

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

v.

87 Crim 378 MEL

IVAN F. BOESKY

Defendant.

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December 3, 1987
8:30 a.m.

Before:

HON. MORRIS E. LASKER

District Judge

APPEARANCES

RUDOLPH W. GIULIANI,
United States Attorney for the
Southern District of New York,
JOHN CARROLL and JESS FARDELLA
Assistant United States Attorneys

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
Attorneys for defendant
LEON SILVERMAN and PAMELA JARVIS
Of Counsel

WILMER, CUTLER & PICKERING
Attorneys for defendant
ROBERT McCRAW
Of Counsel

US PROBATION DEPARTMENT
DANIEL SHERIDAN and JOSEPH FORCINITO

(In chambers)

THE COURT: I asked you to come here because this is an unusual case and I felt that I wanted to have the time to reflect on the various considerations involved in it before I came to a final decision. Usually there is limited opportunity to do that. Of course, I have been now very well prepared by receiving Mr. Sheridan's report, Mr. Carroll's report and Mr. Silverman's report or briefs or whatever you call them. I have read them all and all the letters submitted on behalf of Mr. Boesky as well as his family's letters.

I want to make this remark to everybody but to Mr. Boesky in particular. It is my normal practice to acknowledge the receipt of letters when I get them and to tell whoever writes, not just in your case, that what they have to say will be taken into consideration in deciding what to do. I didn't have the opportunity to do that in this case because these letters weren't submitted to me until just now, so that if you speak to any of your friends or relatives please tell them that I thanked them for writing and I found their letters very helpful and those of your family were particularly moving and I think in the case of Mrs. Boesky very insightful.

I also want to say although what I am going to say is not very important, that I notice that one of the suits that Mr. Boesky is involved with has to do with Kidder Peabody and I have a minimal investment account for which they are the clearing house and brokers. I receive a check for \$350 a month each month from Kidder Peabody. I hope that won't muddy the record too much.

This is a very difficult case for everybody involved. There is no question about it. Let me give you in general my view of the matter first and then, of course, I will hear from you. The offenses to which Mr. Boesky admits rather than the ones to which he has pleaded guilty in

particular are very serious and the public at large without knowing the details considers them to be so.

With regard to the public aspect of the case I consider and I expect to state this at sentencing, that a judge has a two-fold responsibility. He has the responsibility to protect a defendant against passions of public opinion. At the same time he has a responsibility to act in such a way as not to endanger the confidence of the public in the objectivity and good sense of the judiciary. That is the principle by which I am guided.

The other side of the scale is that there has been enormous cooperation. When the United States Attorney, who is not necessarily prone to do so, states that the cooperation in this case is the most remarkable or whatever exact adjective used, in the history of the securities laws and then spells out what it is, a judge can't help but take that into consideration. He must take it into consideration.

One of the problems, of course, is at this stage of the proceeding it is not possible that the public know what that cooperation has been. Another difficulty for anybody in the sentencing situation is that there are ambivalent attitudes toward the subject of cooperation itself, namely, that while it is socially constructive and may be regarded as a sign of remorse and so on, on the other hand it may also be regarded as distasteful. We all know what we are talking about here.

In addition to which there is a certain irony involved. The more information normally that a defendant is able to give to the government, the more that is indicative of the fact that he was involved himself. So it is a double edged proposition.

I have tried to think about how to go about this. I believe that Mr. Boesky -- and I believe that Mr. Sheridan shares this view -- has already been given some recognition of his

contribution by being allowed to plead simply to this one count which carries a maximum of five years which thank god for him is under the old law and therefore would even if a maximum were imposed not involve physical custody of probably more than three and a half years.

On the other hand, I am prepared to consider the fact that not only his cooperation but his life before he got into these things, the many good things he has done for the community and what I am prepared to believe -- maybe I am naive -- and we won't know until either Mr. Boesky or I dies, probably until Mr. Boesky dies I suppose. I am prepared to believe that he is a reformed individual. I wish that were the end of the matter. It can't be and it isn't.

So I have looked at what has happened in the other cases that are analogous to this, and, of course, Mr. Silverman recognized that by proposing the schedule 36 and the most nearly analogous case is Mr. Levine. I myself concluded that sometime ago and asked Judge Goettel for a copy of the sentencing minutes up there. I have read those and I have read his considerations. I regard that as the case against which this one should be compared to in this discussion because we don't have many others that make any sense.

I have given you my overall views and I would like to hear what you have to say. Mr. Carroll, I would like to say, it would be very helpful to me if the government felt it was in a position to state openly whether it believed that the sentence imposed on Mr. Boesky, whether it should be more, the same as, or less than Mr. Levine?

MR. CARROLL: Your Honor, before we would do that, we would have to consult with Mr. Boesky's counsel. We are obliged by our agreement to Mr. Boesky to not make a specific recommendation to the court. I think that they would probably view that that way and I think that our hands are tied on that, maybe knowing your Honor's position that Mr. Silverman --

THE COURT: I am sorry I didn't ask you before because I don't want to put anybody on the spot here. There are various ways of handling this. First of all, you can go in the anteroom and talk, or secondly, Mr. Silverman, if you would like to reflect on it and talk about it after. If you decide to allow the government to answer that question, you can tell them and they can answer to me.

MR. SILVERMAN: I would prefer the latter.

THE COURT: That is really the only question I have of Mr. Carroll and it is the only question I have of either of you. So I think perhaps we should allow Mr. Silverman to talk first and you can comment on anything he has to say. Mr. Boesky is invited to say anything he wishes, too.

MR. SILVERMAN: Judge, in a sense, what I will say now perhaps will be said in various other ways at the time of the allocution -- at the time of sentence. But in a sense I feel a little freer without having hordes of people and cameras and reporters around. That I think is very useful for me. The alternative to that is that I haven't prepared a real allocution so you are going to get it as it comes to mind.

THE COURT: I have a feeling that you have been thinking about this for a long time just as I have.

MR. SILVERMAN: I have been thinking about it, but I have not organized my thoughts in a way that I might otherwise have done.

When you sentence Mr. Boesky, the thing that seems to me is clear is that there is a blood lust in the community. It is perhaps almost an unreasoned blood lust and one that I can't make go away and that your Honor has indicated there are conflicting attitudes, if you characterize it as I do, in rather an invidious way. Others would say it is the conscience of the

community and that is always a question of degree and articulation. But it is a factor that is very, very serious. If Mr. Boesky were named John Smith, I don't think this case would present very much difficulty to your Honor.

THE COURT: I think if Mr. Boesky would have been named John Smith, he would have made the name even more famous than it is already, but I know what you mean.

MR. SILVERMAN: A degree of anonymity with John Smith that Ivan Boesky is not permitted to have. Mr. Boesky's life has started more than three years ago. Your Honor has that and I will not belabor it.

He does have a long history of good works, who in a sense publicly made philanthropic contributions and became a factor in the community by reason of that. His good works long precede that and although people do get a reward for good works in the here after, I would like to claim a little of that reward now. Factor one.

Mr. Boesky's cooperation is the one thing that we have to say which as you have indicated the government has thought to be remarkable and has in its memorandum characterized it in very, very I think fair terms. Other people will not say they are extravagant terms. They do reflect a reality.

Boesky was confronted in the first instance with a subpoena that was issued from the SEC as a result of Dennis Levine. It was at that time --

THE COURT: That was August 1986, right?

MR. SILVERMAN: Yes. In consultation with his lawyers. Within a very short period of time without knowing what Mr. Boesky had done in any great detail or indeed in any sense in terms of wrongdoing, there were intensive and extensive conversations in which a meticulous I think analysis of what his then position was.

Dennis Levine was a person who had fought the government, had destroyed documents, had publicly taken on the SEC, had denied his wrongdoing, had fought them until the time that they had him by the throat and then folded and cooperated. Levine was then a convicted felon. His was the only testimony that could have been adduced against Mr. Boesky.

As trial lawyers we analyzed the possibility of Mr. Boesky making a successful defense in the event the government took it forward on that basis. We discussed with Mr. Boesky the uncertain state of the law which at the moment has not terribly been illuminated by the Supreme Court by reason of the recent Winans decision. At that time we had an analysis of those circumstances, case situation, state of the law which would have at least in our view have permitted Mr. Boesky to make a defense and to have put the government to its proof and that proof may never have been forthcoming. Mr. Reed as you know was acquitted after an insider case.

THE COURT: I had a companion case related to his.

MR. SILVERMAN: Mr. Giuliani has spoken publicly that it would have been years even on the Levine allegations before that case came to trial, and that is uncertain. That is all on the let's stonewall. Fight. It will take years to get there. The government may never convict. If they do, it will be a discrete conviction. That may be worth a shot. It was long and agonizing and thoughtful.

Mr. Boesky made the decision that he would go in. Indeed the rather chimerical life that he had led dawned on him and he decided that this was no longer a possible course of conduct. And so we initiated -- and by that I mean Mr. McCaw's firm and my firm -- contacts with the SEC and immediately with the US Attorney who before that time was totally uninvolved in all of this.

As a result of that, Mr. Boesky did, indeed, we, on his behalf, arranged a plea bargain, if you will, arrangement with the United States and the SEC which permitted Mr. Boesky to plead to a conspiracy to make a false filing.

Your Honor alluded to the fact there are many that think that is the deal that he cut and that is all, that he has gotten the benefits of that. I would argue if I had to that that is not so. He is entitled to more even on that state of events.

Let me then recall to your Honor the state of events. The plea bargain was done on the basis of a written proffer that was made to the government. Assume for these purposes that those who say that that was the bargain that he made and is entitled to no greater consideration by the court, I remind the court that that proffer has been fully complied with by Mr. Boesky.

Assume that that wiped the slate clean. The government in its memorandum and we in ours have pointed out to your Honor the remarkable and extensive cooperation that he gave far in excess of his proffer. That additional cooperation which is vast and we have outlined it in our memorandum, I respectfully suggest entitles Mr. Boesky -- entitles is not the right word. That sounds more belligerent than I mean it to be. It entitles him to beg your Honor.

THE COURT: What you mean is he has earned it.

MR. SILVERMAN: He is entitled to ask your Honor to consider --

THE COURT: I will agree with you that he is entitled to ask me.

MR. SILVERMAN: So that he is here not with a done deal for his cooperation, one count for the cooperation. Assuming that to be the case, he has cooperated on top of that to an extent which entitles him to vastly greater consideration by your Honor. I won't labor that

point any longer, but that it seems to me is the critical factor that is not perceived by the public at large and can't be.

The difficulty is that it is impossible at an allocution to make the point so that the press and the public will understand it. I regret it. It is unfortunate. It puts great pressure on Mr. Boesky, the government, and the SEC and the court, but it is unfortunately the state of play. It is something that I would urge your Honor to take into consideration when you do impose the sentence.

THE COURT: Let me say this. There would, of course, in theory in any case like this be a solution to that problem which would be to wait until the conclusion of the cooperation and when the government felt that the cooperation could be revealed. I think we all agree by being here at this moment that it is inadvisable to go that course, that the delays so far have provoked questioning and further delay would provoke even greater questioning.

MR. SILVERMAN: I believe that to be so. If your Honor please, one of the other reasons I must frankly disclose to your Honor as one of the reasons that we have asked for his sentence to take place, it has been almost a year and a half that for all practical purposes Mr. Boesky has been in incarceration. For a year and a half he has done nothing except cooperate with the government, meet with them and go through his documents and point out all of the things that we mentioned in our submission to your Honor.

Mr. Boesky is a unique individual. He cannot walk down the street without being pointed to. He can't go into a restaurant. He can't use a credit card without having people rush up to him. You can't watch television or read a single newspaper without having Boesky trumpeted before you.

There is a play now opening in New York called Serious Money which I saw Saturday night which is an interesting play. I don't think it is terribly good. It is an interesting play which is a take off on Mr. Boesky, on what the author of the play thinks is the problem of insider trading in England, it is true, but there is a female counterpart to Mr. Boesky which is the central figure.

In the middle of the play, the leading actor turns to the audience and says, "Just like Boesky." People take pictures with his figure. That is the kind of terrible pressure that he has been involved in. We thought it useful that that should end. That is one of the reasons.

Now, it was a deliberate decision and perfectly right that after Mr. Boesky has played out his cooperation, he would be entitled to better. The government has agreed with us. They have agreed with us that the cooperation that he has given and the cooperation that they and we believe he will give and the cooperation he is by agreement obligated to give is really the equivalent of having done it. You must I suggest treat it as done. It is only for the public perception of it which is the problem.

THE COURT: Right.

MR. SILVERMAN: And I can't get away from that and nobody can. So you have a person who has done far more than he had bargained for, or that the government had bargained for. He is a person that came in and confessed to crimes that the government couldn't have begun to detect. He has in fact pointed to the government or pointed out to the government systemic problems in the securities industries to which he was not a party. There was no wrongdoing on his part.

He gave the government insights on every level. I don' mean just law enforcement. I mean on the congressional level as well to remedy systemic deficiencies with

which he cannot be taxed. That cooperation is what distinguishes him from Levine. If I remember Judge Goettel's sentence, what he did was he gave him between 40 and 60 percent off.

I would suggest to your Honor, the extent of Mr. Boesky's activities are broader than Mr. Levine's. The government didn't know that. He told them that. They would never have come across that on their own. The extent of his cooperation is infinitely greater. He has saved the government millions of dollars, years of time, has stopped continuing -- not just on his part -- stopped continuing wrongdoing on the part of others, has permitted the government and will permit the government to make a major impact on the securities industry.

That weighs so heavily on the other side of Levine that I would suggest that it would be wrong to treat Mr. Boesky worse than Levine. It would be right to treat him more leniently than Levine. There is another case -- I don't know -- I think we do refer to it. That is the Grossman case before Judge Owen.

A lawyer profited to a great extent or his family did and then fled the jurisdiction and he stood trial. 38 counts. The trial went on for weeks. He was convicted. He got two years. Is Mr. Boesky to be treated worse than that? He didn't stand trial. He came in and said mea culpa.

Let me deal with other things that I am sorry to trespass on your Honor's time. This may be my last chance to do it.

THE COURT: You are not trespassing. I have to look at the clock because I am trying a case.

MR. SILVERMAN: I do understand that. I read in the probation report, and it is in the public mind and it is always dangerous to talk about this, Mr. Boesky went back to the

Jewish Theological Seminary to take courses after this happened. There are those who smile in derision. If that is so, nobody can ever be contrite. You must assume nobody can be contrite.

The fact is he is contrite. He is not a born again Jew. He has always been an observant Jew and has now intensified the moral precepts which he had departed from, which are now assuming a much greater role. That has been smiled at, but the fact is that it represents -- at least if one talks to the people with whom he has been in contact -- a real conversion. Not a very important thing, but something.

Mr. Boesky sought to do charitable work and this again goes to the terrible impact that this has had on him and I have not yet dealt with this finally. Mr. Boesky sponsored, supported, with enormous largesse many institutions, charitable institutions in this town. He wanted to do community service. Even assuming, which is not the case, that he wanted to do it in order to cotton favor with the sentencing judge, that is not a bad reason to do it, and assuming that were so and it was not an honest attempt to do community service, those organizations rejected him. They would not take him for voluntary work.

These were organizations that he had funded with millions of dollars. He finally went to the Cathedral of St. John the Divine. They took him on the condition that he serve under an assumed name, that if there was the slightest publicity attended upon them, that he would be chucked out of the program. He did it. That was a program dealing with homeless men. And he contributed and I think Father Pridemore has written your Honor about that. I don't want to overcharacterize it. He contributed to that worthy effort but couldn't even do voluntary service under his own name.

The extent of the ignominy of Mr. Boesky's rise and terrible fall where he is now out of his industry, cannot practice law, is destroyed in a setting in which he has flourished -- and

Mr. Boesky's wealth and ascendancy on the scene did not start in 1984. He was a successful arbitrageur before. He was not the product of illegal activity. There is illegal activity. It did enhance the wealth of many people. For that he deserves condemnation. But he didn't make his fortune by reason of that.

Nobody has been able to quantify how much indeed is the result of the illegal activity. But there is illegal activity. It is in large amounts. He has paid a hundred million dollars and has disgorged. Your Honor is going to sentence him on the 18th. That is not the final accounting. For the rest of his life, he is a professional witness. That is yet to come. He can't earn a living. He is on the verge of bankruptcy.

Now, the limited partners who are involved in his partnership who have now sued him and others, every one of them that is untainted, should come out whole. They aren't going to lose any money. I say one company which I will not mention on the record does have a claim in that proceeding. They can't say they were hoodwinked by anybody to enter that partnership. Every one of the legitimate partners ought to come out whole.

Mr. Boesky has not taken money from anyone. I don't mean to give him the medal of honor. He did wrong and he should be punished for it. The fact is that the blow is to him. His life is now doomed. He faces bankruptcy. He will never be able to assume the kind of life that he has heretofore led.

That leads me to his family situation, which again because this is on the record I will try to be discreet about it. It has caused enormous tensions in that family.

THE COURT: Let me say that you don't need to go into any more detail than you think I might not be aware of. As a result of reading the material I have gotten from Mr. Sheridan, from you, and the family letters and so on --

MR. SILVERMAN: The impact on his family, on his children has been enormous. I received his children's letters and I read them and I guess that I thought that I was a pretty callous fellow about some of these things. They touched me.

THE COURT: Yes, they did.

MR. SILVERMAN: They weren't put up by anybody. I gave Mr. Boesky copies of those letters and I sent him a note with them because he hadn't seen them and I said that if ever I needed the support of my children, I hoped that they would react the way his kids did.

THE COURT: It is an appropriate comment.

MR. SILVERMAN: He is not a bad person. He has tried to make amends. He has parted with his sustenance. He is facing a future which is terrible. How many more coals do you heap upon him when in fact he has also performed great public good, not only in philanthropy but in being of assistance to the government?

This is a fairly disorganized presentation. But it is right I think that your Honor should consider or at least use as a reference point Levine and I suggest Grossman, and that he should not be treated worse.

THE COURT: Thank you. If that is your disorganized version, I can't wait to hear your organized version. You have presented the situation I think very effectively and very completely and I sincerely invite you to speak as vigorously in court because whatever I do, I want to be sure that the public understands the facts here as fully as possible.

MR. SILVERMAN: I hope to do that and it will be more organized.

THE COURT: Would you like to make any comment, Mr. Boesky?

MR. BOESKY: I just want to say that I am deeply ashamed and I do not understand my behavior. I have spent the last year trying to understand how I veered off course.

I would like the opportunity as I go forward to redeem myself and leave this earth with a good name. That is what I want.

THE COURT: Thank you.

MR. CARROLL: Your Honor, I probably will be more disorganized than Mr. Silverman, but I will take my best shot here. This is a situation that perhaps as much as any situation your Honor has ever seen, certainly more so than any situation that I have ever seen, divides itself into public and private concerns.

The public concerns here are dramatic and it is our duty to represent them and to make them known to your Honor. We have detailed Mr. Boesky's crimes in our memoranda as best we can and we understand at this point. We spent probably a weekend looking for adjectives to describe them to your Honor. They are certainly widespread, they are certainly serious, extensive, systemic, what have you.

I think it is our office's feeling that prior to Mr. Boesky's walking in the door as it were, we had never seen anything like this. It is fair to say Mr. Boesky, upon his arrival at our door, he told us about greater crimes in our view -- we won't say his crimes were unprecedented. They were previously unprecedented and of dramatic seriousness.

The crimes even break down almost into a public and private dynamic. Unlike Mr. Levine and Mr. Grossman, what we are talking about here is not what at this point seems to be simple insider trading. In that sense it is not simple. The effect is not one of private greed. The larger crimes here in our view are the crimes that Mr. Boesky has engaged in largely at the behest of others and we have named names and gave details in our memoranda so I won't go into that now. There we are dealing with a very systemic type of problem. A systemic corruption that undermines the financial world, and that is not unfortunately an exaggeration.

THE COURT: So it appears from your memorandum.

MR. CARROLL: I don't think we have that out of perspective. Without belaboring them and our memo does set them forth in detail, it sort of leads to the two public purposes of sentencing in this case and perhaps more so in this case than in most cases; that is, there is a need, cultural need for public justice.

As your Honor was alluding to earlier, you are the repository of society's need to feel satisfied here, to feel that the system is fair, and to redress what is a very public concern because it is a very public damage. And unfortunately and perhaps fortunately as well, what the public sees of Mr. Boesky's suffering is largely what is going to go on in your courtroom, which is not for a moment to say that his suffering is confined to that.

The public sees what your Honor does. It doesn't see Mr. Boesky vilified on the street. It doesn't see that people look up at him when he says the name Ivan Boesky. The public doesn't see that. This is a public process. The punishment that comes to Mr. Boesky has to address that need, that legitimate need in the public.

The other public aspect of this is that we view the financial community as a very deterrable community. This is a community one hopes that will react to what has happened to Mr. Boesky.

THE COURT: I hope so too. However, I imposed the sentence in Drysdale that was more than we are talking about here and to hear that things like this still happen, I wonder. Not that Drysdale was exactly the same, of course.

MR. CARROLL: I think that Mr. Boesky courted celebrity. The down side of that now is the whole world is watching and measuring, and we hope that the whole world will react to what happens here.

On the private side, I say without reservation that Mr. Boesky, his agents as it were, largely people in this room and elsewhere, but people who have been given the direction by Mr. Boesky and Mr. Boesky himself have provided model cooperation. There are no two ways about that. I am certain that the cooperation in quality has been unprecedented. We have benefitted enormously.

To the extent that one can measure private suffering or private remorse or what have you, to the extent that I can, it is there. I didn't know Mr. Boesky before, but what I have seen is a remorseful, humble, repentant, contrite individual. If all we were about here was what one does with Mr. Boesky in a bubble, your task would be very much easier.

THE COURT: It certainly would.

MR. CARROLL: I think it important in part because Mr. Silverman raises concerns that we compare generally Mr. Boesky to Mr. Levine and Mr. Grossman. In some sense, Mr. Levine and Mr. Boesky's cooperation are not comparable. There is no sense in which Mr. Boesky has not been more cooperative. No sense in which he hasn't done them more readily, earlier, or what have you. They are not comparable.

The crimes aren't comparable either. And in some sense, Mr. Levine's crimes were and Mr. Grossman's crimes were very private rather than systemic crimes. It was money in the pocket type crime. They were not celebrated. They did not court celebrity. They did not hold themselves out or find themselves held out in the way Mr. Boesky has been.

The comparison, the numerical comparison to Mr. Levine's plea and sentence and all of that I think as your Honor realizes is a little bit off kilter. Mr. Levine came in at a later point in the process, his charges therefore were greater. Mr. Grossman went to trial. His

charges, therefore, were as many as the creative people in the office could come up with and to compare those numbers there is to compare things that don't measure on the same scale.

THE COURT: You are talking about the charges against them and the discount so to speak?

MR. CARROLL: Yes. I don't think that that is truly a relevant concern. What I come back to, your Honor, and perhaps after Mr. Silverman and I talk we can be more helpful is just laying before you the two parts of this. There is private contrition. There is model cooperation. There is all of that in spades.

On the other side of it, there is conduct that we have described using the best adjectives we could think of. And there is a real public need here. The whole world is watching. Mr. Boesky is the visible point of what I would argue and truly believe is a cultural problem. We have got a value system that is at work now that sadly, because it is largely my generation, that has turned entirely on its head. Something has got to be done.

THE COURT: I thank you both for really the highest quality presentation in the 20 years I have been on the bench. Perhaps one of the virtues of this case, if there are any, is that it has made us think about the public and private considerations involved in these very serious questions, questions of sentencing and questions of public confidence in the system as Mr. Carroll has just brought out, public values with regard to what is fair and what isn't fair, what is right and what is wrong.

I have a moment or two to ask Mr. Sheridan if he wants to say anything. It is not obligatory.

MR. SHERIDAN: The only comment that I would make is there have been some objections to the presentence report.

THE COURT: I read the objections.

MR. SILVERMAN: I don't want to make anything of them. Your Honor will consider them.

THE COURT: I don't think they have a significant effect in the outcome. I am glad you are as precise as you are.

MR. SILVERMAN: May I say the dichotomy between public and private is something I don't understand. Private contrition is not what I am talking about. It is a factor. There is a public purpose to be served by so treating Mr. Boesky because Mr. Giuliani said the message to the community is if you come in early and hard, it has a public purpose. And that is a factor that I have not --

THE COURT: I don't think that Mr. Carroll would disagree with it and neither would I disagree with it.

THE COURT: Since we have all been obliged candidly to recognize the public interest in the case, however, I think that it is accurate to say that the public probably considers punishment a more important factor in this case than they do the question of cooperation even if they may be wrong about that. That is part of the blood lust that you were talking about.

MR. CARROLL: We have a couple of plumbing matters which will take up two seconds. For example, the government would request that any surrender of Mr. Boesky be deferred.

THE COURT: I assumed that you would. He is continuing to cooperate. It would be mechanically very difficult.

MR. SILVERMAN: I know that you are anxious to get them off. Let me tick them off. I don't know if your Honor has read the Brill article in the American Lawyer.

THE COURT: I have not and I have deliberately not.

MR. SILVERMAN: That is good because I have 91 points I wanted to make as to the article.

THE COURT: That is one of the reasons I didn't read it.

MR. SILVERMAN: In terms of their inaccuracy.

MR. CARROLL: We join with them.

THE COURT: I read the Canon of Ethics which doesn't specify -- which says that if a judge reads anything outside the record, he should be given an opportunity to comment. I felt we would complicate the situation inordinately if we considered the material. I did look at my picture.

MR. SILVERMAN: Number two, we have suggested that your Honor may want to consider some alternative sentence, community placement. If that is in your Honor's contemplation, I wonder if you would ask Mr. Sheridan to go out and look at the facility and report to you.

THE COURT: I will if I consider it feasible. Let me say at the present time it does not appear to me that a split sentence would be appropriate here. If for no other reason than a split sentence would limit the period of imprisonment as you know to six months. I just don't see that in the cards in spite of your presentation.

MR. SILVERMAN: If your Honor does think it useful, perhaps Mr. Sheridan will. I just call it to your attention.

THE COURT: I don't know if he needs to go there. I saw the material that you sent me and the description of the proposition sounds like a very, very sensible facility and so

forth. But as long as you put the question I didn't want to let you leave here or Mr. Boesky with a belief that that was likely. Let me put it that way.

MR. SILVERMAN: There are one or two other matters. We are going to ask your Honor to consider making a recommendation with respect to the place of incarceration.

THE COURT: I will be glad to do that.

MR. SILVERMAN: Would you consider making the recommendation not an order, that would get the government upset and we would ask your Honor to consider Lompoc because there are no people in the trading business out there. It is a place that the government has cooperating witnesses. I don't know if your Honor wants me to write your Honor about this.

THE COURT: That is entirely up to you. If you wish to make the statement or suggestion in open court, you can do it. If you want to write me a letter, you can do it.

MR. SILVERMAN: Two other things. One we would ask your Honor to consider permitting Mr. Boesky to surrender at whatever institution --

MR. CARROLL: We consent to that.

THE COURT: I will.

MR. SILVERMAN: And the terms of his release pending his surrender date be kept as they are now.

MS. MELLING: Mr. Carroll has a request to file the order on December 18th instead of now and you said you would wait until now to consider that.

MR. CARROLL: We sent to the court a sealing order which your Honor signed. We would request to hold off on filing that.

THE COURT: Yes.

MR. SILVERMAN: And I am not sure that you received this document.

THE COURT: I will seal the memorandum that I received from the government and from Mr. Silverman and I am stating the reason I am doing so is in the interest of the public because it refers to ongoing investigations and revelations which would interfere with law enforcement.

MR. SILVERMAN: I don't think you received an original of the Crown Prosecution Services letter to you with respect to Mr. Boesky's cooperation in connection with the British proceedings.

THE COURT: Thank you.

MR. SILVERMAN: Thank you. We will be back on the 18th.

THE COURT: Yes.
