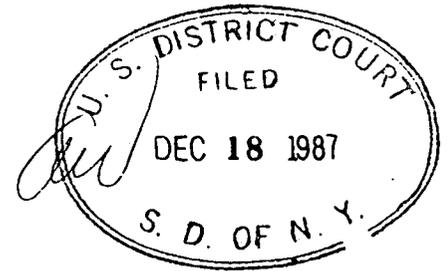


U.S.A. v. IVAN F. BOESKY
87 Cr. 378(MEL)



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 ~~or~~ 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 weighing of the public concerns involved, the private concerns (including the 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 I have just recited them.

First, the public has a deep, legitimate concern as to 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 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 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 concedes, 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:

"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 Act has the government

learned so much at one time about securities law violations."

The pre-sentence report of the Probation Dept of Pres Court established that
That cooperation has consisted of the following:

a) voluntarily revealing to the Securities & Exchange Commission and the United States Attorney's Office the details of ^{his} Mr. Boesky's 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 & Exchange Commission or any indictment or charge having been filed by the United States Attorney's Office;

b) entering into an agreement with the Securities & Exchange Commission to accept a fine 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 monies in question will revert to ~~Mr.~~ Boesky even if claimants do not establish the right to the full \$50 million;

c) 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 its investigation. Boesky's cooperation with the government has assisted the government in stopping on-going criminal activities by

others and in preventing crimes affecting the securities markets 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";

d) 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.

Boesky is also 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, we must consider the purposes of sentencing and the application of those purposes to this case.

Sentencing

It is widely, perhaps universally, agreed that the purposes of sentence are:

- 1) to impose punishment or retribution proportionate to the offense;
- 2) 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;

3) individual deterrence: that is, to deter or prevent the individual offender from offending again;

4) 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.

Punishment

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

Rehabilitation

There is no need in this case to impose sentence for the purpose of rehabilitation. We will not know in Boesky's case, any more than in any other, until the death of the person in question whether he has been truly rehabilitated. Yet every item of evidence establishes with a high degree of assurance that 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 them and the fulfillment of that agreement in what the United States Attorney 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 Boesky has volunteered

his services to work with homeless men and is engaged in religious studies, there is no doubt that 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 contrition. There is model cooperation. There is all of that in spades."

Individual Deterrence

For the reasons I have just indicated, in sentencing Boesky there is no need to apply the principles of individual deterrence. If there was ever a case in which it was reasonable to believe that the offender himself will not repeat his offense or resort to future criminal behavior, this is it. Moreover, as I have already said, Boesky has consented to a decree banning him from the securities industry for life and has resigned as a member of the Bar.

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 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 tempted to skirt, fudge or deliberately break the law that to preserve and 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 Boesky's cannot go unchecked.

WJZ
SECRET →

The Terms of the Sentence

Mr. Boesky, you have pleaded guilty to conspiring to file a false statement in violation of Title 18 U.S.C. § 371. This offense carries a possible penalty of five years in prison, a \$250,000. fine and 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 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 the Probation Department in which the views of all parties were 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. *WJZ*

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.

DEC 18 1987

DEFT. BOESKY pres. W/ATTY LEON SILVERMAN,
AUSA - JOHN CARROLL pres.

Δ IS SENTENCED TO CUSTODY THREE (3) YEARS.
BAIL CONT'D, Δ IS ASSESSED THE SUM OF
\$50.00 Δ TO SURRENDER TO A DESIGNATED INSTITUTION
ON MARCH 24, 1988.

LASKER, J. H.