UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA

v 87 Cr. 378 MEL

IVAN F. BOESKY,

Defendant

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December 16, 1987
9 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
DAVID NELSON,
Special Assistant United States Attorney

LEON SILVERMAN,
Attorney for defendant

CAHILL GORDON & REINDEL,
Attorneys for American Lawyer
FLOYD ABRAMS
DEVEREUX CHATILLON,
Of Counsel

Appearances cont'd

TOWNLEY & UPDIKE,
Attorneys for Newsday
ROBERT LLOYD RASKOPF,
Of Counsel

Present: ROBERT B. McCAW,
WILMER, CUTLER & PICKERING

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THE COURT: Good morning. Before we get started, that is to say, before I ask counsel to make any remarks, I think I might say a word or two to put the situation we now have in perspective. We are here because of a motion on behalf of counsel for the American Lawyer for the court to make public all the materials submitted to the court relating to the sentence of Ivan Boesky.

That material consists in general of a presentence report prepared by the presentence officer in this case who is an official of the Probation Department of this court, and some letters and in support of that, most of which as a matter of fact are attached to a copy of the defendant's sentencing memorandum but not all of which are.

There is also a memorandum submitted to the court by the United States attorney and a memorandum submitted to the court by defense counsel. I don't think there are any other significant items.

A week or two ago, I held a presentence conference with the defendant and his attorneys and the United States attorney and the probation officer who wrote the presentence report and his superior, all of which was on the record, and that record as I understand it has been made available to everybody here, in fact to the whole world because I read it with interest to see

whether it was accurately reprinted in the Manhattan Lawyer which is a sister newspaper of the American Lawyer.

I think some misunderstanding may have arisen with regard to availability of material in general because at conference to which I just referred there were no members of press there, and an application was made at that time for me to allow the sealing of the actual unredacted government and defense memorandum and the filing of redacted versions, the originals to be made public at such time as there was no longer any concern about the security of the investigation still being conducted by the United States attorney of which Mr. Boesky is cooperating.

I did approve the sealing of the originals and the filing of redacted versions. I think that the press was unaware when I received the first request from Mr. Col of the Washington Post, later another letter request from Townley and Updike on behalf of Newsday and finally Mr. Abrams' motion, I think the press was unaware that redacted versions of those memorandum would be available to them and they have been made available at least by filing and perhaps actually by delivery of copies, I don't know.

So where we stand now, it seems to me, if we still have an issue, it has to do with whether the court should order the release of the material which is contained in the unredacted versions of the memoranda and whether the court should order the release of all or any part of the presentence report and the supporting letters.

I will ask Mr. Abrams to address those questions.

MR. ABRAMS: Good morning, your Honor. Thanks to hearing us so soon. We made this application at the end of last week and we appreciate the promptness of scheduling

this. Your Honor is quite right, at the time we made the application we did not know all that your Honor has told us today and indeed all that we have learned in the interim.

There was a sealing order of November 30 which was not in the clerk's office as such in the interim. We now have had access to the redacted memos to which your Honor has made reference.

There are really two types of material, then, that we think are open for your Honor's consideration or reconsideration on today. As to one, I have very little to say except to urge your Honor to read or reread with care that which I assume you have already reread. That is, we have said in our papers that there is a governmental privilege which relates to ongoing investigations; there's no question of that.

We can't pass judgment on whether the material that has been redacted from the memos which we now have had access to are documents as to which that privilege has been properly claimed. So as to that material, we simply ask the court to take such steps as he think appropriate to assure that everything that the government has deleted from its sentencing memo and everything that Mr. Silverman has deleted from his memorandum --

THE COURT: Which I assume is pretty much the same. Mr. Silverman, didn't you redact pretty much the same material as the government?

MR. SILVERMAN: We redacted, at the government's request, all matters the government felt might impact on the ongoing investigation.

THE COURT: Did you redact anything else?

MR. SILVERMAN: Nothing other than that.

THE COURT: So it's the same proposition.

MR. ABRAMS: The only legal proposition that I would cite is it doesn't lie with the government to do the redacting but it is up to the court.

THE COURT: Because of the seriousness of the entire situation I will look back over those redacted versions. I want to make it emphatically clear on the record that I have absolutely no doubt in my mind that the government was justified in proposing to redact the material that they advised me about and I looked over the redacted material that came in yesterday and although I didn't line the two versions up side by side, I am pretty well convinced that they have done what they should have done and no more.

MR. ABRAMS: Turning to the presentence report, I would like to go back just a step and just make an observation or two about the law and then turn to the report and the material that we understand is annexed to the report or made in some sense a part of the report.

Nothing was clearer to me, if I can put it that way, in reading or rereading the cases in this area yesterday and how new the area is. There was no right of access ten years ago.

THE COURT: Even to defendants.

MR. ABRAMS: Even to defendants. And whatever precious little argument there is, even if your Honor had decided to close the courtroom on Friday, is rooted in the First Amendment that there was a right to be present. All of that has changed, of course. The law is clear, I would say now, that not only does a sentencing hearing have to be open but at least as a presumptive matter, as I read the New York Times decision of earlier this year, as a presumptive matter, any written documents submitted in connection with a judicial proceeding, that is itself open, are to be made public.

That is something which can be overcome to be sure. And the New York Times case said in so many words that when it is overcome, when documents are sealed, what is

required is "specific on-the-record findings to be made demonstrating that closure is essential to preserve higher values and is narrowly tailored to serve that interest."

Your Honor, we understand that to mean that the one thing that may not be done is for the government simply to urge, or for your Honor simply to rule, that nothing in the way of the presentence report may be made public, because as a general matter, presentence reports are not made public.

We think that on-the-record findings are needed about this presentence report and the sort of material that is in it. What I would urge upon you is that a case as recently as the Charmer case, 1988, must be read in conjunction with the later case law, particularly the 1987 New York Times case out of the Second Circuit.

As I understand it, your Honor, in Mr. Boesky's submission there are five or six different types of material in or surrounding the presentence report or perhaps part of the presentence report. One is a report of the Probation Department. One, we understand, is a government submission which Mr. Boesky's brief says contains certain grand jury material and information about targets of investigation.

One is a submission from the United Kingdom about cooperation by Mr. Boesky in that country with representatives of that country. One is a draft of Mr. Boesky's sentencing memo and one is certain miscellaneous material which includes, among other things, personal financial statements of Mr. Boesky.

THE COURT: Let me correct what I think may be a misconception or at least a misdescription. The presentence report, and I don't know if you have ever seen any of them or not, is a single document and it has some letters attached to it. It is a single document. It incorporates some of the material you are talking about.

It is not as if there are half a dozen different documents. It is just one document submitted to me by the presentence reporter which gives the government's version of the situation, the defendant's version of the situation, which does include reference to cooperation with the British authorities and so on. But it is a single document with a lot of information.

MR. ABRAMS: It seems to me, your Honor, that the question is not whether the American Lawyer or the public in general can have access to the entirety of the presentence report. I assume that there are certain privileges, some have been asserted already, apart from general opposition to the release of any part of the presentence report. And to the extent that the presentence report contains information about ongoing investigations, that is privileged material.

Let me start with the question of why anything from the United Kingdom should be privileged. Unless there is some reason why it should be privileged, I would argue to you that it shouldn't be privileged. Put differently, I would argue to you, your Honor, that the burden of proof in this case has now shifted -- I don't mean just in this case -- the of burden of proof in general with respect to the openness of documents submitted to a judge in connection with sentencing has shifted to the parties that wish to keep it secret.

I take into account the Charmer Case and the historical antipathy of courts to make available presentence reports. I think that that must now be understood in light of the newly established First Amendment imperatives of openness or presumptive openness to judicial proceedings and the documents which affect the behavior, the actions, the conduct of the judiciary in the sentencing process.

And so I think it is appropriate to look separately at the separate types of information which are in the presentence report and that is to say that unless there is some basis for saying that disclosure, for example, of the United Kingdom information will compromise

something, some ongoing investigation which ought not be compromised, it ought to be made public.

THE COURT: I am not quite clear at this moment, it was a couple weeks since I looked, but my impression is it is still ongoing to extent, is it not, Mr. Carroll?

MR. CARROLL: I think we are fully in agreement with Mr. Abrams on the U.K. letter. I didn't realize it only came to the court in that guise as part of the presentence report.

THE COURT: If that material doesn't deal with any ongoing investigation --

MR. CARROLL: We will treat it the same way we treated the government's submission.

MR. ABRAMS: Reference was made to personal financial statements, was the way Mr. Boesky's memo phrased it, of Mr. Boesky, which was made available to the Probation Department and which I gather is set forth in the presentence report.

Here is something which I think is directly relevant on any theory of the matter to public understanding of whatever sentence should be impose on Mr. Boesky on Friday. Surely one of the public debates that has ensued and will ensue whatever your Honor does is how is Mr. Boesky doing? Is he really bankrupt? How bad off is he? How much has he profited?

THE COURT: All of his civil litigation opponents are going to find that out very quickly.

MR. ABRAMS: But all the less he is protected, and it seems to us, your Honor, that that is just the sort of material which ought to be made available promptly after your Honor reviews it. But my basic position is there is no privilege for that material and that at least it ought presumptively to be made public and that probably it ought to be made public.

The draft of Mr. Boesky's sentencing memo, I assume we have the sentencing memo now, so to the extent that this is in there we don't need to press for that.

The government's submission which Mr. Silverman made reference to in his memorandum containing grand jury material and respective targets, if that is as confidential as that sounds then we would not be entitled to.

What about the Probation Department recommendations or analysis itself not taking into account the material that I've talked about so far?

THE COURT: Recommendation is not made available even to the defendant. I don't know if you are aware of that.

MR. ABRAMS: Is not --

THE COURT: Is not under law made available to the defendant. The report is.

MR. ABRAMS: We would urge that, first, that the report, insofar as it is not specifically privileged, should be made available. In terms of anything in the report which bears upon what sentence the probation department recommends, I would urge upon the court that at least at the time after sentencing, when your Honor has passed judgment on this and taken into account the recommendation, that there's a very special need, a very special desirability in this case, that that material be made public.

This is not an ordinary case in a lot of ways. Not just the notoriety of it. The government says in its brief things which indicate the extraordinary importance of this case. They tell us that not since the legislative hearings in 1933 and 1934 about the Securities Act have they learned so much at one time and one place from one person. All the more reason I would argue that more rather than less should be made known.

More important than that, we don't really have here the same sort of adversary proceeding between the government and Ivan Boesky that is more rather than less commonplace. Reading these memos as I did yesterday, redacted as they are, but reading the memo of the United States and reading Mr. Boesky's memo, there is no outside non-involved decision maker present. That is to say, both parties basically take the same position.

This is not a situation in which Mr. Boesky has submitted a memo saying "Look, you should give me mercy even though I did something wrong," which is what his memo has said and the government has said Mr. Boesky has done terrible things that are wrong and here's why you shouldn't give him mercy. They are people pretty much together which makes it all the more important for any information the public can have as to the view of the disinterested party and the Probation Department is that.

THE COURT: I think there is some truth as to what you say, but I think it would be misconstrued if I sat here and was believed to be in complete agreement because I am not. I think there is a wide area of agreement between the government and the defendant as to facts. There is a substantial disagreement between the government and Mr. Boesky as to what penalty ought to be imposed here.

MR. ABRAMS: What seems to me more common is not just the wide agreement on facts, but at least the tone and nuance of the government's presentation to you about what overview you ought to take of Mr. Boesky and his conduct. Your Honor can pass better judgment, to say the least, than I about the bottom line about where they come out.

THE COURT: I think that tone is originally because of the objectivity with which the United States Attorney's office is viewing this case, and I want to commend them for what I think is marked professionalism. And it may be that people from the outside may expect to find

a more antagonistic approach and the lack of it makes it seem not necessarily so. Of course there is the illusion of seeing eye to eye, but the conference which I held upstairs and which you have read illuminated it for me and which I concluded that each side is properly protecting the interests of its clients in an adversary manner that way but it is a well mannered adversarial battle.

MR. ABRAMS: I wasn't suggesting and I don't have the knowledge to suggest anything about impropriety or collusion, to say the least. But I am suggesting and I would urge upon you that there would be enormous public benefit to permit the public have the views of the Probation Department in this case.

THE COURT: Let me make it -- I am not going to make it perfectly clear, I am justing going to make it clear that I take the points that you are raising very seriously. I went to the same law school that you did and although I've never taught there the subjects as you have, I have the same high regard for the First Amendment that you do.

I think you are presenting the matter in a very responsible way and you can count to me on me to review the material and to make whatever findings the law of this circuit requires in that regard. I am not sure to what extent I agree with you that the New York Times imposes conditions on Charmer. That's a question of law I have to decide.

But whether it does or not, I may make the findings because it is not a major job.

MR. ABRAMS: Thank you.

THE COURT: Mr. Carroll, do you want to state anything?

MR. CARROLL: If I may. I would first say, your Honor, that I think we are fundamentally in agreement with Mr. Abrams. I think that perhaps as much as anyone we want as much of this process done in the clear light of day because I think the public benefits from it

and I think that perhaps no one is as subject to criticism or is perhaps widely disserved by the elements of this that were done in privacy as the government.

I don't know whether your Honor has read the press in the recent days but certainly the claim that Mr. Abrams suggests, and I don't mean to mean to say that he suggests collusion, but the claim that he suggests that we are perhaps closer to Mr. Boesky than we are has been made in the press recently.

THE COURT: I haven't seen it but I am not surprised.

MR. CARROLL: I think we are disserved by that and it is part of the process and we are all big boys and we will take that, but we think there are higher values here and we think among those values are the values of protecting the investigation that's going on, the many investigations that are going on, from scrutiny at this point.

There are two --

THE COURT: I am interested also in your view, if you want to express one, with regard to the presentence report. That's a matter that's probably of more interest to a judge than people in the other roles here, but I should think the United States Attorney's office, which after all has nearly as important a role with regard to this subject, would would have a position and want to say something about it.

MR. CARROLL: Certainly, your Honor. We do aggressively oppose the opening up of the presentence report. They play a very special function in our system here. To some degree a presentence report, the whole process is an individual coming in with an expectation of privacy, in some sense confessing as it were to an independent party, to a third party, so that the court and therefore the system, the public will have the benefit of as much information as possible.

To a certain extent, in that process there is almost an element of compulsion. The individual knows that he is meeting the state in that process, he knows that he is being asked questions that are going to in some sense be weighted for or weighted against him and he knows if he doesn't answer those questions that the state is putting to him, then he is going to in some sense disserve himself simply by the fact of not providing information. If he stands silent it is going to in some sense go against him.

Certainly Mr. Boesky, when he went into that process, presumably his counsel were aware of the state of the law; presumably they knew of the Charmer case and presumably they knew that no presentence report had been made public before. Certainly Mr. Boesky had an expectation of privacy and proceeded under that expectation.

I think that one of the notions that comes out of the cases that Mr. Abrams cites in his memorandum to the court is that the First Amendment asks us to go as far as we can at the time we are at. Well, certainly as to, for example, the financial information, all of that will become public over time. Most of the information in that report will become public over time, and what we are talking about is not shutting the door on it, but just waiting until the proper time for disclosure of those things and not using the element of compulsion that is inherent in that presentence process to lay that information bare to the public.

We think that there is a strong expectation of privacy in that process. We think that if a potential defendant knows or a defendant knows that what he says there is going to be printed on the front page of the American Lawyer or the New York Times, that then the process will be disserved by doing that.

There are elements, and I think that the U.K. letter that Mr. Abrams raises, there are elements of this particular presentence report that do not generate from the probation office

and I think that we would concede that those elements should be looked at in another light, and I am sure we can get a copy of the U.K. report to your Honor.

And I don't mean to suggest by that that what we are doing is opening up a part of the presentence report. What we will do is get it to your Honor and to Mr. Abrams and whomever else wants it.

THE COURT: Are you talking about something beyond the letter that I've already received from the U.K. authorities?

MR. CARROLL: No, your Honor.

THE COURT: You are talking about the letter?

MR. CARROLL: Yes.

THE COURT: I have that. If you want to furnish that to Mr. Abrams, I will not stop you unless Mr. Silverman brings on a motion for a temporary restraining order, or a permanent one.

MR. SILVERMAN: I am not normally litigious.

THE COURT: That's what makes this case so unusual, is that right?

MR. CARROLL: Your Honor, we think the Charmer case still does govern. It discusses values apart from the values that Mr. Abrams has raised.

THE COURT: It deals with the special situation at hand which of course gives it I think a particular force.

MR. CARROLL: We do want the public to know as much about this process as possible and we think we have in fact bent over backwards to do that.

THE COURT: Thank you, Mr. Carroll.

Mr. Silverman, do you want to add anything?

MR. SILVERMAN: I won't lard the record with any great colloquoy about this. There is an observation that I would, however, like to make. And that is, Mr. Abrams referred to what he thought was the lack of the adversarial process between Mr. Boesky and the United States Attorney's office. The fact is that the antagonism that might normally be generated in criminal proceedings doesn't exist for the reason that I will again articulate on Friday.

That Mr. Boesky came in to the United States attorney and bared his sole. There is nothing that he has concealed from the United States attorney.

The antagonism that normally is a product of an adversarial kind of hold-back position doesn't exist in this case. So that I believe that the government, and we as Mr. Boesky's counsel, are confident that Mr. Boesky has disclosed everything that he can disclose to the government and there is no need for antagonism.

So I would not have commented adversely on that subject because this is indeed an unusual case in which Mr. Boesky's cooperation, I hope, will figure prominently in your Honor's consideration.

The fact that Mr. Abrams talked about the sentencing recommendation and that that should be given special treatment in this case, it is not my role to protect the interests of the United States or the Probation Department. But I can't help but think that that could be a very mischievous thing to do for the courts generally in criminal proceedings.

I will confess that I am interested in, intrigued with the possibility of learning what the Probation Department has recommended to your Honor. That has not been disclosed to us. I should be obviously interested in it because I might fashion an argument on Friday that might deal with their recommendation.

But the fact is that it is not open to us. And I would have thought that the probity of that report ought to be maintained because generally, systemically, it seems to me that Probation Department recommendations probably ought not to be available to defendants.

But if it is to be made available, then it should be across the board. I don't think you can fashion a special rule for Mr. Boesky as opposed to some other defendant, and I do not consider this case to be unique in terms of the institutional considerations that must weigh on your Honor in dealing with Mr. Abram's application.

The only other thing that I would suggest to your Honor is something that nobody has talked about. The Charmer case lays out, as I suggest it does, the law in this circuit and the Times case does not deal with that at all. It didn't deal with presentence reports. And we are content, obviously as we must be, to rely on the Charmer case and I won't bore your Honor with a dissertation on that case. It is there. It says what it says. Particularly does it say things in terms of financial reports. It specifically indicates that defendants may have an interest in maintaining the privacy of their financial reports.

Whether they become public in some other proceedings is almost an irrelevance from the point of view of what ought to be disclosed from a presentence report. But Mr. Boesky has a further interest. He has an interest in some privacy. He is a confessed felon. That hasn't removed all rights of privacy from him.

There are matters that were submitted to the Probation Department by members of his family that touch on very intimate personal problems. I don't believe if that were disclosed to Mr. Brill, he would print them. Because Mr. Brill is a responsible person. And he would not, it seems to me, do injury to others. But Mr. Brill is not the only publisher of newspapers in the United States.

There is a privacy interest, not only with respect to Mr. Boesky, and it is his family that is so intimately involved, but those who render reports to the Probation Department do so with an expectation that their reports or their letters or whatever will be kept in confidence. Disclosed only to the Probation Department.

We have disclosed in our presentencing memorandum letters in which nobody has suggested to us that they should not be disclosed. It is obvious that those letters are favorable to Mr. Boesky. But we know that letters have been submitted to the court from others which are favorable to Mr. Boesky in which the reporter or the writer does not want to be identified for reasons that are personal to him. But for the assurance that these matters will be treated privately, such letters would never come to your Honor.

The function of the probation report would be diminished or its effectiveness would be diminished in calling to the court's attention all the aspects of the personality and problems of an individual who comes before the court for sentencing. That, it seems to me, is an institutional concern which is better articulated by the court or the Probation Department. But to the extent to which it impacts on some vestiges of Mr. Boesky's privacy and that of his family, I urge your Honor to be sensitive to those concerns.

They do not feed the public's enlightenment. And the public's enlightenment I believe has been unusually accommodated in this case by the minimal redactions that you will find in our sentencing memorandum. And we, who would be delighted to report it all because we are the beneficiaries of the extensive disclosure, we have accommodated the United States government because of our agreement with respect to cooperation not to prematurely disclose matters that are the subject of their investigation. That is to our detriment.

On the other hand we have fulfilled our obligations to the United States by discreetly eliminating those matters that the government felt was of importance to it in the continuing investigation.

So I will just summarize by indicating that the only new point that I am making to your Honor is that Mr. Boesky and his family have a privacy that ought to be considered in connection with your Honor's ruling on Mr. Abrams' application.

THE COURT: Thank you, Mr. Silverman. Mr. Abrams?

MR. ABRAMS: I will be brief, your Honor. I offer you a theorem, your Honor, that goes like this. The less antagonism there is between the government and the defendant, the more need there is for intensive public scrutiny of the sentencing process. We have not urged upon you that you should make available the entire presentence report. I assumed, and indeed I am persuaded, there are parts of that report which are privileged by any definition of privilege.

The question put before the court as I see it is not whether we shall get anything but whether we shall have nothing. If Charmer is read to mean that no part of the presentence report, nothing in the presentence report however relevant it is to public understanding of the sentencing process, and whatever the particular facts of the case, shall be made public, then I would urge upon you A, that is not what Charmer means and, B, that cannot be any more than what Charmer is read.

Charmer talks about the ends of justice being served as one of the standards. Your Honor has to pass upon that. I would simply urge upon the court that what is needed is, to use the lawyer cliche and doctor cliche, a scapel. What you ought not to is say I have to give it to them, all or none of it.

If there is material in there which does not disclose things which are as private as Mr. Silverman is talking about, which does not compromise the government's ongoing investigation, and particularly if there is material which bears on the public understanding of whatever your Honor chooses to do so Friday, all the more reason to make it available, not less,. And that's why I use the example of the financial data.

THE COURT: I don't think there is anything in the presentence report upon which I will rely in imposing sentence that will not be made clear by my remarks when I do impose sentence.

MR. SILVERMAN: Your Honor, I'm sorry. Mr. Abrams did raise something that I did mean to cover in my presentation. One of the problems we have with the presentence report, we addressed an eight-page letter to the Probation Department with respect to what we thought were inaccuracies.

THE COURT: Some of which are recorded

MR. SILVERMAN: And some of which are not. In order to make it available, your Honor would have to hold hearings on that, and that doesn't seem to me to be productive.

THE COURT: Let me make a variety of comments on some of which you have said. With regard to Mr. Abrams's approach, first of all, let me say that I am grateful to Mr. Abrams and others of you at Townley & Updike and Mr. Coll for putting forth question. It is an important case and I think it's a desirable situation for us all to think through what policies should be followed in matters of this kind although I think the law is pretty clear in this circuit.

Secondly, I suppose one could argue that even Charmer requires the judge to consider whether anything can be released rather than everything withheld. My impression of the report is that such information as is clearly not privileged or confidential is material that is

already well known to the public, such as where Mr. Boesky grew up and went to school, or whatever, and the fact that he became a lawyer and was a clerk to a Federal judge and so on.

If I should conclude that that's the case, I might well also believe that to dole out that information would do the public no good but would constitute a first incursion on the integrity of the probation report system.

However, I do assure Mr. Abrams and everybody else interested that I will review the report again to see whether there is anything that has not already been -- well nothing has been made available from that -- whether there is anything in it which under Charmer and perhaps New York Times, if I agree with Mr. Abrams, that New York Times does qualify Charmer and should be made available. I will do that today.

I don't know whether you will want to appeal my ruling or not or whether anything will come out of it if you do. I do want to read into the record a point to Mr. Coll of the Washington Post when he raised the question in explaining to him why I would not make the Probation Department or letters annexed to it available. And I said the following:

"It's been the universal practice in this district, and I believe in most United States District Courts through the country, to make probation reports and annexed material available only to the defendant, his counsel and the United States Attorney's Office. So emphatically is this the case, that the Chief United States Probation Officer of this District advises me that he knows of no instance of the release of such information in the last 30 years, which is the period of his experience."

I interrupt my reading to say that of course that doesn't mean the policy can't change, but it does establish a long standing and widely observed policy. Going back to the letter.

"The reason for this policy is not capricious. It is to protect the confidentiality of those furnishing information to the Probation Officer who makes up the presentence report, thereby encouraging the frankness of informants and the availability of such information. The policy for preserving the confidence of the documents may be appropriately compared to the policy of so-called shield statutes which have been enacted to protect the reporter from having to reveal his sources.

"The Court of Appeals of this circuit has considered the matter of releasing pre-sentence reports to third parties in detail in United States v. Charmer Industries, Inc., 711 F.2d 1164, (1983), particularly pages 1172 through 1176. The Court concluded that disclosure should not be made in the absence of a 'compelling need for disclosure to meet the ends of justice.' In my view, the case at hand does not meet that standard.

"To the contrary, it is my firm belief that between the availability of the transcript of the hearing on Mr. Boesky's sentence on December 3rd, which has been made available to the press, and the open discussion which will take place at the actual sentencing on December 18th, the public will be thoroughly informed with the exception of precise details of Mr. Boesky's cooperation with the government. As to that material, the public will be informed as developments ripen."

That's the end of my letter. I should add a couple of thoughts. First of all, since I dictated the letter, of course the government and defense's redacted memoranda have been made available. Secondly, I did not include in my letter a thought which has occurred to me since, which is the policy of not releasing this information is impelled also to protect the confidentiality of the relationship between the probation office who writes the report and the judge. It would have a seriously adverse effect in my view if probation officers felt that what they make as

confidential recommendations were to become public and they might be influenced by public pressures.

I think that's all I have to say for now.

I will get something out during the day as to whether I think I should alter my position.

ooOoo