guinness and its investment bankers, as well as five criminal prosecutions, including Ernest Saunders, former Chairman of Guinness PLC; Roger Seelig, former corporate finance director of the London investment banking firm of Morgan Grenfell & Co., Ltd.; Gerald Ronson, Chairman of the Heron Group, one of the largest private firms in Britain; Sir Jack Lyons, former U.K. advisor to Bain & Co. of Boston, Mass.; and Anthony Parnes, a former London stockbroker arrested in the United States. Mr. Boesky is cooperating (with the consent of the U.S. Attorney and the SEC) with U.K. authorities in their continuing criminal investigation.^{8/} U.S. authorities are likely to benefit substantially in the future as Britain and other nations reciprocate by providing information concerning potential violations of U.S. laws.

Mr. Boesky's cooperation contributed to the Government's ability to achieve reforms in the administration of the federal securities laws. Legislation to define "insider trading" is pending in Congress and has been endorsed by the SEC. Additional legislation to curb abuses in the corporate takeover area is also pending in Congress. Jefferies & Company and Kidder, Peabody & Co. Incorporated are subject to new court-imposed

^{8/} See Letter from Crown Prosecution Service, attached to the Presentence Report.

compliance procedures. Kidder, Peabody & Co. Incorporated disbanded its arbitrage operations.^{9/} Numerous Wall Street firms have strengthened their securities law compliance efforts. These reforms extend far beyond the specific conduct revealed by Mr. Boesky, but the momentum necessary to achieve them resulted in large measure from his cooperation in providing information about previously undetected securities law violations.

Ivan Boesky spent hundreds of hours preparing for and attending interview sessions with at least sixteen different Government investigators from the SEC, the U.S. Attorney's Office, and the U.S. Postal Service. In these sessions Boesky identified and assisted the Government in developing more than criminal and civil cases, resulting to date in more than \$34 million in disgorgements and civil penalties, in addition to his own guilty plea, SEC injunctive settlement, administrative consent to be barred from the regulated securities business, consent to loss of his license to practice law, and \$100 million payment of personal assets in disgorgement and civil penalties.

^{9/} Kidder, Peabody entered into a settlement with the SEC pursuant to which Kidder, Peabody consented to a civil injunction, disbanded its arbitrage department, agreed to disgorge approximately \$13.6 million, paid a civil penalty of \$11.6 million, and consented to the imposition of an SEC administrative order. SEC v. Kidder, Peabody & Co., No. 87 Civ. 3869 (S.D.N.Y. June 4, 1987).

Boesky's interview sessions with U.S. Government agents have been continuing for _____ and are not yet complete. The interviews have covered his personal background, his business history, the philosophy and technicalities of the merchant banking and arbitrage businesses, the functions performed by his staff of nearly 100 employees, his dealings with dozens of Wall Street figures, the financing of his arbitrage corporations and partnerships, the details of hundreds of merger and takeover transactions, and the specifics of thousands of transactions in over 100 different stocks. In these sessions, he repeatedly volunteered valuable information suggesting new avenues of inquiry to investigators. He also shared with Government investigators his educated guesses and suspicions about wrongful conduct in the securities market place. While the latter information may not lead to immediate prosecutions, it should provide useful guidance to investigators in shaping future enforcement efforts.

From the time that his cooperation first became public, Ivan Boesky has also actively encouraged his employees to cooperate fully with the Government. As a result, at least sixteen current and former employees have cooperated with the Government, providing extensive additional information to investigators. These employees have corroborated information he supplied, described the details of transactions that he directed or approved, and revealed their own contacts with others involved in Government investigations. This additional information would not

have been available to the Government without Boesky's cooperation and the encouragement he gave his employees in cooperating.

He has also maintained a skeleton staff at IFB Managing Partnership, L.P., primarily for the purpose of assisting in responding to Government information requests and in producing documents. This staff has greatly enhanced the speed and quality of ~~the information flowing to~~ the Government.

In the course of his cooperation, he arranged for hundreds of thousands of pages of documents in the possession, custody and control of his entities to be made available to the Government. He arranged for counsel to assist the Government (at no cost to the Government) in cataloguing, indexing, and producing more than a half-million pages of documents. Boesky repeatedly called investigators' attention to the most sensitive and informative of these records, the significance of which would not have been apparent without his explanations. His assistance in collecting, organizing and explaining these documents saved investigators thousands of hours and made it possible for investigators to understand and obtain admissible evidence of transactions which would otherwise have escaped Government attention.

Ivan Boesky's cooperation thus provided enormous immediate benefits to the Government. It relieved the Government of the time, cost, and manpower that would have been required to prosecute Boesky. It provided the Government with a tremendous

head start on investigations of other wrongdoers, an advantage that was so overwhelming that several of those wrongdoers quickly determined to cooperate, saving the Government yet more time, cost, and manpower. Mr. Boesky's cooperation gave the Government the momentum and publicity to interdict some crimes and deter other crimes.

Thus, simply from the viewpoint of effort and expense, Boesky's cooperation has been extraordinary and invaluable to the Government. Boesky, however, has paid a high price for his extensive cooperation. Although the out-of-pocket expense has been substantial, there have also been significant psychological and emotional costs. He has been vilified in the press almost daily for fifteen months, and his cooperation exacerbated the vilification. His cooperation has made him an outcast among many of his former friends and business acquaintances. After years of an active business, social and philanthropic life, he has been banished and relegated to a near solitary existence. Most of the charitable organizations that he once supported generously have refused to permit him to perform voluntary community service.

Ivan Boesky's cooperation has left him in a state of limbo. He has been unable to commence building a new life. He has been isolated and emotionally incarcerated throughout the fifteen months he has spent cooperating.

Ivan Boesky Should Receive Extraordinary Credit
For His Cooperation.

As demonstrated above, Ivan Boesky's early voluntary cooperation conferred many unprecedented benefits upon law enforcement authorities. He evidenced substantial courage and fortitude in initiating such cooperation. It was certainly not in his economic interest and he has paid a monumental price in public humiliation. Such extensive and personally costly cooperation shows his genuine remorse for his unlawful acts and his commitment to do as much as humanly possible to correct the consequences of the misdeeds in which he and others participated.

In our enormously complex international financial world, financial crimes are easily hidden, and wealthy wrongdoers have vast resources to fight investigations and criminal charges. Society must encourage others to come forward and cooperate with Government authorities. Only through cooperation will financial crimes be identified and prosecuted. Only through cooperation will scarce governmental investigatory resources be sufficient to halt abuses.

Society must also encourage those who cooperate to do more than the minimum necessary to comply with plea agreements. Had Boesky merely delivered what he proffered to the Government cooperation would have been extraordinary. In fact, however, his cooperation went far beyond the proffer upon which his plea agreements were based.

Mr. Boesky should thus receive extraordinary credit for his cooperation. The Court should recognize that his cooperation was far more extensive than the minimum necessary for him to comply with his plea agreements. The Court should also recognize that his cooperation was earlier, more voluntary, more extensive, and more valuable than Dennis Levine's cooperation. Levine perjured himself, suborned the perjury of others, and obstructed justice until his arrest. After arrest, he claimed his Fifth Amendment privilege and he and his counsel publicly denied his crimes. He resisted the SEC's motion for preliminary injunction. Only after his assets were frozen by judicial order and conviction was inevitable did Levine begin to cooperate. Levine's belated cooperation nevertheless earned him between sixty percent and eighty percent credit off of the sentence he would otherwise have received,^{10/} and ninety percent credit off the maximum 20-year sentence on the four counts to which he pleaded guilty.

It would be unfair if Ivan Boesky should receive less credit for his cooperation, which was more voluntary, far more extensive, and immeasurably more valuable to the Government than Levine's cooperation. If that were to happen, it would convey

^{10/} In sentencing Dennis Levine, Judge Goettel stated that Levine's "offense, standing alone, is such as to warrant a sentence of five to ten years' imprisonment," but sentenced Levine to two years imprisonment in light of his cooperation. Transcript of Sentencing, United States v. Dennis Levine, 86 Cr. 519 (S.D.N.Y. February 20, 1987).

the message_to other potential criminal defendants and their counsel that little is to be lost by stonewalling Government enforcement efforts and little is to be gained by immediate voluntary cooperation with Government inquiries.

II. **IVAN BOESKY HAS PAID A DEVASTATING PRICE FOR HIS WRONGDOING.**

As a result of his unlawful conduct, Ivan Boesky has lost everything that he has worked a lifetime to achieve. He offered his resignation to the Michigan State Bar and has been voluntarily disbarred. He agreed to a voluntary lifetime bar as a securities professional. His arbitrage partnerships have been turned over to a liquidating partner and largely liquidated. His personal \$13 million investment in those partnerships is worthless. He resigned as Chairman of Cambrian & General PLC, the English investment trust he helped to revitalize. He also resigned as Chairman of Northview Corporation, a California hotel and communications business.

He paid \$100 million -- \$50 million to an escrow fund and \$50 million in civil penalties -- which together with his now-worthless investment in his business and his legal expenses represented virtually his entire net worth. United States Attorney Giuliani has acknowledged not only that the \$100 million paid to the Government destroyed Boesky's wealth but also that it represented a greater monetary sanction than would have been imposed upon conviction after a contested trial.

"It'll [the financial settlement] come very close to wiping him out. It will not leave him or his family without a home. But Boesky will lose if not all, then the overwhelming majority of the ill-gotten gains that he received -- which is substantially more than

happens to people whom we convict after a trial." Collins, Gotcha! New York Magazine, May 25, 1987 at 31.

Boesky faces lawsuits claiming hundreds of millions of dollars in damages, some of which assert novel legal, and attenuated factual, theories.^{11/} He lacks the wherewithal to pay the likely costs of defense, let alone possible damages beyond the \$50-million-escrow fund. He will likely spend years of his life as a witness in civil, regulatory, criminal, and possibly congressional proceedings. Personal bankruptcy is likely.

He has resigned from all of the boards and committees on which he served, and the prestigious social clubs to which he belonged. Many former friends and acquaintances shun him in chance public encounters.^{12/} He has been forced to terminate the Harvard Public Health Fellowship created in his name^{13/} and the Princeton University Center of International Studies he had

^{11/} Ivan Boesky is a defendant in 19 private civil lawsuits claiming losses, restitution, treble damages, punitive damages, attorneys' fees, and costs far in excess of \$1.7 billion. One case, filed by FMC Corporation, claiming approximately \$225 million in damages, has already been dismissed for failure to state a claim. An appeal is pending in the United States Court of Appeals for the Seventh Circuit. Another case, a class action, captioned Sperber v. Boesky, No. 86 Civ. 9232 (6L6), alleging RICO violations, was recently dismissed by Judge Goettel.

^{12/} Letters from Joseph Papp, attached as Exhibit 1 and Chris Gersten attached as Exhibit 2.

^{13/} See Letter from Jay A. Winsten, Ph.D, attached as Exhibit 3.

sponsored.^{14/} He voluntarily removed his name from the library he helped to build for the Jewish Theological Seminary. Despite his years of hard and successful work for the UJA Federation, his offers of volunteer community service were rejected by a Jewish agency for the blind and other organizations. He was ultimately accepted as an unpaid counselor for homeless men.^{15/} He was accepted on the condition that he work under an assumed name and under pain of termination if there is the slightest press coverage.

The public recognition that Ivan Boesky sought and achieved has turned especially bitter. He has been vilified in the press every week, and in some weeks every day, for fifteen months with no end in sight. He has been subjected to vicious parodies on the "Saturday Night Live" television program and in nationally syndicated cartoon strips. See Exhibit 6. Photographers on Wall Street's sidewalks sell group pictures including a six-foot cardboard caricature of Boesky. See Exhibit 7. His name has -- unfairly -- become synonymous with all that is wrong with the securities markets. He has been hounded and harassed by reporters and pushed, shoved and physically abused by photographers. Neither he nor his family can suffer in peace.

^{14/} See Letter from Henry S. Bienen, attached as Exhibit 4.

^{15/} See Letter from the Rev. Charles P. Pridemore, Assistant for Pastoral Ministries, attached as Exhibit 5.

Ivan Boesky's fall does not excuse his wrongs, but it has been punishing. His power has become impotence. He has lost his wealth. His fame has yielded horrible notoriety. He has been abandoned by all but a few remaining friends. He has damaged precious family relationships. He is now largely alone and faces an uncertain future.

III. IVAN BOESKY LED A PRODUCTIVE LIFE.

Ivan Boesky came from a middle-class background in Detroit. He started working at age thirteen. He was unable to establish himself as a lawyer and initially had trouble finding a job in the securities industry.

He married Seema in 1962 and she has been his wife for 25 years. They raised four children. They generously supported other members of Ivan Boesky's family. Ivan Boesky was, and continues to be, a good father. His misconduct has hurt his family and he is trying to make amends.

From his early days in Detroit, Ivan Boesky has also devoted himself to less-fortunate people. He has given of his time, his experience, and his money to educational, religious, cultural, and medical charities. He has helped numerous people -- relatives, friends, employees, and strangers. Over many years he has compiled an exemplary record of public and private community service.

Ivan Boesky Has Been A Devoted Father And Supportive Family Member.

Ivan Boesky is a devoted and loving father. Boesky's greatest penalty lies in the suffering he has caused his family. He has been "torn by the agony of explaining his conduct to his four children, in whom he had tried to instill high moral

values."^{16/} Seema, his wife, wrote to the probation officer:

"Ivan has been a model father and has been instrumental in setting the highest standards of ethics and morality in our home. Therefore, the recent scandal is an aberration in his general conduct which our family has found difficult to understand. He has taught us philanthropy, religion and he has always been an observant Jew, encouraged truth and honesty regardless of consequences"^{17/}

Ivan Boesky—found it painful, but morally necessary, to admit his wrongs to his children. The children are confused and hurt. Since last fall, Ivan Boesky has spent as much time as possible helping his children -- especially his youngest children -- cope with the consequences of his wrongdoing.^{18/}

Mr. Boesky has long supported other members of his family. His sister suffered from disease more than 10 years ago. He has given her moral support, comfort and virtually all her continuing financial support for more than a decade.^{19/} He has also helped his 83-year old mother, who suffers from heart

^{16/} Letter from Mr. Boesky's psychiatrist, appended to the U.S. Probation and Parole Office Presentence Investigative Report, hereinafter "Presentence Report."

^{17/} Letter from Mrs. Seema Boesky, attached as Exhibit 8.

^{18/} Letters from educators and others who have worked with Mr. Boesky's children are attached to the Presentence Report. See letter from Charles D. Lieber, attached as Exhibit 9.

^{19/} Letter from Ms. Suzanne Davis, attached as Exhibit 10.

disease. She writes that her son "has always been a very devoted family man."^{20/} He has also provided long-term financial support to other family members.

Ivan Boesky's devotion to his family, and especially his children, is a strong theme that recurs throughout the letters written to the Court on his behalf. Daniel Honigman, a friend for 30 years, summarized this theme:

"Although I know that superlatives are suspect in a character reference of this nature, I, nevertheless, must say that I have never known anyone who has been more a caring, kind, considerate and devoted family man and father, than Ivan."^{21/}

Ivan Boesky Has Repeatedly Helped Employees And Strangers.

Mr. Boesky has repeatedly reached out to help less fortunate people. Judge Norman L. Lippitt of the Michigan Circuit Court, who has long known Mr. Boesky, writes:

"Throughout Ivan's years of success, he always had time for old friends, acquaintances and young people, regardless of their relative unimportance in Ivan's world, and regardless of how busy he was. Through the years, story after story has come back to me about how reachable Ivan was and how he always had time for everyone. . . ."^{22/}

^{20/} Letter from Mrs. Helen Boesky, attached as Exhibit 11.

^{21/} Letter from Daniel M. Honigman, attached as Exhibit 12.

^{22/} Letter from Michigan Circuit Court Judge Norman L. Lippitt, attached as Exhibit 13.

The examples of Boesky's reaching out to help other less fortunate people -- friends, employees, and strangers -- are numerous. Mr. Boesky routinely provided extraordinary benefits and individual help to his employees. He paid the educational expenses of every employee who attended school of any kind.

Murry Silver, ~~a long-term employee~~ whom Mr. Boesky maintained through ~~a lengthy period of illness~~ and rehabilitation that other employers might not have tolerated, has recounted the good salaries, insurance, and health benefits that Boesky as a sole proprietor provided to his employees.^{23/}

Mr. Boesky first met Nancy Hollander when she worked in a bank after graduating from business school. He helped her find better employment on Wall Street. When another job did not work out well, he hired her as a research assistant. He "contributed to [her] professional growth during the time [she] worked in the arbitrage research department" and advised her with respect to her subsequent employment after he began to liquidate his business as required by his SEC agreement. She describes how he made an effort to ease her grief by driving several hours to attend the funeral of her father, whom Mr. Boesky had never met.^{24/} He

^{23/} Letter from Murry Silver, attached as Exhibit 14.

^{24/} Letter from Nancy Hollander, attached as Exhibit 15.

has also spent countless hours counselling other employees, helping them through difficulties, and assisting them in finding new employment.

Mr. Boesky hired Johnnie Ray as a driver after the man was fired from a previous job. He helped Johnnie Ray by teaching him job responsibility, visiting his family, and helping him to purchase the first and only house he has owned. Johnnie Ray obviously struggled to write in longhand that Mr. Boesky had treated him "as a friend and brother, who has given me support through good times and bad."^{25/}

Mr. Boesky's genuine personal respect and affection for his employees caused him great personal anguish about the consequences of his plea agreement upon his employees. He sought unsuccessfully the protection of immunity for all his employees. He has accepted broad responsibility for their acts on his behalf. His psychiatrist wrote:

"He remains concerned about his many loyal employees. Some of them have apparently served him for years. He accepted full responsibility for all of their activities pursuant to his direction. He is deeply trouble [sic] that some of them may have to plead guilty to crimes committed at his direction, or suffer other penalties. He wants to help each of his former employees find new employment, although he recognizes that his ability to do so is limited."^{26/}

^{25/} Letter from Johnnie Ray, attached as Exhibit 16.

^{26/} Letter from Mr. Boesky's psychiatrist, attached to the Presentence Report.

Ivan Boesky's personal and individual assistance was not limited to his business employees. He has a special interest in education and provided educational help for others. He sent Edwidge Emmanuel, a Haitian maid who worked in his home, to a school for medical technicians, enabling her to secure a medical technician's job at New York University. He also paid for her first vacation and offered to send her to medical school.^{27/}

Similarly, Haldan Connor describes how Ivan Boesky befriended him as an orphaned young man without profession or means. Mr. Boesky helped him find a stock exchange job. Thereafter Mr. Boesky encouraged him to go to law school, helped pay for his legal education and assisted him in establishing his practice. Today, Haldan Connor is a practicing lawyer in Connecticut.^{28/}

Ivan Boesky has also reached out to help complete strangers. Joseph Brady, a retired lieutenant of the New York Fire Department, wrote to the Court describing how Ivan Boesky responded to his letter and provided financial guidance to Mr. Brady and his family.^{29/} Mr. Brady's letter is all the more

^{27/} Letter from Edwidge Emmanuel, attached as Exhibit 17.

^{28/} Letter from Haldan E. Connor, Jr., attached as Exhibit 18.

^{29/} Letter from Joseph N. Brady, attached as Exhibit 19.

remarkable because, although Ivan Boesky and the retired officer corresponded and talked by telephone, they have never actually met.

Michigan Circuit Court Judge Norman Lippitt summarized this aspect of Ivan Boesky's life:

"[T]here are few among us who have repeatedly demonstrated a willingness to reach out to others without any possible benefit or remuneration to ourselves.—Ivan has spent a lifetime doing just that. I do earnestly hope that in sentencing Ivan for whatever mistake he has made, that his past good deeds will be given the weight they so richly deserve."^{30/}

Ivan Boesky Has Been A Dedicated Philanthropist.

Ivan Boesky has devoted a significant portion of his adult life to philanthropy. Beginning as a high school student, he has led or participated in fundraising drives for numerous charities and made substantial personal contributions. He was always "responsive to charitable requests above and beyond the call of duty."^{31/} Over the years, he has made significant personal commitments and financial gifts in four areas of special interest -- education, religious organizations, civic and

^{30/} Letter from Michigan Circuit Court Judge Norman L. Lippitt, attached as Exhibit 13.

^{31/} Letter from Harry E. Gould, Jr., attached as Exhibit 20.

cultural organizations, and medical research. Frank Brunetta, a former business associate, wrote:

"I have known Ivan professionally and personally. Particularly striking has been his sincere interest in helping others, his deep religious convictions, his involvement with a variety of educational, cultural and medical institutions. . . ." ^{32/}

In the educational arena he has given time and resources to educational organizations, including the Eagle Hill Foundation, ^{33/} Princeton University, ^{34/} Harvard University, ^{35/} Greenwich Country Day School, ^{36/} Jewish Teachers Training College, Yeshiva University, Jewish Public School Youth, the Horace Mann School, and the Taft School. He served as a director of the Eagle Hill School ^{37/} and as a trustee of Yeshiva University and the Greenwich Country Day School. ^{38/} He made a significant contribution towards a library to house the nation's largest

^{32/} Letter from Frank P. Brunetta, attached as Exhibit 21.

^{33/} Letter from Mark J. Griffin, attached to the Presentence Report.

^{34/} Letter from Henry S. Bienen, attached as Exhibit 4.

^{35/} Letter from Jay A. Winsten, Ph.D., attached as Exhibit 3.

^{36/} Letter from Peter G. Briggs, attached as Exhibit 22.

^{37/} Letter from Mark Griffin, attached to the Presentence Report.

^{38/} Letter from Peter G. Briggs, attached as Exhibit 22.

collection of Judaic writings at the Jewish Theological Seminary. He purchased and loaned to the Seminary a valuable collection of rare and original Jewish books, including fragments of Babylonian and Jerusalem Talmuds. He was in the process of funding a fellowship and a new building housing a Center for Jewish Life and Center of International Studies/Economics at Princeton University when his plea and SEC settlement intervened.^{39/}

Ivan Boesky has generously supported religious organizations and groups with his time and resources. As a teenager, he was President of the Junior Division of the Jewish Welfare Federation in Detroit, Michigan.^{40/} In New York, he labored in the ranks of the Wall Street Division of the UJA Federation and served as the Chairman of the Wall Street Division UJA Federation campaign. His success with the Wall Street campaign gave him the opportunity to serve as the General Chairman of the New York campaign, the highest lay-leadership position in the New York UJA Federation community. He "not only gave generously of his money but also of his time, energy and talents."^{41/} "[H]e consistently made pace-setting gifts, made numerous solicitations for support from others and gave generously of his time in chairing campaign cabinets, addressing fundraising events and

^{39/} Letter from Henry S. Bienen, attached as Exhibit 4.

^{40/} Letter from Daniel M. Honigman, attached as Exhibit 12.

^{41/} Letter from Ernest W. Michel, attached as Exhibit 23.

guiding the diverse operations of the Campaign."^{42/} Overall, he helped raise more than \$250 million for the UJA Federation. In all of his fundraising activities, he "was always generous with his home and his time as well as his money" and treated those with whom he worked with courtesy and respect.^{43/}

After reading a New York Times article about Claude Lanzmann, who had spent 10 years creating a Holocaust documentary ("Shoah"), Mr. Boesky called Mr. Lanzmann and arranged a meeting. Thereafter Mr. Boesky discussed the possibility of broadcasting the documentary with representatives of the Educational Broadcasting Service ("EBS"). He "decided to do everything within his power to have [Shoah] shown to the American public."^{44/} With EBS agreement, Mr. Boesky arranged for sponsors, including himself, to raise \$1.5 million to compensate Claude Lanzmann and finance production costs for the Shoah documentary broadcast on public television.^{45/} Those involved describe Mr. Boesky's efforts as "a public service of extreme magnitude."^{46/} Mr. Boesky also served as a member of the New York Holocaust Memorial Commission

^{42/} Letter from Morton A. Kornreich, attached as Exhibit 24.

^{43/} Letter from Judith Frede Love, attached as Exhibit 25.

^{44/} Letter from Charles I. Scher, attached as Exhibit 26.

^{45/} Letters from Claude Lanzmann, attached as Exhibit 27 and Robert Wechsler, attached as Exhibit 28.

^{46/} Letter from Charles I. Scher, attached as Exhibit 26.

and withdrew his name from nomination to the Presidential Holocaust Commission because of his SEC and plea agreement.

Ivan Boesky's personal gifts to religious organizations include substantial sums to the Jewish Theological Seminary, the Simon Wiesenthal Center (founding contributor), Raoul Wallenberg Committee, the Jerusalem Foundation, the American-Israel Friendship League, the Association pour le Retablissement Des Institutes et Oeuvres Israelites en France, the New York City Holocaust Memorial, and the UJA Federation.

His support for various civic, cultural and artistic groups was also extensive and included personal or financial support for the Smithsonian Institution, the Metropolitan Museum, American Ballet Theatre, the San Francisco Ballet, the Israel Philharmonic Orchestra, and La Mama Theater in New York. He gave of his time as well as his money. "[H]e was always a man whose private actions matched his publically [sic] documented generosity."^{47/} By mayoral appointment he served as a trustee on the commission that planned the addition to the New York Museum of Modern Art. He served as a director of the New York Shakespeare Festival, sponsoring a Shakespeare program on Broadway for New York City school children.^{48/} He also served as

^{47/} Letter from Jule Styne, attached as Exhibit 29.

^{48/} Letter from Joseph Papp, attached as Exhibit 1.

a director and contributor to New York's La Mama experimental theater.

In the medical field, the Boeskys started the Gertrude Levin Pain Clinic at Wayne State University in Detroit. In recent years Ivan Boesky has supported the Dystonia Medical Research Foundation, a New York University Hospital program for abused children, the Sloan Kettering Cancer Center, the Einstein School of Medicine, Orentreich Foundation skin cancer research, and medical research at the University of Toronto. As a member of the Board of Visitors of the Harvard School of Public Health, he started and funded a visiting fellowship for health policy information at that school.^{49/}

Ivan Boesky Led An Active Professional Life On Wall Street For 21 Years.

Ivan Boesky's professional life as law school graduate, arbitrageur, merchant banker, broker-dealer, author, and business school lecturer is perhaps most relevant to his sentencing because his years of hard work and public achievement ended in humiliating disgrace. He attended Wayne State University, University of Michigan, and Eastern Michigan University. After law school at Detroit College of Law and a clerkship for Chief Judge Theodore Levin in the United States District Court for the

^{49/} Letter from Jay A. Winsten, Ph.D., attached as Exhibit 3.

Eastern District of Michigan, Mr. Boesky could not secure a suitable job with a law firm. He decided to try Wall Street.

When he arrived on Wall Street 21 years ago, he had great trouble finding a job. From a humble start, he invested years of unremitting hard work, often 20 hours a day. After six or seven years of apprenticeship at various firms, he started his own business in 1975. He built that business in corporate-or partnership form from 1975 to 1986. By the early 1980's he had more success than many achieve in a lifetime. He was nevertheless driven by some blind compulsion toward even greater achievement.

By mid-1986, his arbitrage partnerships held approximately \$3 billion in securities and employed nearly 100 people. He directed brokerage firms in New York City and an investment firm in Bermuda. He was Chairman of the Board of Cambrian & General PLC, an English investment company, and Northview Corporation, a California-based hotel and communications company. His entities traded nearly 2 percent of the entire volume of stocks on the New York Stock Exchange.

During those same years, Ivan Boesky served on dozens of boards and committees. He lectured at a dozen business schools, including Harvard University, New York University, Columbia University, University of California, Boston College, University of Michigan, Rice University, Randolph Macon College,

Wharton School of Business, Duke University, University of Chicago, and others. He served as Finance Chairman of the National Jewish Coalition, faithfully attending meetings and raising money.^{50/} He led a highly-publicized political, business, and social life. In short, Ivan Boesky had achieved many of the goals that inspire people to undertake long arduous work-days and great financial risks.

Unfortunately, success became its own trap, blinding Ivan Boesky to the line between legitimate business deals and unlawful transactions. He became caught up in a high-pressure, fast-paced system where corruption was unfortunately rampant. He gave and sought unlawful accommodations in his business dealings with financiers and brokerage firms. His psychiatrist offers a partial explanation:

"[Ivan Boesky] has begun to recognize that he suffered from an abnormal and compulsive need to prove himself, to overcome some sense of inadequacy or inferiority that is rooted in his childhood. He was driven to work without any limit of time or effort. He sacrificed closeness with family and friends without realizing that it was happening. . . ."51/

As a result, Mr. Boesky has lost everything for which he ever worked. In virtually every area of his life, he has

^{50/} Letter from Chris Gersten, attached as Exhibit 2.

^{51/} Letter from Mr. Boesky's psychiatrist, attached to the Presentence Report.

achieved the opposite of what he sought. In the process, he has lost his pride and his good name. He will suffer the consequences for the rest of his life.

IV. IVAN BOESKY'S ACTIONS REFLECT HIS REMORSE

Ivan Boesky's decision to cooperate and his unprecedented subsequent cooperation with the Government can only be explained as his personal repudiation of his wrongful conduct.

He simultaneously acted to recompense those arguably hurt by his conduct. All of his securities trading had been conducted through investor-owned partnerships or corporate entities. Boesky sought to protect those entities and their investors by forfeiting his personal funds. He placed \$50 million of the \$100 million taken by the Government in escrow to resolve claims against him and the entities over which he exercised investment control. He would have placed the whole \$100 million in that escrow had the SEC not insisted upon a civil penalty.

After announcement of his plea and SEC agreements on November 14, 1986, he worked diligently to achieve a repayment of \$640 million in indebtedness owed by his principal arbitrage partnership. The resulting settlement saved his principal arbitrage partnership millions in accrued interest and \$99 million in debt repayment penalties. The main arbitrage partnership now holds approximately \$300 million in cash equivalents to repay investors (excluding Ivan Boesky) who invested about \$320 million (including \$100 million invested by Guinness PLC). As a result of his actions in these respects, there remains a realistic possibility, subject to uncertainties about future claims, that innocent investors in the Boesky enterprises will emerge whole.

Boesky's initiation of contact with the Government, his unique cooperation, and the steps that he has taken to rectify his wrongdoing reflect a remorseful and repentant man. His other actions in the last year also evidence his contrition. He entered into and diligently pursued psychiatric treatment. His psychiatrist states that "[h]e accepts full responsibility for his improper actions and recognizes that they ar [sic] wrong."^{52/}

Mr. Boesky's work with homeless-men has contributed to a new understanding of his relationship to society and less fortunate people. Father Pridemore has written to the Court that Mr. Boesky's work "would seem to have changed his outlook on right and wrong and good and evil."^{53/}

Boesky's repentance and his search for moral and ethical foundations upon which to reestablish his life have led him to pursue an intense and systematic program of religious instruction. Since June 1987, he has spent more than 800 hours of classroom work and study under the auspices of the Jewish Theological Seminary. Rabbi Wolfe Kelman, Mr. Boesky's counselor at the Seminary, describes both the intensity and seriousness of Mr. Boesky's studies:

^{52/} Letter from Mr. Boesky's psychiatrist, attached to the Presentence Report.

^{53/} Letter from The Rev. Charles P. Pridemore, Assistant for Pastoral Ministries, attached as Exhibit 5.

"He is applying all that energy and all that talent to the study of Judaism, which I find quite remarkable. . . . I know he does his homework. He is responding in a very positive way, with a great deal of joy, to his studies."^{54/}

And, in his letter to the Court, Rabbi Kelman discusses Mr. Boesky's "full candor and honesty" in private discussions admitting his shame.^{55/}

Friends and relatives have observed profound changes as Ivan Boesky reassessed his life. Robert Wechsler, a friend of 20 years standing, writes:

"[Ivan Boesky's] fall has elements of real tragedy, and this past year has tempered his character. I truly believe that his priorities are now much better ordered, and that he views life from a new and vastly more profound perspective."^{56/}

David Hermelin, another friend of 40 years, writes:

"[Ivan Boesky] is filled with a sense of remorse for that which he has done, and he is deeply distressed. I strongly believe that he is committed to applying his skills and talents to positive and caring community endeavors."^{57/}

^{54/} Rabbi Wolfe Kelman, quoted in The Washington Post, November 8, 1987, at H4, col. 4.

^{55/} Letter from Rabbi Wolfe Kelman, attached as Exhibit 30.

^{56/} Letter from Robert Wechsler, attached as Exhibit 28.

^{57/} Letter from David B. Hermelin, attached as Exhibit 31.

Daniel M. Clark, a friend of 25 years, writes:

"A deep strand of family pride has been torn at, and the emerging personality is one of new-felt respect and dependency upon the loving kindness of his wife, children, mother and others. With mercy . . . this strand will mend and the whole pattern of his life, at last . . . the whole texture of his being will be for the better."58/

58/ Letter from Daniel M. Clark, attached as Exhibit 32. See also letters from Sammy Cahn, attached as Exhibit 33; Nathan Applemen, attached as Exhibit 34; Max Fisher, attached as Exhibit 35; and Charles D. Lieber, attached as Exhibit 9.

V. IVAN BOESKY PLEADS FOR COMPASSION TO PERMIT HIM TO RESUME A PRODUCTIVE LIFE.

The Court has vast experience in balancing the competing factors of retribution, cooperation, deterrence, restitution, consistency, and rehabilitation that go into sentencing. In applying that balance, Boesky asks the Court to weigh the past and inevitable future retribution that society has already imposed and will continue to impose for the rest of his life. He also asks the Court to ignore the cry for vengeance from those who would punish him for cooperating with the Government's investigation of financial abuses.

The cooperation in this case is unique and without parallel in modern securities history. Ivan Boesky substantiated all the elements of his proffer, and his cooperation extended enormously far beyond. He provided the Government with information concerning, and guided it to proof of, nationwide financial crimes by the highest leaders of our investment banking and financial communities. Neither the SEC nor the U.S. Attorney had any inkling of these abuses before Ivan Boesky voluntarily approached the Government. His cooperation will make a vital contribution to the Government's ability to achieve significant reforms that were long overdue.

Revocation of license, loss of lifetime profession, destruction of reputation, forfeiture of wealth, demise of social position, and abandonment by friends are powerful deterrents for financial crimes. Media revilement and endless civil litigation pointing inexorably toward personal bankruptcy, will also deter others in the financial community. The publicity associated with Ivan Boesky's cooperation has deterred and will deter others with the capacity to commit financial crimes. The added Government enforcement efforts triggered by his cooperation stopped, and will continue to stop, other wrongdoers, as will the precedent he established by paying multi-million dollar civil penalties.

If the Court believes that incarceration is necessary for deterrence, Ivan Boesky pleads that it be limited. Short-term incarceration is an effective deterrent, specifically recommended by the Sentencing Commission for financial crimes.^{59/} Moreover, Ivan Boesky will serve any period of incarceration under especially onerous conditions. Even in federal facilities designated for cooperating Government witnesses, he will, in all likelihood, be deprived of programs and opportunities routinely available to other inmates.^{60/}

^{59/} Testimony of Honorable Stephen H. Breyer, Circuit Judge, before the House Judiciary Subcommittee on Criminal Justice, July 23, 1987 ("short, but definite terms of confinement will help deter such crimes as tax evasion, price fixing and insider trading").

^{60/} Mr. Boesky's cooperation and the extreme publicity surrounding his case assure that he will be subject to Central

Ivan Boesky has exhausted his capacity to make monetary restitution. He has forfeited virtually all of his wealth. What little remains will be drained away by litigation and additional taxes now due or anticipated. Further restitution is possible only through public service, such as the program for community service contained in the material on alternative service submitted with this Memorandum.

While the nature of Ivan Boesky's crimes and the extent of his cooperation distinguish this case, there is nevertheless a powerful trend toward consistency and uniformity in sentencing. As the attached chart demonstrates, the overwhelming majority of persons convicted of insider trading receive probation or split sentences. See Exhibit 36. Similarly, the overwhelming majority of persons convicted of false filings with Government agencies receive probation or split sentences.

Dennis Levine, who used offshore accounts to avoid detection and taxes, who engaged in perjury and obstruction of justice until after he was arrested, who denied guilt, took the Fifth Amendment, and fought until conviction was inevitable, who

[Footnote continued from preceding page]

Inmate Monitoring ("CIM") upon entry into the federal prison system. Experience establishes that inmates subject to CIM are routinely denied admission to half-way houses and furlough programs, for which they would otherwise qualify, and to which most other qualified inmates are admitted.

pleaded guilty to perjury, obstruction of justice, tax evasion and securities fraud, and who by any measure was entitled to less credit for cooperation than Ivan Boesky, was sentenced by Judge Goettel to two years in prison. Israel Grossman, an attorney who was convicted after a lengthy jury trial on 38 counts of insider trading for the benefit of people who fled the jurisdiction to avoid prosecution and restitution, was sentenced by Judge Owen to two years in prison.

If Boesky were to be sentenced as harshly as Grossman and Levine, lawyers advising potential defendants in future insider trading and financial accommodation cases will find it difficult to recommend and justify cooperation with Government investigations. Wrongdoers with the resources to resist Government investigations will have little incentive to cooperate. Such a result would impede investigation and prosecution of these types of financial crimes which are exceedingly difficult to detect and prove without the cooperation of a knowledgeable participant.

Ivan Boesky is keenly aware that he has limited time and a long uphill struggle to redeem himself. He asks only for

the Court's compassion in helping him begin the long climb as soon as the Court's responsibility and conscience allow.

Respectfully submitted,

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