UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -x

UNITED STATES OF AMERICA

v. 87 Cr. 378

IVAN F. BOESKY,

Defendant.

- -x

December 18, 1987
9:30 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,
Assistant United States Attorney

LEON SILVERMAN,
Attorney for defendant

(Case called)

THE CLERK: Is the government ready?

MR. CARROLL: The government is ready.

THE CLERK: Is the defendant ready?

MR. SILVERMAN: The defendant is ready.

THE COURT: Very good. Mr. Silverman, before I call on you I will ask Mr. Carroll if the government has anything they wish to bring to my attention which they have not already done in their presentence report or in the earlier conference that we had, the record of which has been made public.

MR. CARROLL: If I may, your Honor:

Your Honor, today the government will ask you to do two things. We will ask you to fashion a sentence that is fair both to Mr. Boesky and to the community that reposes its trust in this process, and we will ask you to instruct the community that no amount of money and no amount of power and celebrity are worth the price the a defendant pays when he commits a crime and is caught.

Mr. Boesky has committed very great crimes. Through his insider trading with Dennis Levine and Martin Siegel he has in effect stolen great sums of money from an innocent public that believed that everyone started the game with the same fair chance of winning.

With Boyd Jeffries and others who we have named in our sentencing memorandum, Mr. Boesky has committed even more damaging crimes. Rather than just taking money, he has played fast and loose with the rules that govern our markets, with the effect of manipulating the outcome of financial transactions measured in the hundreds of millions of dollars.

He and his co-conspirators have essentially asserted that they are too big or too smart or too powerful to be governed by the rules that protect our financial world.

From these facts, it should be clear that Ivan Boesky is no Dennis Levine and no Israel Grossman. If you do no more than measure the amount of money that he gained from his insider trading and measure the duration and variety of his other crimes, the relative magnitude of his conduct jumps out.

At the behest of others, Mr. Boesky perpetrated frauds that ridicule any notion of fair, sensible secure markets.

But Mr. Boesky is different from Levine and Grossman too because of the fact and quality of his cooperation. In our sentencing memorandum, we have discussed that cooperation at great length. It is fair to say that we knew only the smallest part of Boesky's crimes before he walked in the door and told them to us. It is equally fair to speculate that without his help, we probably would never have discovered even all of his insider trading, let alone the systematic deceit that we now say mocks the very notion of financial competition being conducted on a level playing field.

Mr. Boesky's crimes unfairly cheated many people of their rightful due. Just the same, we hope that history will record Mr. Boesky's cooperation as an important first step on the road to reform. He has been and he continues to be a model cooperator. To the extent that these sorts of things can be measured, we would judge Mr. Boesky to be contrite, humble, repentant, and profoundly changed by these events. If he was an arrogant man before, his arrogance has now been stripped away from him. In ways that none of us in this courtroom have ever had to live with, Mr. Boesky has already lost much of his freedom. Truly, he has now lost the power to control his own life.

If all we were doing today, your Honor, was trying to measure what would be best for Mr. Boesky, everyone's job would require much less soul-searching. But your responsibility to the community requires you to take a broader view. We hope and we believe, your Honor, that you can send a powerful message to the community by the actions you take today. If any sentence in any criminal case can ever be a constructive thing, we hope that you will find that opportunity here. Either the types of crimes that Mr. Boesky has committed can be stopped or they can't be. If one believes in the possibility of stopping such conduct, one must realize that such crimes will not be stopped because the government can catch and prosecute every person on Wall Street who breaks the law.

These crimes will only be stopped because the public will be made to realize that nothing in life is worth the price to be paid when you are caught breaking the law.

I am sure that Mr. Boesky would tell the court that his crimes were not worth the game.

Now all of Wall Street must be made to realize that you cannot calculate the price of crime with a simple cost-benefit analysis.

Mr. Boesky has already brought very great shame upon himself. That shame will track him to the end of his days. To be fair, he has done as much as he can do in the way of cooperation to make amends for his crimes.

In sentencing Mr. Boesky today, we ask you to find the very public purpose in this process. We ask you to fashion a sentence that will instruct the financial community that power and position create no immunity to punishment, and that the cost of being caught cannot be measured even in the millions of dollars.

THE COURT: Thank you, Mr. Carroll. I want to commend you personally for the great thought that you have given to this case and the advice that you have given to the court which has been particularly helpful in trying to reach a decision in this difficult matter.

MR. CARROLL: Thank you your Honor.

THE COURT: Mr. Silverman?

MR. SILVERMAN: Your Honor, before I begin, may I introduce Mr. Robert McCaw, who is sitting next to Mr. Boesky, who is co-counsel with me in representing Mr. Boesky today.

THE COURT: Yes. I am pleased to have had Mr. McCaw before me before, and I am glad to recognize him at this time too.

MR. MC CAW: Thank you, your Honor.

MR. SILVERMAN: May it please the court, I will, with the court's permission, make a full presentation on behalf of Mr. Boesky.

THE COURT: Of course.

MR. SILVERMAN: Which may repeat some of the assertions which I made at the hearing before you on December 3. I hope not to trespass on your Honor's patience, and will desist whenever you wish.

THE COURT: No, I would like to have you make as full a statement as possible.

MR. SILVERMAN: My text begins, your Honor, with your opening remarks on the December 3 hearing. You said then "He," meaning the judge, "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."

Now, your Honor, I was struck by your reference to the passions of public opinion. There is indeed a bloodlust in the community. It is largely an unreasoned bloodlust fueled by incessant reportage, newspaper and television commentary, television skits, movies, and even a very recent play. Reason and balance have gone out the window. Indeed, as recently as Wednesday, the Wall Street Journal devoted a full page to a discussion of Mr. Boesky quoting from eleven wholly uninformed persons under the headline which reads, "What sentence should Ivan Boesky get?"

One person opined that Mr. Boesky should get 25 years. Other estimates are equally bizarre. This kind of publicity, and it has been pervasive and extravagant, has inflamed the public. Savagery has replaced reason. It is right for the court to protect Mr. Boesky against passions of public opinion while vindicating, as it must, society's interest in appropriate punishment considering all of the factors which the court has an obligation to take into account in imposing a fair sentence.

Your Honor is about to sentence Mr. Boesky on his plea of guilty to an one-count information which charged him with conspiring to make a false filing with the Securities and Exchange Commission. That crime is punishable by a maximum prison term of five years and a maximum fine of $250,000 plus an additional nominal assessment which I believe to be about $50.

His quality plea is a part of his settlement with the U.S. Attorney and the SEC in which Mr. Boesky consented to a civil injunction and an SEC order requiring him to pay $50 million in personal funds into an escrow account to settle claims against him and entities he managed, and paying an additional $50 million as a civil penalty. That totals $100 million. In

addition he resigned from the bar and agreed to be barred from the securities industry for the rest of his life

Finally, he agreed to cooperate with the United States Attorney and the SEC, and I will refer, as did Mr. Carroll, to his cooperation in a few minutes. It is the basis for my plea for leniency in the sentence to be imposed.

Your Honor, those are the vital statistics with respect to the settlement with the government.

The sentence today finishes only one part of Mr. Boesky's agreement with the government. The balance of his life, at least for the foreseeable future, will be spent in fulfilling the other obligations he has assumed in that plea agreement.

In sentencing Mr. Boesky, your Honor must deal with the totality of Mr. Boesky's life. He was not born four years ago when the various acts which will be weighed by your Honor began. He had lived for almost a half a century before his misconduct began. He had grown up in Detroit, graduated from law school, clerked for a federal judge, went into the securities business, married, became the father of four children, built a considerable fortune by reason of his undoubted talents as a successful securities professional, and expanded the practice of philanthropy which has characterized his life from the time he was a young adult in Detroit.

Mr. Boesky was a force for good in the community, and participated in charitable work by reason of personal commitment as well as by reason of massive charitable donations running to many millions of dollars. All that before his wrongdoing began.

I suggest that your Honor must take that into consideration in imposing a sentence.

Now, I know that your Honor has heard variations on this theme from many defendants' counsel over the course of the years. What is there in this case which impels me to ask for special consideration on Mr. Boesky's behalf? For I do ask for special consideration. I ask for leniency.

Mr. Boesky has acknowledged his implication in serious misconduct in the financial markets. Mr. Carroll has referred to those, and they appear in his presentencing memorandum.

But there is much to be said on the other side. First, Mr. Boesky, as Mr. Carroll has said, initiated contact with the United States Attorney. That followed hard on the heels of a SEC subpoena to him which was based on information provided by Dennis Levine, who pleaded guilty in this court to four felony counts and then proceeded to cooperate with the government.

When served with the subpoena which demanded the production of documents, Mr. Boesky consulted counsel. Mr. Boesky considered the possibility of defending himself against the SEC investigation and possible resultant litigation. None of Mr. Boesky's employees knew of his arrangements with Levine. Any charges which might have been brought would have been limited to the Boesky-Levine relationships. Indeed, the case would have been a one-on-one case, Levine's word against Boesky's.

But Levine, the government's only witness, would have been singularly vulnerable. He had confessed to perjury, obstruction of justice, tax evasion, and a securities fraud; hardly the hallmarks of a credible witness. Surely, Boesky had a viable and perhaps winnable case.

Mr. Boesky, however, decided, go to the SEC and the United States Attorney and put an end to the aberrational period in his life. He determined to put his life in order, whatever the consequences, and so began a journey which has inevitably led us to this courtroom today.

Mr. Giuliani, the United States Attorney, has put Mr. Boesky's decision to end his illegal conduct and cooperate with law enforcement agencies in the following terms, and I quote him:

"Without being arrested, indicted, or convicted, and easily a year away from any realistic period in which he could have been convicted, Boesky agreed to confess to the crimes he committed, cooperate with the government, and return more money than the SEC could have possibly recovered from him had we convicted him and taken the full limit to trial. A lot of people defrauded by him never would have gotten their money back because we would have 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 can't tell you how good the case would have been. There is at least a realistic chance that Boesky never would have been convicted had he not agreed to plead guilty. If he was convicted, it would have happened two years from now. Many of the leads the government had to obtain for other convictions would have evaporated and nothing says that after he was convicted he would have been inclined to cooperate. Thus, it is clear that the government was spared years of work, huge amounts of money, and tens of thousands of investigative hours by Mr. Boesky's early cooperation." Indeed, at the time of his plea, Mr. Giuliani stated that without Boesky's cooperation, it would have taken the government two years to accomplish as much on its own, and I quote, "if we could have gotten to that stage."

But Mr. Boesky did not stop at merely providing information to the government. At the request of the United States Attorney's office, he began to make and tape-record telephone calls and to arrange and tape-record meetings with others at the direction of government investigators. He did this despite considerable fears for his safety. Indeed, government agents were sufficiently concerned by the possibility of harm to Mr. Boesky as to offer him physical protection.

Now, if I may, a slight diversion. Gathering evidence, wearing body wires, taping conversations, all as requested by the government, has produced strange dividends. It corroborated Mr. Boesky's allegations about various persons and transactions; it strengthened the government's case against many individuals and institutions, and helped the partial expiation of Mr. Boesky's sins.

It also, however, has helped fuel the public's expressed hatred for Mr. Boesky; and curiously, has redounded to his detriment. The notion that gentlemen do not disclose the wrongdoing of others continues in full force and effect.

In the area of sophisticated financial wrongdoing, the principle of silence continues to be the order of the day. Thus, Mr. Boesky has been revealed as a stoolpigeon, an informer, a turncoat, and a traitor. He has become a leper in the financial community because he has disclosed instances of massive wrongdoing by many of his former colleagues and has flagged systemic inadequacies from which many have benefited substantially. This orchestrated revilement has contributed in no small measure to the bloodlust that I spoke of earlier.

Mr. Boesky's cooperation has thus far paid enormous dividends to the government. He provided the government with a roadmap to pervasive misconduct by Wall Street professionals in domestic and international securities markets. He disclosed information

which quickly led to pleas by Martin Siegel, the former head of Kidder, Peabody's mergers and acquisitions departments, Boyd Jeffries, the head of Jeffries & Company, the largest over-the-counter market maker in the country.

Both of these men immediately began to cooperate with the government in turn, triggering additional criminal and civil investigations of major Wall Street figures. A full statement of the indirect fruits of Mr. Boesky's cooperation, although known to the court, is yet to be disclosed publicly.

He disclosed wrongdoing by at least five major brokerage firms, the names of which I cannot disclose. He revealed the misuse of foreign securities markets to conceal securities-law violations. Information provided by Mr. Boesky to United States and United Kingdom authorities with respect to the take-offer of Distillers company by Guinness in a fight with Argyll has led to the largest securities investigation in British history.

I quote from a letter to the court, which has been released by the government from the Crown Prosecution Service, describing the fruits of Mr. Boesky's cooperation:

The Crown Prosecutor says, "The investigation resulting from Mr. Boesky's disclosures has resulted as follows:

"Mr. Saunders, the chairman of Guinness, resigned and was subsequently charged with destruction of documents and 37 other counts of criminal conduct. Mr. Seelig resigned his position with Morgan, Grenfell and was subsequently charged with twelve counts of criminal conduct. Mr. Ronson has been charged with five counts of criminal conduct. Sir Jack Lyons, who served as a consultant to the Boston, Mass., firm of Bain and Co. and Mr. Anthony Parnes, a U.K. stockbroker, were also charged with criminal conduct. Mr. Parnes was arrested in the United States and is awaiting extradition. The United Kingdom investigation is continuing."

The indirect effect of this cooperation, I suggest will undoubtedly benefit the United States in the future as Britain and other countries reciprocate by providing our authorities with information about violations of U.S. laws which come to their attention.

Mr. Boesky's cooperation has substantially contributed to the government's present efforts to reform the federal securities laws. Legislation to define insider trading and to curb abuses in the corporate takeover area are pending in Congress. Jeffries & Company and Kidder, Peabody are subject to new court-imposed compliance procedures. Kidder Peabody disbanded its arbitrage operations. Almost every Wall Street firm has reexamined and strengthened its compliance efforts. Surely, these reforms go far beyond any specific conduct disclosed by Mr. Boesky, but the government's initiative and momentum can fairly be attributed to information provided by him about previously undetected securities-law violations.

Mr. Boesky has spent in effect the last sixteen months in virtual incarceration. He has attended interview sessions with at least 22 different government investigators from the U.S. Attorney's office, investigators from the SEC, the United States Postal Service, officers from Scotland Yard, and representatives of other governmental bodies. In these sessions, Boesky assisted these authorities in developing more than a dozen criminal and civil cases, resulting to date in more than $34 million in disgorgements and civil penalties; this in addition to his own guilty plea, SEC injunction, loss of license to practice law, and $100 million in personal assets in disgorgement and civil penalties.

He has provided invaluable information to the government about merchant banking and arbitrage business, his dealings with dozens of Wall Street figures, the financing of his arbitrage corporation and partnerships, the details of the hundreds of merger and takeover transactions, and the specifics of thousands of transactions in over a hundred different stocks.

He volunteered valuable information suggesting new avenues of inquiry of the he provided useful insights into wrongful conduct in the securities marketplace, conduct in which he was not a participant.

He has encouraged his employees to cooperate with the government. At least 16 of his employees have provided useful additional information to the government. They corroborated Mr. Boesky's statements about details of transactions and revealed their own contacts with others involving government investigations.

He has arranged for many hundreds of thousands of pages of documents to be made available to the government. He arranged for his counsel to assist the government at no cost to the government in cataloging and indexing over a half a million pages. He pointed out sensitive information, the significance of which could not have been discovered by the investigators. He led the government through an otherwise impenetrable thicket and permitted them to obtain admissible evidence which would otherwise have been unavailable.

Now, your Honor will recall that I said that Mr. Boesky's cooperation began at an early time. It was a time when he was aware only that an investigation of his activities with Levine had only recently begun. As candidly reported in the government's presentence memorandum, and I quote from it, "Although the Securities and Exchange Commission had subpoenaed Boesky, no documents had been produced, and no testimony had been taken. This office" -- the United States Attorney's Office -- "had not initiated any contact with or made any request of Boesky. Boesky initiated contact with this office. Without Boesky's cooperation, this office could not have proceeded against Boesky without a lengthy and complex investigation. Obviously, the government had no assurance that Boesky would have been convicted.

Moreover, any investigation of the subjects identified by Boesky would have awaited and been contingent upon a successful completion of the Boesky prosecution."

Now, your Honor, Mr. Carroll spoke to you briefly, although at great length in his presentence memorandum, about the various wrongdoings committed by Mr. Boesky. He used terms that were in some eyes reasonable, in mine hyperbolic, to describe those activities.

I would, however, again remind the court that, as the government's memorandum points out, except for the Levine transactions, and I quote, "The first knowledge of the various criminal activities described in that memorandum came from Boesky himself."

Thus, what is surely right to consider on the debit side of the ledger must also appear on the credit side as part of his cooperation, revelation of wrongdoing which, but for his voluntary disclosure, would never have come to light.

I should now turn to a question which your Honor raised on December 3, and which appears in the press from time to time:

Didn't Mr. Boesky receive all the benefit for his cooperation to which he was entitled by being permitted to plead to one count of conspiracy to make a false filing? My answer to that is a categorical no. Mr. Boesky made a proffer to the government of information. That is what initiated this entire proceeding. The proffer was lengthy; it involved various persons, some of whose identities have not yet been disclosed; and it was detailed. Based upon that proffer and that proffer alone, Mr. Boesky was permitted to plead to one count.

Now, I could argue that even on that state of affairs, Mr. Boesky could be entitled to credit for cooperation, but I need not take on that burden, because that is not the state of affairs with which the court is confronted this morning.

As the government's presentence report makes clear, Mr. Boesky fulfilled his proffer with respect to each matter. The memo goes on to say that in addition, Boesky provided information that went far beyond the proffer. He identified more than 14 additional subjects. None of those persons were under any investigation before Mr. Boesky began to cooperate. Parenthetically, and only to demonstrate the importance of the additional information not included in the proffer, I should note that the Guinness transaction was one such transaction that came up after the proffer and after the agreement that he be permitted to plead to one count.

The government's memo goes on to say that, and I quote, "In addition, individuals whom Boesky identified and who are now cooperating with this office have provided information leading to new investigations which may result in additional indictments."

That additional cooperation entitles Mr. Boesky to substantial credit which is not covered by the one-count plea, which was based only on the proffer.

Now, on December 3 your Honor alluded to the problem of not being able to inform the public of the specifics of Mr. Boesky's remarkable and unprecedented cooperation. The word "unprecedented" appears in the government's characterization of that cooperation.

THE COURT: Yes, I know.

MR. SILVERMAN: To do so would be to compromise ongoing investigations. I am at a loss to know how to confront that problem. I want much to inform the public and the press of the details of that which Mr. Boesky disclosed. I can't do it. It would be wrong to do it.

I therefore have to content myself with repeating the government's characterization of that cooperation. The government says, "His cooperation with the government has been unprecedented. Not since the legislative hearings leading to the passage of

the 1933 and 1934 Securities Acts has the government learned so much at one time about securities law violations."

And again, the government says, "Boesky's cooperation enabled this office to stop ongoing criminal activities by others and to prevent crimes affecting the securities markets that would otherwise have occurred."

Now, lest cynics be in doubt, I think it also fair to observe that Mr. Boesky's cooperation disclosed more violations and systemic inadequacies which went far beyond any participation by him in much of the wrongdoing he disclosed. It would be fair to note that Mr. Boesky should not be taxed with responsibility for the systemic inadequacies.

Your Honor, it is this remarkable, complete, unprecedented, and ongoing cooperation which entitles me to plead on Mr. Boesky's behalf for leniency. I beg the court to further consider the price Mr. Boesky has paid for that cooperation. I do not mean his considerable out-of-pocket expenses. The cost in emotional and psychological trauma has been incredible. Your Honor briefly alluded to it tangentially, alluded to it in your December 3 hearing when you said, "Another difficulty for anybody in the sentencing situation is that there are ambivalent attitudes towards the subject of cooperation itself; namely, that while it is socially constructive and may be regarded as a sign of remorse, on the other hand, it may also be regarded as distasteful."

Now, as I said before, Mr. Boesky has been vilified and excoriated in the press and the other media for some 13 months on a daily basis. His cooperation exacerbated that vilification. He has become an outcast. He has been ostracized by his former friends and business associates. No one will take his calls; no one will be seen with him. He can't go into a restaurant, he can't use a credit card without attracting unwelcome attention.

Indeed, the unkindest cut of all was delivered by the very philanthropies that he had funded with millions of dollars before his fall. When he sought to do community service pending his sentence, he was shunned and turned away. Even his voluntary service was rejected.

He did, however, go to the Cathedral of Saint John the Devine and was accepted as a worker in a project dealing with homeless men, but even that service was accepted on condition that he use an assumed name and with a warning that if his participation became public, he would be chucked out of the program.

There is probably no one else in the United States who cannot do community service under his own name. That is rare punishment indeed.

Now, your Honor, I have discussed the basis for Mr. Boesky's plea for leniency. It is based on cooperation, complete, unstinting, and continuing.

But there is also a societal interest in recognizing Mr. Boesky's entitlement to leniency. Surely in this complicated, complex, international financial world, financial crimes are easily concealed. Malefactors of wealth have the resources to fight and delay investigations, and to fight and not infrequently succeed in defending criminal proceedings.

Mr. Carroll said you can't detect everybody. He urges the court to impose a sentence or Mr. Boesky which may deter others. That may be a deterrent, but I suggest that equally it must be considered that there must be an incentive to encourage others to come in and cooperate with government authorities. Only in that way will financial crimes be easily identified and prosecuted. Only by cooperation will scarce government resources be deployed effectively against crime.

Indeed, society should encourage those who cooperate to do more than minimally comply with plea agreements. To deal harshly with Mr. Boesky will, I suggest send an

unmistakeable signal to those who might otherwise be uncertain as to the course to follow. They may determine that the wisest course is to stonewall the government.

If a person whose cooperation has been as extensive and valuable as Mr. Boesky's is not dealt with with leniency, why on earth should wrongdoers come to the government early, or indeed, at all? Society's interests are furthered by judicial recognition of Boesky's cooperation.

Now, your Honor, there are one or two other factors that I am bound to put to you and which argue for leniency.

First I will ask your Honor to take into account Mr. Boesky's contrition and sorrow. It is not sorrow that he was caught it or contrition evidenced for the purpose of requesting leniency. Mr. Boesky was not caught. He came in early, without compulsion, and in complete candor. He recognized that his life, which prior to his wrongdoing in the past years has had been exemplary. It had gotten, however, out of hand. He simply could not continue. The psychiatric basis for that recent aberration Al life pattern is contained in the letter furnished to you by Mr. Boesky's psychiatrist. I will comment no further on that. Nor will I labor the sincerity of his contrition, since your Honor indicated your belief on December 3 that he was a reformed individual, and Mr. Carroll, on that day, and indeed this morning, said that Mr. Boesky, he believed, is remorseful, humble, repentant, and contrite.

There are those, however, who smile at the notion that Mr. Boesky or, indeed, any other criminal defendant, can be repentant and contrite. Yet we believe that an unrepentant defendant should be punished severely in our judicial system. If that is so, and if no defendant can be repentant, we have a terrible situation. It's heads the repentant sinner losses, tails the government wins.

Moreover, I would remind those skeptics that there is no major religion extant today that fails to acknowledge that repentance and confession expiate sins. Were it otherwise, the truly repentant and the incorrigible malefactor would be viewed in the same light. That is not and cannot be a principle of sentencing. It surely is not and cannot be a rule of ethics or accepted as the norm in a civilized society. Repentance and confession are societal values and societal norms. Credit is given for the repentant and the contrite. Mr. Boesky is entitled to nothing less.

Let me touch briefly on one or two other factors. Mr. Boesky has done everything in his power since his cooperation began to keep his limited partners from damage. He bargained for and was assured that the partnership would not be involved in criminal proceedings. He paid a $50 million civil penalty to take personal responsibility for the partnership's trading activities. He negotiated a settlement with the noteholders which saved the partnership at least $120 million. He liquidated the bulk of the partnership portfolio with the approval of the SEC in order to protect the partnership from loss.

He has deposited $50 million to compensate anyone who may have been injured by reason of his activities.

Indeed, we fairly expect that all the limited partners who are not themselves wrongdoers or did not profit from wrongdoing will emerge whole. There should be no uncompensated victims when the dust settles. There should be sufficient funds available through Mr. Boesky's efforts to make the necessary recompense.

I would like now to say a brief word about the canard which has found its way into the public press that Mr. Boesky, despite the payment of $100 million from his personal assets to the government continues to have undisclosed bank accounts in Switzerland or the Bahamas or elsewhere.

This court has before it a sworn financial statement which gives the lie to such rumors. Mr. Boesky has been virtually wiped out by the payment of the $100 million, the worthlessness of his investments in his former partnerships, and the costs of his cooperation, and the litigations pending against him. Nothing more remains. Nothing more remains to be said on that subject.

I must next touch on the impact of these proceedings on Mr. Boesky's family. It must be obvious to your Honor from the letters you have received from his family that the impact on of Mr. Boesky's conduct on them has been enormous. His wife and children have written your Honor, and I will content myself with merely noting that the letters were moving, sincere, insightful, and informative. His family's need not to be deprived of his presence for a great length of time will, I trust, weigh in your Honor's sentence.

Your Honor will note, however, that I have not suggested that Mr. Boesky expects that he will not be incarcerated for some period of time. Any such suggestion on expectation would not be realistic. I have heard Mr. Carroll talk about the need for a jail term to send a warning to the community. I do not fight that statement. The only question I think it is fair to put to the court is the length of a jail term. I would use as a point of departure the sentences imposed by Judge Goettel on Dennis Levine and by Judge Owen on Israel Grossman; and I have heard Mr. Carroll attempt to distinguish those cases.

Nevertheless, first, Dennis Levine. Mr. Levine perjured himself, suborned perjury by others, and obstructed justice until he was arrested. After his arrest, he claimed his Fifth Amendment rights, and he and his counsel publicly denied his crimes. He fought the SEC's preliminary injunction application. It was only after his assets were frozen by judicial order and his conviction virtually assured that Levine began to cooperate.

Levine received a two-year term, although Judge Goettel stated that Levine's offense standing alone is such as to warrant a sentence of five to ten years. It was his belated cooperation which led Judge Goettel to impose a sentence of two years.

Contrast Levine with Boesky, whose cooperation was early, complete, and infinitely more valuable. Surely, Mr. Boesky should not receive as great a sentence as Dennis Levine. Even conceding, as I do, that his financial crimes were greater, his cooperation, its timing and its value, more than outweigh the content of his criminality, particularly when one recognizes that Levine was also sentenced as a perjurer, as an obstructer of justice, and a person who evaded payment of income taxes, crimes that have never been charged against Mr. Boesky.

I can do no better than to quote Mr. Carroll from the December 3 hearing where he said, "There is no sense in which Mr. Boesky has not been more cooperative than Levine, no sense in which he hasn't done them," that is, cooperative deeds, "more readily, earlier, or what have you. They," Levine and Boesky, "are not comparable."

THE COURT: Well, I have to interrupt you to say that I remember Mr. Carroll also put some factors on the other side of the equation with regard to the Levine case.

MR. SILVERMAN: Well, your Honor I don't mean to debate the issue. Mr. Carroll, I thought, pointed out the difference in the criminality involved.

THE COURT: Which is accurate.

MR. SILVERMAN: And that I have conceded. I do not argue that court court I am not arguing with you. I just want the record to be clear.

MR. SILVERMAN: Now, if your Honor pleases, Israel Grossman, was tried and convicted of 38 counts after a trial of several weeks. There was no cooperation. Family members who benefited from his illegal insider trading fled the jurisdiction. Yet Mr. Grossman

received a two-year sentence from Judge Owen with no history of cooperation or remorse, and after stonewalling the government, even through conviction, a two-year term was thought adequate.

Should Boesky not be treated more leniently than that?

We compiled all of the insider trading prosecutions for the Southern District of New York through February 12, 1987, and appended them as a chart to our presentencing memorandum. In no case was a jail term of more than two and a half years imposed, and that term in only one case. Indeed, in case in which the defendant cooperated at an early date with the government, we have been unable to find any sentence, except Levine's, exceeding a year and a day.

Whatever sentence is now imposed on Mr. Boesky, it must be clear that Mr. Boesky's punishment has been and will continue to be devastating. His license has been revoked. He has lost a lifetime profession. His wealth has been forfeited. The demise of his social position has wiped him out in that area. He has been abandoned by his friends. He has created devastation on his family. He has been the subject of unmerciful media revilement, and endless civil litigation inexorably point towards bankruptcy.

And the certainty of many years as a witness in criminal and civil proceedings, enforcement proceedings, Congressional and regulatory agency hearings, provides Mr. Boesky with a most certain but most unattractive future. A jail term, no matter how short, added to these punishments under the unique circumstances of this case will be crushing.

I can only urge the court, as does the government in its presentence memorandum, to take into account not only Mr. Boesky's criminal conduct, but in mitigation, his outstanding cooperation.

THE COURT: Thank you very much, Mr. Silverman.

I want to say to the public before I go further that in spite of a lengthy presentation by Mr. Silverman and the somewhat shorter presentation by Mr. Carroll, if we had not met and heard argument on this matter a couple of weeks ago, it would be impossible to proceed at the moment because of the very many arguments that have been put before me. It is quite appropriate, I think, that such arguments should be made at length in a public forum, as they have been today, but I am ready to proceed at this time because I have been advised in advance on the record of the views of counsel before this time.

Mr. Boesky, would you stand, please.

Mr. Boesky, you have the right at this time to make any statement you wish to the court. I know that I did give you that opportunity at the meeting that we have all referred to, and you did make remarks on the record at that time; but because of the importance of this occasion, you may wish to do so again or amplify your remarks or if you don't care to make any, I will understand that. It's entirely up to you.

THE DEFENDANT: Your Honor I would like to simply say that you will recall I expressed my profound sentiments to you on the date we met, and I could not make it more deeply now.

THE COURT: Thank you Mr. Boesky.

Mr. Boesky, and ladies and gentlemen, I have prepared some remarks which I believe are appropriate for this occasion, and although they amount to a sentencing statement, I am not going to ask Mr. Boesky to stand until I have come towards the end of the statement, because I don't want to make this an exhibitionistic exercise.

Addressing myself to everybody in the room, experience teaches that cases periodically arise which attract unusual public attention because they seem to crystallize all the facets of a social problem. The case of the United States of America against Ivan F. Boesky is such a case. Through the press and the media, the public has come to regard this proceeding as the ultimate representation of the insider trading scandal because of the scope of the offenses involved, and the celebrity and notoriety of the defendant.

Accordingly, it is particularly important for the public to be assured that all of the parties and the court have given great thought to a just disposition of this case which must be and has been based upon a fair wedding of the public concerns involved, the private concerns, including aggravating and mitigating circumstances of the particular offense, the purposes of sentencing, and the application of those purposes to this case.

I will discuss these issues in the order in which have just recited them.

First, the public has a deep, legitimate concern as to the obedience of the law, integrity of the financial markets, and above all, that the courts decide cases fairly, fully, and objectively. In cases of this kind, that means, as I have said before, that a judge has the responsibility both to act in such a way as not to endanger the confidence of the public in the objectivity and good sense of the judiciary, and also a responsibility to protect a defendant against unreasonable passions of public opinion.

Second, every defendant has the right to expect that his case will be considered on the merits, and the particular circumstances of his acts, and the court has a responsibility to weigh the favorable and unfavorable circumstances before it.

In the Boesky case, the offenses are of the highest seriousness, but it is also true that the mitigating factors are unusually weighty. Ivan Boesky is not only guilty of simple

insider trading; but the scope of his offenses is substantially enlarged, as he himself has conceded, by engaging in many transactions at the behest of others on a scale so substantial as to represent a systemic problem in the financial market.

On the other hand, as the United States Attorney's sentencing memorandum points out, I will quote a passage that has now become rather public:

"Mr. Boesky's cooperation with the government has been unprecedented. Not since the legislative hearings leading to the passage of the 1933 and 1934 Securities Acts has the government learned so much at one time about securities law violations."

The presentence report of the probation department of this court establishes that Mr. Boesky's cooperation has consisted of the following:

First, voluntarily revealing to the Securities and Exchange Commission and the United States Attorney's Office the details of his offenses as to some of which they already had hints but as to most of which they did not, without any summons from the Securities and Exchange Commission or any indictment or charge having been filed by the United States Attorney's Office.

Second, entering into an agreement with the Securities and Exchange Commission to accept a civil penalty of $50 million and to establish a separate fund of $50 million for payment of claims of persons who may establish that they have been injured by Boesky's acts. As to the latter fund, none of the moneys in question will revert to Mr. Boesky even if claimants do not establish their right to the full $50 million.

Third, the cooperation has also included providing information on a scale well beyond that specified in the plea agreement with the government as well as Boesky's efforts, substantially successful, to persuade his former staff to assist the government in his investigation.

Boesky's cooperation with the government has assisted the government in stopping ongoing criminal activities by others, and in preventing crimes affecting the securities market that would otherwise have occurred.

Indeed, the government has stated that Boesky has, "given the government a window on the rampant criminal conduct that has permeated the securities industry in the 1980's."

Next, Mr. Boesky has also accepted a decree barring him from ever engaging in the securities business and has voluntarily resigned as a member of the bar of the state of Michigan.

Finally, Mr. Boesky is entitled to the court's consideration of the fact that he has no prior record, and that indeed, until the occurrence of the offenses to which he has confessed, he was a good citizen and member of the community, as attested not only by many letters from responsible citizens of good repute, who have known him over the years, but by his philanthropic activities and gifts.

With this factual background, let me consider the purposes of sentencing, and the application of those purposes to this case.

It is widely, perhaps universally agreed, that the purposes of sentencing are, first, to impose punishment or retribution proportional to the offense.

Second, to rehabilitate the offender, that is, to reform him from someone who by his offense has shown himself to be socially destructive to one who will be socially constructive.

Third, individual deterrence, that is, to deter or prevent the individual offender from offending again.

Fourth, general deterrence. That is, to warn members of the public of the seriousness of the offense, and to prevent them from engaging in such conduct.

As to punishment, Mr. Boesky's offense cannot go unpunished. Its scope was too great, its influence too profound, its seriousness too substantial merely to forgive and forget.

As to rehabilitation, there is no need in this case to impose sentence for the purpose of rehabilitation. We will not know, in Mr. Boesky's case any more than any other, until his death whether he has been truly rehabilitated.

Yet every item of evidence establishes with a high degree of assurance that Mr. Boesky is not today the man he was at the time of his offenses.

Aside from the agreements which he made with the government to disgorge $100 million and to cooperate with the government in fulfillment of his agreement, in what the United States has described as an unprecedented manner, aside from the facts, which may be regarded by some as an attempt to curry favor with the court, that Mr. Boesky has volunteered his services to work with homeless men, and has engaged in religious studies, there is no doubt that Mr. Boesky has been humiliated, vilified, and cut down to size in a degree rarely heard of in the life of a person who was once regarded favorably as a celebrity.

As the United States Attorney stated at the earlier conference relating to this sentencing, "There is private conviction, there is model cooperation, there is all of that in spades."

As to individual deterrence, for the reasons I have just indicated, in sentencing Mr. Boesky there is no need to apply the principles of individual deterrence. If there was ever a case in which there was reason to believe reasonable to believe that the offender himself will not repeat his offence or resort to future criminal behavior, this is it.

Moreover, as I have already said, Mr. Boesky has consented to a decree banning him from the securities industry for life and has resigned as a member of the bar.

As to general deterrence, on the other hand, it is of substantial importance that the principle of general deterrence, that is, deterring members of the public and in particular members of the financial community, from committing offenses such as Boesky's be considered as a factor in Boesky's sentence.

Recent history has shown that the kind of erosion of morals and standards and obedience to the law involved in a case such as this is unhappily widespread in both business and government. The time has come when it is totally unacceptable for the courts to act as if prison is unthinkable for white-collar defendants but a matter of routine in other cases. Breaking the law is breaking the law. Some kind of message must be sent to the business community that such activities cannot be wholly repaired simply by repaying people after the fact.

The signal must go out, loud and clear, to those attempting to skirt, fudge, or deliberately break the law, that to preserve and to nourish moral values, to strengthen respect for the rule of law as governing society, so each of us has a fair and equal chance, and to preserve not only the actual integrity of the financial markets but the appearance of integrity in those markets, criminal behavior such as Mr. Boesky's can not go unchecked.

I will now, Mr. Boesky, ask to you stand.

Mr. Boesky, you have pleaded guilty to conspiring to file a false statement in violation of 18 United States Code, Section 371. This offense as you know, carries a possible penalty of five years in prison and $250,000 fine as well as a $50 mandatory assessment.

By entering into such a plea in an acknowledged plea bargain there is no doubt that you have been given credit at least for the actions which you took before the plea bargain was entered into, and for the actions which you agreed to perform as part of that bargain.

The question which has been properly raised by your counsel is whether, bearing in mind all of the circumstances I have described above, you are entitled to any further credit.

After very substantial thought and review of the recommendation of the Probation Department of this court, as well as the United States attorney's sentencing memorandum, and that of your attorney, and after conference with counsel and probation department in which the views of all parties have been expressed, and weighing all the interests and factors which I have discussed above, it is adjudged that on Count One you be committed to the custody of the Attorney General or his authorized representative for a period of three years.

No fine is imposed for two reasons. First, because of your disgorgement of $100 million, and second, and more important, it is appropriate that your legitimate creditors be given a claim on your assets prior to that of the government.

The defendant is assessed the sum of $50 as required by law.

You can be seated, Mr. Boesky.

Mr. Silverman and Mr. Carroll, I know that we discussed at the conference in my chambers the question of surrender, and there is no need for me to call upon you to express your views because they have been articulated. Is there any change in attitude at the moment?

MR. CARROLL: Your Honor, perhaps we left the court or perhaps the public took a misimpression from what was said at the conference. Mr. Boesky's counsel and I have agreed that we would recommend to the court that his surrender to whatever institution be

adjourned for just 90 days. We would ask that a surrender date be set, I believe the 90 days would be March 24, 1988.

THE COURT: If that is by consent, I am quite agreeable to it.

MR. SILVERMAN: Your Honor, my application would be that Mr. Boesky be permitted to surrender at the institution that is designated on that day, and I understand Mr. Carroll has no objection to that.

THE COURT: That is a perfectly normal thing in many cases and I am glad you approve of it.

MR. SILVERMAN: I would also ask your Honor to continue during this 90-day period Mr. Boesky's release on the same terms on which he has being released to this day.

THE COURT: I assume the government has no objection to that?

MR. CARROLL: No objection to that.

THE COURT: Very good. Thank you all for your courtesy.

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