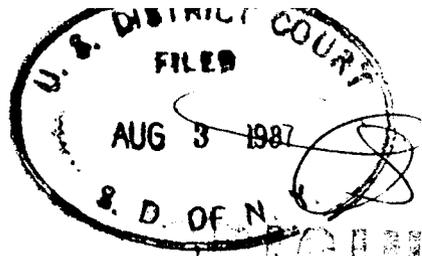


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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x

4 UNITED STATES OF AMERICA

5 v.

6 IVAN F. BOESKY,

87 CR 378

7 Defendant.

8 -----x

9

April 23, 1987
11:00 a.m.

10

11

Before:

12

HON. MORRIS E. LASKER

13

District Judge

14

15

APPEARANCES

16

RUDOLPH W. GIULIANI,
United States Attorney for the
Southern District of New York,

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CHARLES CARBERRY
Assistant United States Attorney

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LEON SILVERMAN
Attorney for Defendant

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ROBERT B. MCCAUGH
Attorney for Defendant

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1 (Case called)

2 THE COURT: The purpose of my calling you up
3 here is to explain to you what your legal rights are so
4 that when I come to take your plea I can be satisfied
5 that you do understand what those legal rights are. And
6 I ask you, if you have any questions about my explanation
7 to you, please to ask me a question so that I can explain
8 further or consult your attorney or if the attorney
9 thinks that the explanation needs any amplification I'll
10 ask you to tell me so.

11 First of all, you, I understand, have signed
12 what are called a waiver of indictment. Do you
13 understand what they are and am I correct that you have
14 signed them?

15 THE DEFENDANT: Yes.

16 THE COURT: By doing that, you have given up
17 the right to have your case put before a grand jury of 23
18 men and women who would have the responsibility of
19 deciding by a majority vote whether or not the offences
20 charged against a particular defendant have in fact been
21 committed and if they have, whether there is probable
22 cause to believe that the defendant committed those
23 offences.

24 You have a constitutional right to put that
25 matter before the grand jury. Do you understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: Are you agreeable to giving up
3 that right?

4 THE DEFENDANT: Yes.

5 THE COURT: Secondly and more important
6 because it involves more questions and I want to be sure
7 you understand it, you also have the right, of course, to
8 be tried on these charges by a trial jury. You're not
9 required to plead guilty. Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: At a trial, you would have the
12 right to be represented by counsel, you would have the
13 right to have your counsel cross-examine any witnesses
14 against you, you would have the right to face any
15 witnesses against you and you would have the right to
16 testify if you wished or decline to testify if you wished
17 and if you did decline to testify, no one could hold that
18 against you. Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand that if I accept
21 your plea of guilty there will be no trial for you?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that if I accept
24 your plea of guilty, I will be free to impose the same
25 penalty as could have been imposed if you had been tried

1 by a jury and found guilty by a jury?

2 THE DEFENDANT: Yes.

3 THE COURT: You understand that if I accept
4 your plea of guilty, you will have no right of appeal
5 from any higher court from any lawful sentence that I
6 impose; as long as I stay within the law with regard to
7 imposing a sentence on you that's final?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that if I accept
10 your plea of guilty you cannot automatically withdraw
11 your plea of guilty hereafter. For all practical
12 purposes a plea of guilty is final; do you understand
13 that?

14 THE DEFENDANT: Yes.

15 THE COURT: Are there any questions?

16 THE DEFENDANT: No.

17 THE COURT: Does counsel wish me to amplify my
18 instructions.

19 MR. SILVERMAN: No, your Honor.

20 THE COURT: All right. Mr. Silverman, how
21 long have you and your colleagues, I gather there are
22 others in your firm also, represented Mr. Boesky?

23 MR. SILVERMAN: From the outset of this
24 investigation.

25 THE COURT: How long is that?

1 MR. SILVERMAN: Months.

2 THE COURT: How much time have you and your
3 colleagues spent with him going over the matter?

4 MR. SILVERMAN: An enormous amount of time.

5 THE COURT: I take it that you and your firm
6 have acquainted yourselves with the evidence against Mr.
7 Boesky?

8 MR. SILVERMAN: Yes.

9 THE COURT: You're satisfied that if he went
10 to trial on this information that the government would
11 prevail.

12 MR. SILVERMAN: Yes, your Honor. May I say
13 that to spare you a separate allocution, what I say is so
14 on behalf of both of us.

15 THE COURT: Both attorneys?

16 MR. SILVERMAN: Both firms and both attorneys.

17 THE COURT: All right. Thank you on that.

18 Have you informed Mr. Boesky that with regard
19 to this information he faces a possible penalty of five
20 years and \$250,000 fine?

21 MR. SILVERMAN: Yes, your Honor, we have.

22 BY THE COURT:

23 Q. Mr. Boesky, how old are you sir?

24 A. 50 years old.

25 Q. How much education have you?

1 A. I have a law degree.

2 Q. Are you in good health?

3 A. Yes, sir.

4 Q. Have you ever been addicted to drugs or
5 alcohol?

6 A. No, I have not.

7 Q. Are under the influence of any drug or
8 sedative at this time?

9 A. No, sir.

10 Q. Mr. Silverman and other co-counsel have told
11 me that they represented you now for some months and have
12 spent very many hours going over the case with you. Have
13 you been satisfied with their services as your lawyer?

14 A. Yes, your Honor.

15 Q. Have they answered any questions you have
16 about this information?

17 A. They have, your Honor.

18 Q. All right. I understand that you wish to
19 plead guilty to the information. Have you read it?

20 A. Yes, sir, I have.

21 Q. Do you understand what it charges you with?

22 A. Yes.

23 THE COURT: I'm going to call on the United
24 States Attorney to specify the contents of the
25 information.

1 MR. CARBERRY: The charges are conspiracy to
2 violate Section 1001 of Title 18, filing a false
3 statement.

4 Essentially the information charges that in
5 1984, Mr. Boesky was contacted by a co-conspirator and
6 instructed to buy stock of a Fischbach Corporation. Mr.
7 Boesky was assured that any losses he might incur on his
8 purchase would be reimbursed and that he would be made
9 whole for his purchase.

10 In connection with his purchases, Mr. Boesky
11 bought over 5 percent, through entities that he
12 controlled of this corporation, of the stock, which
13 required the filing of a 13 D. This 13 D form which was
14 filed with the SEC was false because it did not reveal
15 the secret agreement about making Mr. Boesky whole for
16 any losses he might suffer on this stock.

17 Eventually, one of the co-conspirators
18 instructed Mr. Boesky to buy over 10 percent of the stock
19 which eventually he did. Arrangements were made to
20 purchase the stock from Mr. Boesky's company in London at
21 a price above the American market in an attempt to make
22 him whole.

23 He still was suffering losses at that time and
24 later on another step was taken to reimburse Mr. Boesky
25 for the losses his entities suffered on this stock.

1 Q. Mr. Boesky, did you hear what the United
2 States Attorney said in answer to my question?

3 A. Yes, sir.

4 Q. Has he essentially correctly described the
5 facts of the case?

6 A. He has, your Honor.

7 Q. Did you commit the acts that he said you
8 committed or are accused of committing?

9 A. Yes, I did, your Honor.

10 Q. Do you wish to make any other statement with
11 regard to the facts of the situation?

12 A. No, your Honor.

13 Q. Mr. Boesky, do you understand that if I accept
14 your plea of guilty you face a penalty of up to five
15 years in prison and a \$250,000 fine?

16 A. Yes, your Honor.

17 Q. Mr. Boesky, in view of the publicity that your
18 case has involved and some publicity about the sentencing
19 practices of the judges of this court, I want to talk
20 turkey. Do you understand that although various judges
21 have various reputations, that I have the authority and
22 responsibility of deciding whether you should receive up
23 to the maximum?

24 A. Of course, your Honor.

25 Q. All right. Mr. Boesky, has anybody told you

1 that if you pleaded guilty you would receive a lighter
2 sentence than if you didn't plead guilty?

3 A. No.

4 Q. Has anybody made any promises to you in
5 connection with what punishment might be meted out?

6 A. No.

7 Q. Has anybody pressed you or pressured you or
8 anybody close to you to make you plead guilty?

9 A. No, sir.

10 MR. SILVERMAN: Perhaps you might note and
11 perhaps Mr. Carberry --

12 MR. CARBERRY: There is an agreement.

13 THE COURT: I assume there is an agreement and
14 I will be prepared to see it.

15 MR. CARBERRY: Mr. Boesky's statement is in
16 connection with no matters outside the agreement.

17 THE COURT: I understand that. That's no
18 problem. I'm trying to remember where I was.

19 Q. Has anybody pressed or pressured you or
20 anybody close to you, Mr. Boesky to make you plead
21 guilty?

22 A. No, sir.

23 Q. Are you pleading guilty of your own free will?

24 A. Yes, sir.

25 THE COURT: Do you want to say anything about

1 the agreement?

2 MR. CARBERRY: I just marked the agreement for
3 identification. I would state that the government, which
4 is not stated in the agreement, has determined not to
5 prosecute any Boesky controlled entities that were
6 involved in this matter. Mr. Boesky is just pleading
7 guilty personally.

8 THE COURT: Mr. Silverman, is there anything
9 you want to put on the record about the agreement?

10 MR. SILVERMAN: No, your Honor.

11 THE COURT: You've all signed it.

12 MR. SILVERMAN: Yes.

13 THE COURT: Very good. Is there any reason
14 why Mr. Boesky can't be released on his own
15 recognizance?

16 MR. CARBERRY: That's all right with the
17 government.

18 THE COURT: All right. You're released on
19 your own recognizance. What about a sentence date?

20 MR. CARBERRY: We would like the court to set
21 a date at this time.

22 THE COURT: Friday, August 21, 9:15 a.m.

23 MR. SILVERMAN: Mr. Boesky will be present.

24 THE COURT: I'm sure he will.

25 (Proceedings adjourned)