

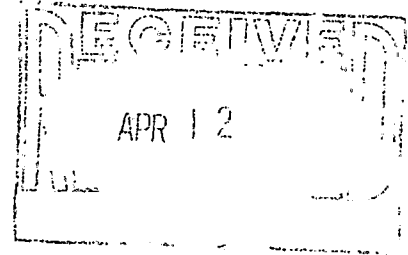


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SP-7006/2

United States Attorney
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April 12, 1989



BY-HAND

Honorable Morris E. Lasker
United States District Judge
United States Courthouse
Foley Square
New York, New York 10007

RA
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Re: United States v. Ivan F. Boesky
87 Cr. 378 (MEL)

Dear Judge Lasker:

The Government respectfully submits this letter in connection with the motion of Ivan F. Boesky to reduce his sentence pursuant to Fed. R. Crim. P. 35 in the above-named case. For the reasons set forth below, the Government takes no position on that motion.

BACKGROUND

On December 18, 1987, Boesky appeared before this Court for sentencing on his plea of guilty to an information charging him under 18 U.S.C. § 371 with conspiracy to make false filings with the Securities and Exchange Commission ("SEC") regarding holdings in the securities of Fischbach Corporation. At that time the Government asked for a sentence that "considered both Boesky's extensive criminal conduct" -- including that which was not reflected in the charge to which he pleaded guilty-- "and, in mitigation, his outstanding cooperation" with the Government in ongoing investigations of prominent individuals and entities in the securities industry. Government's Memorandum With Regard To The Sentencing of Ivan F. Boesky ("Government's Sentencing Memorandum" or "GSM"), at 25. At the time of sentence, the Court stated that "there is no doubt that [Boesky has] been given credit at least for the actions which [he] took before the plea bargain was entered into, and for the actions which [he] agreed to perform as part of that bargain. The question ... is whether ... [Boesky is] entitled to any further credit...." After "weighing all the [relevant] interests and factors," the Court

sentenced Boesky to three years' imprisonment. Minutes of Sentencing, December 18, 1987, at 39-40.

On April 15, 1988, Boesky filed a motion to reduce his sentence, pursuant to Fed. R. Crim. P. 35, but asked the Court to defer action until the fruits of Boesky's cooperation became more apparent. In response, the Government asserted that it believed Boesky's sentence was "an appropriate sentence in light of all the competing factors." Affidavit of Assistant United States Attorney John K. Carroll, dated April 22, 1988, ¶ 2. The Government also requested the opportunity to address the merits of ~~Boesky's motion when it was ripe for consideration~~. Boesky has now asked that the Court rule upon his motion.

EVENTS SINCE BOESKY'S SENTENCING

As Boesky sets forth in his supporting papers, the fruits of his cooperation are now more vividly apparent to the public. Additional charges have been filed and, in some cases, tried in court. Indeed, the centerpiece of Boesky's cooperation -- his disclosures and those of his former subordinates* regarding Drexel Burnham Lambert, Inc. ("Drexel") and certain of its employees -- has recently resulted in (1) a civil complaint by the SEC against Drexel, Michael R. Milken and others for extensive violations of the federal securities laws, (2) a tentative plea agreement with Drexel, under which the firm has agreed to plead guilty to six felony charges and pay \$650 million in criminal and civil penalties and in compensation to civil claimants, United States v. Drexel Burnham Lambert Inc. et al, 89 Cr. 41 (KMW), and (3) an indictment on racketeering and other charges of Michael R. Milken, Lowell J. Milken, et al., and Bruce L. Newberg, United States v. Michael R. Milken, et al., S 89 Cr. 41 (KMW), in which forfeiture of over \$1.8 billion is sought. While these criminal charges reflect the fruit not only of Boesky's disclosures, but also of an ongoing investigation premised upon information from wholly independent sources, Boesky's disclosures were the essential catalyst for all that has been and remains to be revealed in those cases. Other investigations arising directly from Boesky's disclosures have also matured since Boesky's sentencing.**

* Boesky's disclosures directed the Government to certain of his former subordinates. Boesky also encouraged his employees to cooperate with the Government.

** The status of other investigations stemming from Boesky's cooperation or that of his former employees is outlined in the Ex Parte Sealed Affidavit of Assistant United States Attorney Jess Fardella, filed herewith.

Similarly, the collateral benefits of Boesky's cooperation -- investigations and prosecutions resulting directly or indirectly from disclosures by individuals whose criminal conduct was revealed by Boesky -- have also become more visible since the time of Boesky's sentencing. Thus, as Boesky has pointed out, disclosures by Boyd Jefferies, made after he was implicated by Boesky, have led to three indictments.* Moreover, while Boesky gave no direct information concerning another investigation (i.e., of Princeton/Newport Partners, L.P. and their affiliates) which has resulted in two prosecutions, United States v. Jones, 88 Cr. 824 and United States v. Regan, et al., 88 Cr. 517 (RLC), the Princeton/Newport matters were discovered in the course of an investigation arising from the disclosures of another individual whom Boesky implicated.

As Boesky suggests, it is easier as a general matter to perceive and appreciate the value of a defendant's cooperation once the fruits of that cooperation have more fully matured. Filed charges give dramatic shape and color to what were undisclosed allegations during the investigative phase. This is no less true in Boesky's situation. It is also worth noting that, for a considerable time after the announcement of Boesky's cooperation with the Government, including at the time of his sentence, Boesky was not only assailed for his criminal conduct but was also alleged to have fabricated the information he provided against others to obtain more lenient treatment. Subsequent events, including Drexel's tentative plea agreement and the disclosures of additional witnesses, have resoundingly confirmed our belief in the truthfulness of Boesky's disclosures.

However more tangible the fruits of Boesky's cooperation have become, the Government nevertheless articulated the value of that cooperation in unqualified terms when Boesky was sentenced. At that time, we described his cooperation as "exceptional," "unprecedented" and "outstanding" (GSM 2, 24, 25). We recognized then that "substantial" fruits of that cooperation -- the guilty pleas of Martin Siegel, Boyd Jefferies and Michael Davidoff, the settlement with Kidder Peabody, and the indictment of officials of Guinness PLC in Great Britain -- had already been realized. (GSM 22-24). Moreover, at the time of Boesky's sentencing, we anticipated additional fruits, including those which have subsequently resulted in charges in the Drexel and

* They are United States v. GAF Corp. et al., 88 Cr. 415 (MJL) (recently ended in a mistrial), and United States v. Lewis, 88 Cr. 802 (MJL) and United States v. Bilzerian, 88 Cr. 962 (RJW) (awaiting trial).

JF:bsj
SP-7006/2

Honorable Morris E. Lasker

- 4 -

Jefferies-related matters (GSM 6-12, 23). We stated in conclusion that Boesky had "given the Government . . . a window on the rampant criminal conduct that has permeated the securities industry in the 1980's, to an extent unknown to this Office before Boesky began cooperating." (GSM 24).

We take this opportunity to reaffirm these hearty appraisals of Boesky's historic cooperation. We also reiterate that the timeliness of Boesky's cooperation was not only laudable, but integral to its resulting enormous value. As we previously pointed out, Boesky initiated contact with the Government at the dawn of the Government's investigation of him. Because the crimes revealed directly and indirectly by Boesky are complex and highly sophisticated, they could never have been successfully investigated had Boesky waited until the conclusion of the Government's inquiry into his activities and any resulting prosecution before offering to cooperate. Since his sentence, Boesky has continued to cooperate with the Government fully and, we believe, truthfully.

The Government cannot assess whether and, if so, to what extent, the Court discounted Boesky's cooperation at the time of sentence because many of its seeds had not yet reached fruition. Only the Court can say in the light of subsequent events whether it was fully able at that time to strike the right balance between "Boesky's extensive criminal conduct and . . . his outstanding cooperation." (GSM 25). As with Boesky's original sentence, it is this balance which, we respectfully submit, should govern the determination of Boesky's current Rule 35 motion.

JF:bsj
SP-7006/2

Honorable Morris E. Lasker

- 5 -

CONCLUSION

For the foregoing reasons, the Government respectfully takes no position on Boesky's motion to reduce sentence.

Respectfully submitted,

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By: 

JESS FARDELLA
Assistant United States Attorney

cc: Leon Silverman, Esq.
Robert McCaw, Esq.