THE TWENTY-FIRST MAJOR FRANK B. CREEKMORE, JR. LECTURE*

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* This is an edited transcript of a lecture delivered on 19 November 2009 by Mr. James J. Graham, Trial Attorney, U.S. Department of Justice, to attendees of the Government Contract and Fiscal Law Seminar, members of the staff and faculty of The Judge Advocate General's Legal Center and School, their distinguished guests, and officers of the 58th Judge Advocate Officer Graduate Course at The Judge Advocate General's Legal Center and School, Charlottesville, Virginia. The Major Frank B. Creekmore Lecture was established on 11 January 1989. The lecture is designed to assist The Judge Advocate General's School in meeting the educational challenges presented in the field of government contract law.

Frank Creekmore graduated from Sue Bennett College, London, Kentucky, and from Berea College, Berea, Kentucky. He attended the University of Tennessee School of Law, graduating in 1933, where he was inducted into the Order of the Coif for scholarly achievement. After graduation, Mr. Creekmore entered the private practice of law in Knoxville, Tennessee. In 1942, he entered the Army Air Corps and was assigned to McChord Field in Tacoma, Washington. From there, he participated in the Aleutian Islands campaign and served as the Commanding Officer of the 369th Air Base Defense Group.

Captain Creekmore attended The Judge Advocate General's School at the University of Michigan in the winter of 1944. Upon graduation, he was assigned to Robins Army Air Depot in Wellston, Georgia, as contract termination officer for the southeastern United States. During this assignment, he was instrumental in the prosecution and conviction of the Lockheed Corporation and its president for a $10 million fraud related to World War II P-38 Fighter contracts. At the War's end, Captain Creekmore was promoted to the rank of major in recognition of his efforts.

After the war, Major Creekmore returned to Knoxville and the private practice of law. He entered the Air Force Reserve in 1947, returning to active duty in 1952 to successfully defend his original termination decisions. Major Creekmore remained active as a reservist and retired with the rank of lieutenant colonel in 1969. He died in April 1970.

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I. The New Federal Acquisition Regulation Mandatory Disclosure Rule—A Sea Change

Frank Creekmore retired in 1969 and I started in government service in 1971, so our careers almost overlap, and it is an honor to be here. I want to thank the JAG School and the Creekmore family for this opportunity. This audience is a very impressive group for me. I normally speak to prosecutors and investigators and white collar crime lawyers. For the most part, I know more about the procurement process than they do. From yesterday, I understand who you are, and I am in awe of your knowledge of the procurement and acquisition process.

I also long have admired the work that the JAG School has done. I have used the *Year in Review* as sort of a guide to stay up on the process, and I am glad for the opportunity to talk about the FAR rule mandating that contractors disclose fraud and corruption in their contracts. I am not going to go through the rule in detail because I'm counting on this group as one of the few in America that actually read the Federal Acquisition Regulation (FAR) and pay attention to it. I want you to understand where we at the Department of Justice (DoJ) and the Office of Inspector General were coming from when we proposed the rule. As the title to this talk indicates, we intended this rule to be a sea change in the way the Government and its contractors interact, and that remains an ambitious objective.

So you know my perspective. I began my legal career in 1971 in the Criminal Division. After graduating from the University of Texas Law School, I joined DoJ in the Honors Program and stayed there eighteen years. When it became clear I had been there long enough, I joined Jones Day, which is a big law firm, where I had the privilege to represent government contractors—the types of people and businesses that I had been investigating and prosecuting in my eighteen years as the Government. I stayed eighteen years at Jones Day and then came back to my first home, the Department of Justice, to finish my legal career. I returned full of ideas, and one of the ideas became the Mandatory Disclosure Rule.

Amendments: Privatizing the Civil Prosecution Function, 49 FED. CONT. REP. 659 (1988). Mr. Graham is on the Board of Editors for *Business Crimes Bulletin*.

‡ The views expressed here are my own and not those of the Department of Justice.

For some reason, I became passionate about government contract law early in my career in the Department of Justice. We are all formed by our early experiences as lawyers. The first person that I ever prosecuted was an engineer hired by the U.S. Agency for International Development to review and approve claims that the contractor made in connection with the construction of the Saigon water system. John Hay was convicted for taking bribes from the French contractor Les Établissement Eiffel that were found in a Swiss bank account.

My second case was an Army contractor who was supplying all the beef to the military. Their competitor recruited a Senate committee to investigate how he was able to consistently win the contracts. We found out, essentially, that they substituted round steak for sirloin, enabling them to underbid the competition, and were bribing the Army inspectors to hide that practice. The memorable thing for me was appearing as a twenty-eight-year-old before a Senate subcommittee at a hearing telling them why they should not interfere with my investigation. It was those sorts of experiences that whetted my appetite for this field.

II. The Origin of the Mandatory Disclosure Rule

I hope that my experiences will invite others to pursue changes in the way the Government does business.

The FAR's Mandatory Disclosure Rule (the rule) became effective in December of 2008.[1] We hope at the Department of Justice that it radically changes the way contractors and their government relate. The preamble to the rule candidly refers to it as a "sea change" in the fundamental approach to compliance. Make no mistake, we intended this.

If any of us told our civilian friends at a cocktail party that when the Government enters into business with contractors, agreeing to pay them millions—or billions—of dollars, without the accompanying obligation to admit their mistakes, our civilian friends might surely question why that is. We may have some type of explanation rooted in the way our procurement system developed. We all have found our sides and some

[1] Contractor Business Ethics Compliance Program and Disclosure Requirements, 73 Fed. Reg. 67,064 (Nov. 12, 2008).

of us—many of us have made a living in the litigation that surrounds the relationship between the Government and contractors.

Really, the idea behind the rule was, "Why don't we require contractors to tell us about things that they frankly don't want to tell us about?" This idea fueled this issue more than twenty-five years ago. The original Department of Defense (DoD) Inspector General (IG) law, was enacted in the early '80s.[2] Some of you are old enough to remember the $14,000 coffeemaker, the $400 hammer and the $2000 toilet seat. Those issues are what generated a lot of the fraud interest back then. At that time, the DoD IG said to people within the Pentagon, "Why don't we make them report this stuff?" But it was the Packard Commission that persuaded Secretary Weinberger to pursue this voluntary disclosure as opposed to the mandatory approach.[3]

The DoD Voluntary Disclosure Program was stood up in 1986,[4] and, in the beginning, the program worked well. During the first few years, the number of self-disclosures by contractors averaged almost sixty per year, and all the major DoD contractors participated. Some big matters were disclosed and addressed in that process, and I think the facts are that no contractor who chose to participate in that program lied in a disclosure, except for one known case.

Over time, the program fell into disuse for a variety of reasons, some attributable to the Government and some to the contractors. It is undisputed that DoJ took too long to process the disclosures, and it is also undisputed that it too often punished the disclosing contractors, as opposed to rewarding them, by demanding inflated False Claims Act damages.[5] The Government found itself saying reflexively, "Well that's what the False Claims Act says," as opposed to examining the full context of the disclosure.

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[2] Inspector General Act of 1978, 5 U.S.C. app. § 1 (2006).
[3] Executive Order No. 12,526, 50 Fed. Reg. 29,203 (July 18, 1985)
[4] *See, e.g.*, Enclosure to Taft Memorandum, *reprinted in* U.S. Dep't of Def., Inspector Gen., The Department of Defense Voluntary Disclosure Program: A Description of the Process (Apr. 1990) (describing the "Department of Defense Program for Voluntary Disclosures of Possible Fraud by Defense Contractors").
[5] 31 U.S.C. §§ 3729ff (2006).

The real reason for the decline was that the intensity of the enforcement effort decreased over time. In the intervening twenty-plus years, contractors had less reason to disclose. By 2005, there were only a handful of voluntary disclosures per year, leading to the question of what these contractor compliance programs were up to. I would suggest that part of the answer to the reduction of disclosures over time lies in the fact that their chance of being caught decreased and the penalty of being caught amounted to the same False Claims Act penalties contractors faced if they made a voluntary disclosure. You do the calculation if you are a contractor.

Now, I am going to cover how the attitude about corporate disclosure changed. Many of you remember the next scandal after DoD's toilet seat and coffeepot was the Savings and Loan collapse. In the late 1980s, Congress imposed mandatory disclosures on banks to disclose fraud that they discovered in the course of their business.[6] The Treasury Department and Federal Deposit Insurance Corporation have managed the Suspicious Activity Reports Program and responded to the hundreds of suspicious activity reports that are filed every year by U.S. banks.

In 1991, the U.S. Sentencing Commission published its commentary explaining what they meant by an "effective compliance program."[7] They offered standards on how courts should assess corporate behavior. Interestingly, those standards in 1991 were drawn almost word-for-word out of standards developed at DoD and Justice in the original Voluntary Disclosure Program. The Sentencing Guidelines expressed the view that corporations were expected to self-disclose and cooperate with investigators if they were going to receive any sentencing relief.

In 2002, we experienced the collapse of Enron and WorldCom, which fueled Sarbanes-Oxley and required corporate disclosures of securities fraud. Lastly, as the Government cranked up its healthcare enforcement effort, healthcare providers discovered they had been subject for the last twenty years to a criminal statute that required them to disclose, and, in fact, many of them did. Their impetus was not that they wanted to disclose but that they knew the risk of criminal prosecution, which, while probably still remote, was there. They were simply unwilling to run that risk.

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[6] 12 U.S.C. §§ 1818, 1819 (2006).

[7] U.S. SENTENCING COMM'N, U.S. SENTENCING GUIDELINES MANUAL § 8B2.1 (1991).

You should now add that to the other landscape change, which is that the Justice Department stopped prosecuting companies after Arthur Andersen. There, DoJ became sensitive to the fact that they ended a company and put thousands of people out of work. They started to look for a more effective way to enforce the law. The Department, in the last Administration, had already made the policy change that if a company discloses and cooperates, the risk of prosecution by the company is, frankly, almost nil.

III. The Rulemaking Process

This was the landscape that put us into 2006, when we started to think about the rule. Darleen Druyun was the longtime and powerful career Air Force Deputy Undersecretary convicted on corruption charges in 2004 relating to her dealings with Boeing. There was nervous laughter in the room when somebody talked about Darleen Druyun doing something good yesterday at the end of the day. While Darleen Druyun had nothing to do with the rule, the rule's genesis was a product of her difficulties with the law. Paul McNulty, before he became Deputy Attorney General, was the U.S. Attorney responsible for her case. He came to the Department of Justice in 2006 with an interest in upgrading the Government's lagging procurement fraud effort.

McNulty, with the help of the Assistant Attorney General in the Criminal Division, formed the National Procurement Task Force, with Steve Linick as the Staff Director. Essentially, it was a collection of the IGs and the Federal Bureau of Investigation with the goal to put increased emphasis on combating fraud and corruption in the procurement process. The Task Force ultimately focused on improving on what the Government was already doing. They got the investigators to include reference to the Task Force in the press releases, promoted the cases a little better, and generated some increased energy levels on the cases. In the process, they were searching for an initiative that would go beyond that, and this is where the idea for the rule arose.

Part of the luck was our first step to find some help outside of DoJ. We asked a friend off-line whether the Office of Federal Procurement Policy (OFPP) would support such a radical FAR change if Justice proposed it. Remember, it was still just an idea by a couple of lawyers at Justice.

Rob Burton—by that time, the Deputy Administrator of OFPP, who went way back with us—fielded our question. He was a young lawyer in the Defense Logistics Agency in the 1980s. While he could not promise a final rule, he was in the position to get a proposed rule into the *Federal Register*, which for the Justice Department was a victory in itself. That was also enough for senior DoJ people, like the Assistant Attorney General and the Deputy Attorney General, not all that familiar with the process and rightly concerned that we were pushing them off the edge of a cliff and beyond their comfort zone. Rob's endorsement was enough to make them comfortable to support such an idea.

Who was going to draft such thing? None of us in the DoJ had ever drafted a FAR regulation or even been involved in the process. Again, we were lucky enough to draw on expertise from two DLA lawyers, who had worked around the FAR Council and the Defense FAR, to draft up this regulatory proposal with just enough specificity using FAR language that the FAR Council and the FAR Law Team would be comfortable without feeling like DoJ was invading their province. That process took two days.

In May of 2007, for the first time in its history, the Department of Justice asked the Executive Branch to open a FAR case. This request occurred with the support of Assistant Attorney General Alice Fisher after exchanging numerous drafts with Rob and others in OFPP. In a sense, just getting that far was an achievement for the National Procurement Fraud Task Force. Many thought the initiative would "die in committee," and it did take a while to progress forward—about eighteen months. Candidly speaking here, few senior acquisition people in the General Services Administration (GSA) and DoD, in private, favored the rule.

Before I tell you about the lucky accident that sort of made it all happen, I want to tell you about the FAR Council contribution. The FAR Council is a group of high-level acquisition executives from GSA, the National Aeronautics and Space Administration (NASA), DoD, and some civilian agencies.[8] Almost all the work is done by the Law Team. They draft the proposed FAR language and then read and discuss every public comment. The Law Team is made up of acquisition folks—attorneys for the most part—from the major procurement agencies.

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[8] *See, e.g.*, Office of Mgmt. & Budget, *FAR Council Members*, WHITE HOUSE, http://www.whitehouse.gov/omb/Procurement_far_farc_members.

I am not sure in the beginning how happy the Law Team was to receive the Justice proposal accompanied by a request from OFPP to expedite. They worked in secret, too. What I mean by that is, despite the fact that DoJ proposed the rule, since DoJ was not a member of the FAR Council, we were not included in the first phase leading up to the initial *Federal Register* announcement. The first time we saw how it came out was when it appeared in the *Federal Register* on 14 November 2007.[9] No one called and asked during the initial rulemaking process why Justice was seeking the rule or asked for any ideas about what language would be helpful until the public saw that notice. But it only took six months to accomplish that.

The proposed rule actually followed pretty closely our initial proposal. The Council took our suggestion that there should be some effort to minimize the impact on small contractors, but they went a little further and also excluded the application to commercial contractors and overseas contractors. When I first saw that overseas exemption, I thought it was essentially an effort to be practical, that it did not make any sense to impose such requirements on a company like Public Warehousing Company in Kuwait, for example. This is a Kuwaiti company that supplies essentially all the food stuff to our troops in the Middle East. The requirement to make a disclosure about misconduct by any of its senior people would not be particularly effective in meeting the rule's objectives.

It was that decision to exclude contracts overseas that triggered a happy accident. When an Associated Press reporter wrote in February of 2008 and said that Vice President Cheney and his staff put that exception in the rule to protect Halliburton, that article gave the rule some real momentum. All of a sudden the senior acquisition folks spent a lot of time denying that the Vice President or his staff even knew about the rule, which was true. They also added how much the Administration was in support of the rule, which could be said to be an exaggeration at that point.

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[9] Contractor Compliance Program and Integrity Reporting, 72 Fed. Reg. 64,019, 64,020 (Nov. 14, 2007).

IV. The Happy Accident of the Close the Loophole Act

After seven more articles by this same reporter, senior folks from Justice, OFPP, and GSA—and I think somebody from DoD—found themselves before a House subcommittee in April 2008 defending the Vice President and responding to questions about whether they supported the proposed rule. In private, few of these agencies were enthusiastic about the rule, but it was too hard for them to say so.

Congress did something even better after the hearing. They introduced the Close-the-Loophole Act, a good title. Just like that, the provisions showed up in the Defense Authorization Act.[10] In a matter of days, the overseas and commercial exemptions disappeared and Congress wrote a law mandating the Office of Management and Budget (OMB) to have a final rule within 180 days. I think, in truth, if that happy accident had not occurred, the FAR Council would still be working on the rule today.

I want to talk a few minutes about the people on the FAR Law Team involved in the drafting process. The Law Team is a great group of public servants. It is a part-time job for acquisition lawyers, in this case lawyers from GSA, NASA, DoD, who meet periodically—sometimes weekly when they are working on a rule—to draft, review, and revise proposed FAR language on new proposals.

I was invited, shortly after the proposed rule was published, to help the Law Team evaluate the public comments. What I saw among the Team was concern about imposing new requirements on contractors and concern about reducing the contractor base. I also saw concern about giving additional work to overworked contracting officers and some skepticism about the Department of Justice and the Inspector General.

There were times it was hard to go to the meetings. Often, my only ally at those meetings was Chris McCommas from the Army. In the end, it eventually became the Law Team's rule to shape. I came to understand and respect their process, how they go about it, and how passionately they express their concern with the system and their desire that the rules make sense and are workable. We wrestled over every line of the proposed rule and discussed in detail all sixty-eight public comments, including those that were off-the-wall.

[10] Pub. L. No. 110-252, tit. V, ch. 1, 122 Stat. 2323 (2008).

Interesting to me, none of the major DoD contractors filed any comments. However, there was an active campaign from the associations, and this included lengthy briefs from the Council of Defense and Space Industries Association, the Defense Industry Initiative, the Professional Services Council, and two American Bar Association (ABA) committees. But we also did something here that was a little outside the lines. First, we asked the IGs to all write in support of the rule. They were not used to doing that, but they were the beneficiaries of the rule, and they wrote letters. We also reached out to the public interest groups who more often find themselves criticizing DoJ and asked them to write public comments in support of the rule. The Project on Government Oversight and Taxpayers Against Fraud wrote some pretty substantive letters. The IGs at NASA and GSA wrote very strong letters in support, as did the DoD IG.

When the Law Team looked at the public comments, they had not only the letters from the contractors largely opposing the rule, but also letters of support. The Team initially was puzzled to find agencies in the Government writing to them in support of a rule. The opponents of the rule argued for the status quo. They thought the Voluntary Disclosure Program was great, somehow finding a way to ignore the fact that there were practically no disclosures. They asserted that mandatory disclosure was unconstitutional or worse. We are still waiting for a citation on that point. An opportunity was missed by their failure to suggest changes to the disclosure formulation itself.

In the end, after almost a year-and-a-half, I left the FAR Team with great respect for the process. The dedication of the members of the Team in getting it right was remarkable. A lot of that can be attributed to Amy Williams, the Chairperson of the Team. She knew how to permit her family of acquisition lawyers to squabble, to disagree, to nitpick, yet she seemed always to find a way to find a middle-ground while remaining faithful to the intent, to the goal of the regulation.

The work product of that effort is a preamble of thirty pages in the *Federal Register*—three columns, small type—all written by the Law Team.[11] Its purpose was to explain the objectives of the rule. I would not say that it is exciting reading, but it is good reading to understand what the rule accomplishes and how it should be implemented. You should come away with it thinking that it was calculated to be fair. I

[11] 73 Fed. Reg. 67,064–67,093 (Nov. 12, 2008).

came away from the process proud of being part of that Law Team, which contributed to some of my now twenty-one years of public service. The ABA is now writing a book about the rule. While it will reflect some griping, I think you will conclude that the choices made by the Law Team more than hold up.

V. Implementation Experience over the First Year

What happens now? The IGs have received over a hundred disclosures since December of 2009. The disclosures are made by the largest and smallest commercial contractors. Some look like the old voluntary disclosure submissions with a lot of lawyer reports and attachments; others come from companies—it might be shocking to say—that simply report the information in unpolished form, as if they trust the Government. Some of the biggest contractors have chosen to send a large number of individual employee time card cases involving problem employees who use their day to surf the net or worse, and I will describe some of the disclosures to you in a minute. These small time card cases—some of them adding up to ten, twenty, thirty thousand dollars—will never be prosecuted and will never be False Claims Act cases.

From the Justice Department's point of view, we have sort of made the calculus never to criticize anyone for making a disclosure, however insignificant. While individual employee time cards are not really what we were focusing on in pursuing those disclosures, they do show these large contractors know about the rule as well as the focus of their compliance programs.

Does it look like DoJ's objectives have been met after twelve months? Our first objective was to enlist contractors, to the extent they have been willing, to help in ensuring that the public the process was free of fraud and corruption; real team work, real action—not slogans. The second objective in requiring that disclosures go to the contracting officers, as well as the IGs, was to get the IGs working more closely with the contracting officers and the contractor compliance programs. Many of the IGs in the drafting would have preferred that we excluded the contracting officers. We thought it was an important part of the process that when the contractor screws up, he tells the IG *and* he tells the contracting officer at the same time, hoping that those two functions will

work together more effectively . We really wanted to change the way problems of fraud and corruption were handled in a significant way.

We also included, and intended to include, our own loophole in the rule. We recognized that even with a regulation, disclosure was still going to be voluntary, i.e. the contractor had to be willing to do it, and it is something that is often difficult to do. The loophole that remains in the rule is that contractors do not have to disclose overpayments to the IG; they have to disclose them to the contracting officer as the FAR already required. The rule just added, "And if you don't, you will be debarred."[12] We added the word "significant" to "overpayment,"[13] which permits a contractor to say, "I'm not going to call this fraud. I really don't see it as fraud. It's an honest mistake, and I am just going to repay it as an overpayment." Hoorah for them and boo for us if we in the Government does not find a way to track that; we do not find a way to track whether that is a trick or, in fact, it really just is an overpayment—i.e. an innocent mistake.

In the end, the success of this initiative will not be measured by the number of disclosures since it is still up to the contractors to choose to make the disclosures. Success will not be measured by the number of contractors prosecuted, because our purpose is fewer—not more—prosecutions. Success should be measured, first, by how the Government—particularly the IGs and DoJ—treat the contractors who make disclosures. Are we prepared to reward them? Are we prepared to process their disclosures speedily and fairly? Second, how do we treat the contractors who choose not to disclose—to ignore the rule and not to make disclosure? These are the decisive questions.

VI. Some Representative Disclosures

You might find it interesting if I shared with you some disclosures that we have received. How many of you here have ever heard of an inverted domestic corporation? A company came in and reported, "We discovered that we're an inverted domestic corporation and we shouldn't have been getting contracts under that provision." We inquired about what sort of mechanism we have set up within the Government to address that law. It turned out, at least as best I could find, not much,

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[12] GEN. SERVS. ADMIN ET AL., FEDERAL ACQUISITION REG. 9-406-2(b)(1)(vi) (July 2010).
[13] *Id.* 9-406-2(b)(1)(vi)(C).

and so we said, "Well, we're not that interested in punishing that company that came in. In fact, we want to reward them for reminding us that this is an area of law that we should be looking at." That was one of the by-products of the disclosure that I was not anticipating.

Another one was a contractor employee who charged a Government contract for 442 hours of viewing sexually explicit material. I mean that is a *lot* of time. In another case, a company goes out and hires a new head of contracts. To generate more business, he falsely qualifies them as a small business and encourages the staff to substitute lower quality electric parts. Another case, that is part of an ongoing criminal investigation, involved an employee found to have stolen $400,000 in Government-owned equipment. Another disclosure involved an employee who was found to have pawned Government property that he was stealing.

In another case, that was exactly what we were seeking, the disclosure revealed inadequate testing of the parts and failure of certain parts to meet contract specifications—something we would not otherwise identify with the limited inspections the Government is able to do in many cases. Normally, we only find out about such defects if the contractor chooses to alert us or if the part fails. Another case involved false testing reports on concrete used in foundations. Another one featured employees who received gifts and passed sensitive information to a subcontractor. While that situation really involves the employee cheating his employer, it is still a federal violation and something that may cost the Government money. We want it disclosed.

Another disclosure involved a contractor that was already under investigation. They found other indications of stuff regarding bribery by a subcontractor of some of its employees and purchases diverted to other uses. The company disclosed that, even though it was under investigation for different things. Another one was a Berry Act disclosure.[14] What made it significant was the prime contractor—the subcontractor was the Berry Act violator—may well have made efforts to conceal the violation. Finally, an employee received commissions for awarding subcontracts; a manager of the company had a financial relationship with a competitor and had solicited kickbacks from a subcontractor. These are matters that we should be acting on and ones we should be concerned about.

[14] 10 U.S.C. § 2533a (2006).

The other day at a conference on the rule, I heard an argument from a lawyer who claimed, "Oh, all this would have been disclosed anyway." He was talking about one of the big top three defense contractors. I said, "Well, do you think they would have disclosed the case you and I worked on together?" (I won't tell you the details of that case, but it involved a chief financial officer and a president of the company.) Something we have to be realistic about in terms of this rule is that it is not easy inside a company to make disclosure; it is sort of foreign to their way of doing work—it often requires them to take action against their employees, and the higher up, the harder it is.

After the rule was final a few in the Government said, "Well, we'd better get ready. It's December 13th and we're going to get an avalanche of disclosures." I said, "Guys, it's not going to work that way. It's going to take time for people to understand."

VII. Conclusion

I want to give you one concrete example revealing why this rule was a good idea. It happened only three weeks ago. I was in an interview with an FBI informant, who is still with the contractor at a very high level, asking him about the contract fraud. I go through his background and the contract provisions that he says were being violated. He says, "You know, when I realized we were doing this, I went to the president and I told him about this new rule." I said, "What rule?" This is not a contract professional. This is an executive—a vice president in a company delivering services to the Government. He said, "This rule that requires you to make disclosure," and I said, "Well that's interesting, and what did the president say?" "Well he said he was going to go get the lawyer to look at it." "Okay, what did he do?" "He got the company lawyer to look at it." I said, "Now you can't tell me what the lawyer said because that's covered by the privilege, but what happened next?" "Well he then decided he needed to get a consultant."

It is that sort of thing that we wanted to empower—right-thinking people in companies because it is not just one person that commits this kind of behavior. It is usually a group of them. All we need is one to speak up and empower that company; and for him to alert his employer that there is an obligation to disclose and that there is a risk if one does not. This was an important objective of this rule.

At the end of the day, it is going to be a team effort, not just the Justice Department and IGs. It is going to be a team effort with regard to the support of the acquisition community because the disclosures are going to be made to contracting officers. We want the disclosures made to contracting officers so they know about it and so they are in a position to do something about it in real time, as opposed to waiting three or four years.

What I hope I have accomplished today is to suggest to you that there is a deeper mission that really will require your support and your help to apply the rule effectively, reasonably, and fairly.

Thank you very much.