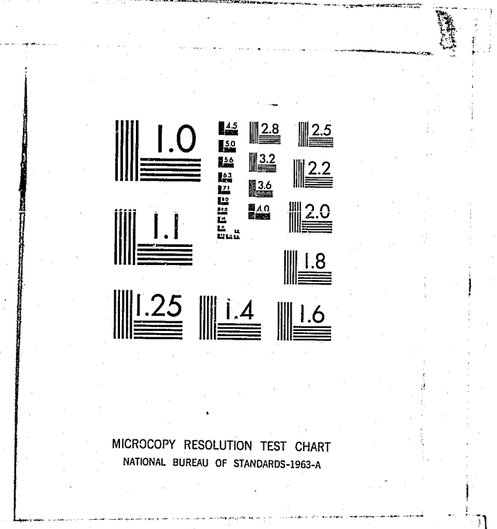

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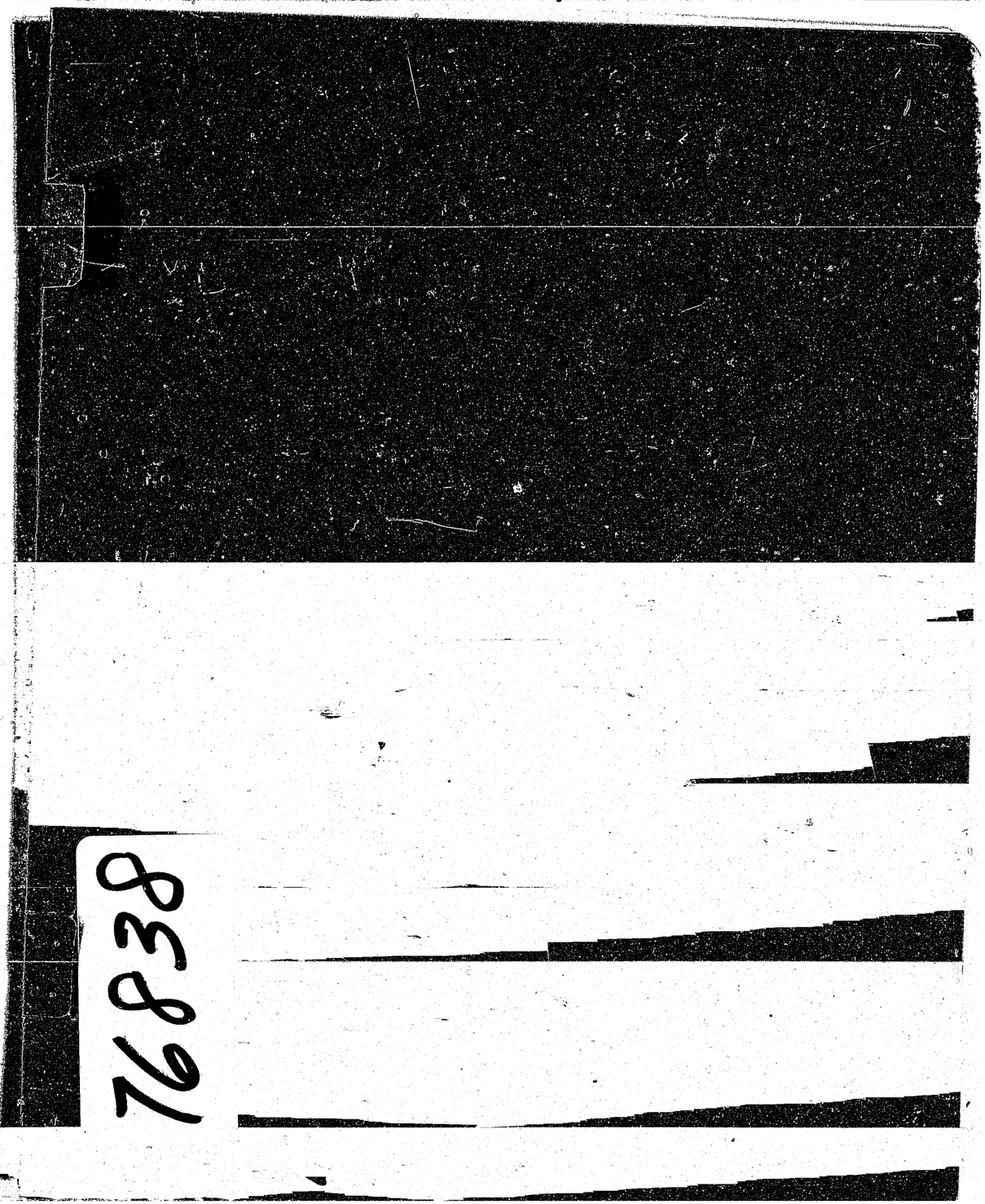

Department of Justice

STATEMENT

OF

JO ANN HARRIS
CHIEF, FRAUD SECTION
CRIMINAL DIVISION

BEFORE

THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT
UNITED STATES SENATE

CONCERNING

FEDERAL DEBARMENT AND SUSPENSION

ON

MARCH 12, 1981

STATEMENT OF JO ANN HARRIS, CHIEF, FRAUD SECTION
CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

I appreciate the opportunity to appear here today. We understand that your concern is whether current procurement and suspension procedures and regulations are adequate to protect the government from fraudulent and corrupt practices in connection with government contracts. We share your concern about fraud in government contracting and your desire that the government make full use of all appropriate means to assure integrity in the contracting system. But, as you know, our expertise in the Criminal Division is limited to the use of criminal sanctions. We believe that most of the issues raised by any change in the debarment and suspension regulations involve procurement policy matters which fall outside our area of expertise. Thus, although we have attempted to answer, in the attachment, some of the questions posed by the Subcommittee to John C. Keeney, Acting Assistant Attorney General in charge of the Criminal Division, we defer to OFPP, the affected agencies and contract lawyers in general as to the advisability of the changes proposed.

However, because the Criminal Division has, over the past few years, been involved in a number of significant contract fraud criminal investigations and prosecutions, I

believe we can provide some background and general observations about the debarment and suspension procedures from our perspective which may prove useful to the Subcommittee.

We believe that if there is a solution at all to fraud and abuse in government spending programs, it lies in the balanced and effective use of all the appropriate remedies. The availability of sound administrative remedies is just as important as criminal and civil sanctions in combating fraud and waste in government programs.

We should note here that, in our judgment, in many instances, agencies are not aggressive in pursuing the suspension and debarment remedy at any stage in the process. In the course of fraud investigations, we discover contractors who have repeatedly violated the terms of contracts and regulations over a prolonged time period with no resulting government action. Inaction such as this often indicates condonation on the part of the agency, and undercuts criminal investigations undertaken after years of contractor abuse. After the referral of cases, agencies often advise us they cannot suspend the contractor until an indictment is returned. Equally often, after we have investigated a case and decided, for reasons not related to the responsibility of the contractor, to decline prosecution, agencies advise they cannot suspend or debar, thereby demonstrating little interest in reviewing the results of the investigation.

Substantial strides have been made at GSA and the Defense Logistics Agency as well as the program agencies such as HUD; however, as we undertake investigations in other programs and procurement areas, we repeatedly see this hesitancy to use an important tool of the government.

We must recognize, however, that it has not always been easy for an agency to proceed administratively while a criminal matter is pending. The selection of potential criminal sanctions in a particular case and a referral to the Department of Justice for criminal investigation brings into the picture certain principles which impact greatly on the agency's ability to proceed with civil or administrative remedies during the pendency of the criminal investigation. The basic principle is that the public interest in the effectiveness of the criminal process is paramount and that any system of administrative action, including debarment or suspension, must insure that the agency will do nothing during the pendency of the criminal investigation which will prejudice, interfere with or otherwise adversely affect the criminal investigation or subsequent prosecution.

As a practical matter what this means is that it can be difficult for an agency to proceed with debarment and suspension during the pendency of a criminal proceeding for two reasons: (1) Although we may have

developed substantial evidence in the criminal investigation to support such an administrative action, many prosecutors feel that premature disclosure of the proof (or even of the existence of the criminal allegation) in an administrative proceeding will seriously prejudice the pending criminal action in several ways. It can allow fraud participants to develop false explanations, to alter or destroy documents, expose witnesses to threats and if the suspension action is not sustained, affect the investigation and eventual prosecution; (2) further, even if we were convinced that full disclosure in a particular case was in the public interest, we are bound, as the Subcommittee well knows, by the principles of grand jury secrecy embodied in Federal Rule of Criminal Procedure 6(e) and, consequently, are unable to share with the affected agency the information we gather in the course of the grand jury investigation.

On the other hand, we have learned that failure to suspend can also have an adverse impact on an investigation. For instance, potential witnesses, concerned about their employment, question the seriousness of the investigation and decide not to come forward. In addition, juries question the gravity of the conduct if the government continues to do business with the contractor.

On balance, we have come to recognize the importance of the administrative process in the overall interests of

the United States and, recently, in various training programs have emphasized that each case be examined closely to determine if the administrative and criminal processes can proceed together without prejudice to the United States. Also, we have advised agencies that we would examine any decisions made by prosecutors to defer administrative action which was felt to be arbitrary and unsupported.

In conclusion, from our perspective, the best procedure is one in which the prosecutor and the suspending agency review together the evidence to be used in the suspension, agree on it, and full and complete disclosure is made to the contractor. In more than one case, we have carved out evidence sufficient to support a suspension where full disclosure of the evidence did not prejudice the continuing investigation, either because the evidence was already public and/or the evidence was not the focus of the criminal investigation. Subsequently, the administrative process continued without prejudice to our investigation. We believe that with a flexible system of debarment and suspension, we can continue to progress toward the full use of all appropriate remedies to combat fraud and corruption in government contracting.

Thank you for the opportunity to appear.