

Doc # 34

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

64185

-against-

87 Cr. 378 (MEL)

IVAN F. BOESKY,

Defendant.

-----X

LASKER, D.J.

Ivan Boesky has timely moved for a reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure. The memorandum submitted on his behalf contends that a reduction is appropriate because 1) the extent to which Boesky's cooperation has benefitted the public is now clear; 2) Boesky has demonstrated his contrition by continuing, since his sentence, his extensive cooperation with governmental authorities; and 3) Boesky is being denied participation in programs and other opportunities routinely available to other prisoners.

The United States Attorney takes no position as to Boesky's application but properly suggests that the decision whether Boesky is entitled to a reduction of sentence depends substantially on the extent to which the court credited him, at the time of sentencing, for the cooperation that has since occurred.

At the time of sentencing I stated that Mr. Boesky's

MICROFILM

APR 27 1989 9 00 AM

"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." I also remarked that "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 laws violations."

In weighing the present application, I have meticulously reviewed the material submitted to me at the time of sentencing by Boesky's counsel and the United States Attorney and have compared the items as to which Boesky was cooperating at the time of sentence with those as to which he has done so since then. I find that the material submitted at sentencing had already informed the court of Boesky's cooperation with regard to cases involving Drexel Burnham, Michael Milken, Guinness and Jefferies and several other matters that are not yet of public record in which Boesky's cooperation is continuing.

While it is true that since the time of sentencing Boesky has not only continued to cooperate in these cases but has also assisted the government with regard to other matters,

it was my expectation at the time of sentence that that degree of assistance was expected and forthcoming. Accordingly, I cannot in good conscience conclude that, commendable as Boesky's behavior has been since he was sentenced, he should be given further credit. In the first instance, he was given credit by the prosecuting authorities when he was charged on one count only and when that count carried a maximum penalty of five years. Thereafter, the three year actual sentence imposed by this court gave him the credit he was due for actual and anticipated cooperation. Current inquiry to the Bureau of Prisons establishes that without any action by the Board of Parole Boesky will be released from custody less than a year from today, which is to say, that the actual period he will have served will be slightly more than two years. Such a sentence is not unjust in the circumstances.

Although I, therefore, conclude that the motion to reduce should be denied, Boesky's argument that he is being treated more harshly than other prisoners and has been denied access to various prison programs and other favorable opportunities routinely available to other prisoners is a cause of considerable concern. Access to such programs is not within the control of the court. Nevertheless, the court has the right, indeed an obligation, to communicate its views to the Bureau of Prisons if it concludes that the Bureau is treating a prisoner unjustly simply because of the prisoner's notoriety. I am, therefore, agreeable, if persuaded that the Bureau

