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United States General Accounting Office
Washington, D.C. 20548

FOR RELEASE ON DELIVERY
EXPECTED AT 9:30 a.m.
MARCH 16, 1983

STATEMENT OF
WILLIAM J. ANDERSON, DIRECTOR
GENERAL GOVERNMENT DIVISION
BEFORE THE
SUBCOMMITTEE ON CIVIL AND
CONSTITUTIONAL RIGHTS,
HOUSE COMMITTEE ON THE JUDICIARY,
ON THE COSTS
OF FBI UNDERCOVER OPERATIONS

Mr. Chairman and members of the subcommittee, I am pleased to appear here today to discuss our report on the costs of Federal Bureau of Investigation (FBI) undercover operations which you have released today. (GAO/GGD-83-51, dated March 7, 1983.)

At your request, we attempted to determine the total costs, both direct and indirect, associated with the FBI's undercover operations. As agreed with your office, we did not pursue access to certain undercover cost and investigative data that FBI officials considered sensitive. Thus, we could not determine



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the total cost of FBI undercover activities, nor independently verify the accuracy of cost data provided by the FBI.

Even with complete access to FBI data, determining the total cost of undercover operations would have been difficult. For fiscal years 1979 through 1981, the FBI spent about \$10.8 million which was identifiable as undercover operation expenses. This figure does not include the costs of (1) FBI personnel involved in the undercover operations, or (2) the litigation and settlement of lawsuits resulting from the undercover operations. FBI personnel costs could not be determined from available data. Litigation and settlement costs are still being incurred.

During our review, we also examined the details of some liability agreements the FBI entered into and the FBI's accounting controls over undercover funding. Although it is not expected to be a problem, one of the liability agreements established an unlimited contingent liability for the Government. I will discuss this agreement in more detail later.

As to the accounting controls, we could not test them in operation because of our limited access to detailed records. As written, however, the controls conform to the design of the FBI's accounting system which we approved in April 1977. In any event, typical accounting controls, such as separation of duties or documented receipts are frequently impractical because of the sensitive and confidential nature of undercover operations. The

propriety of expenditures usually depends on the integrity of the undercover agent.

TYPES AND EXTENT OF
UNDERCOVER OPERATIONS

Now let me give you a little background on the types and extent of undercover operations. FBI officials told us that an undercover operation is only one of many techniques that could be used to investigate a crime. Undercover work usually is targeted at exposing white collar crime, public corruption, and organized crime--crimes more difficult to detect using other investigative techniques. Funding for undercover operations has grown from \$3.0 million in fiscal year 1978 to \$6.6 million for fiscal year 1983.

The FBI classifies its undercover operations into two categories--Group I and Group II. Group I operations are larger and more complex, with all expenditures controlled by headquarters. Group II's are usually small, more localized operations controlled by 1 of the 59 FBI field offices. Total expenses for a Group II operation cannot exceed \$1,500 without headquarters approval. For fiscal years 1979 through 1981, the FBI ran 187 Group I's and 612 Group II's.

THE COSTS OF MOST UNDERCOVER
ACTIVITIES ARE IDENTIFIABLE

A breakdown of the expenditures for Group I and Group II operations was unavailable for 1979. For 1980 and 1981 combined, Group I operations cost about \$6.4 million, Group II's about \$0.4 million. These funds cover most aspects of undercover operations. The activities funded include travel, services of informants, the display of a large amount of cash (called show money) to reinforce an agent's role, enticement buys to establish an agent's credibility or to encourage a subject to supply additional property or information, rental of equipment, rental of apartments or offices, and entertainment expenses. Also included are indirect expenses, such as transportation and lodging costs incurred by agents during the selection process for potential undercover operation participants. FBI officials said that expenditures for these indirect activities were \$40,000 or less annually for fiscal years 1979 through 1981.

FBI personnel costs are the only undercover activity costs not included in the above figures. The FBI tracks personnel time by type of crime being investigated, such as white collar or organized crime, rather than by the techniques used during the investigation, such as a wiretap or an undercover operation. Thus, the amount of personnel salaries expended for undercover operations was not readily available. Without access to the

complete investigative files, we could not determine whether staff time devoted to a particular undercover operation could be estimated. FBI officials said that making such estimates would be difficult.

LITIGATION AND SETTLEMENT
COSTS ARE STILL BEING INCURRED

I would now like to discuss two of the indirect costs of undercover operations--litigation and claims settlement--that should be included in determining the total costs of these operations. As of December 31, 1982, 29 lawsuits with claims of about \$424.3 million had been filed against the Federal Government. These lawsuits stemmed from eight FBI undercover operations. The Government had settled six of these lawsuits, all involving operation Frontload, at a total cost of about \$1.1 million. The original claims for these lawsuits totalled about \$18.4 million. In addition, seven other lawsuits with claims totalling about \$72.6 million were dismissed. Thus, as of December 31, 1982, 16 claims for about \$333.4 million were pending. The Department of Justice's Civil Division is representing the Government in these lawsuits.

AGREEMENTS DESCRIBING LIABILITY IN
UNDERCOVER OPERATIONS SHOULD LIMIT
THE GOVERNMENT'S LIABILITY

For a few undercover operations, the FBI entered into agreements with third parties which specified the conditions under which each would be liable for actions taken during the operation. These agreements usually were used to obtain the cooperation of a third party in an undercover operation. Five of the eight agreements we reviewed stated that the Federal Government was liable only for any negligent acts by the FBI. This is nothing more than it would normally be liable for under existing law. The other three agreements clearly extended the scope of the Government's liability beyond FBI negligence.

One of these, from one of the FBI's first undercover operations, did not limit the amount of the Government's potential liability. Therefore, the Government's liability under the agreement could exceed available appropriations. The Supreme Court and the Comptroller General have ruled that, without express statutory authority to the contrary, agencies entering into such agreements must limit the amount of the Government's potential liability in order not to violate the provisions of the Antideficiency Act (31 U.S.C. 1341). For an agreement to comply with the act, it must either (1) limit the contingent liability to a finite amount which does not exceed available appropriations or (2) provide that indemnity payments will not exceed available appropriations.

Fortunately, according to FBI officials, no payments have been made as a result of the agreement, and none are anticipated. All subsequent similar agreements that the FBI provided us contained language limiting the amount of the Government's liability. FBI policies and procedures require liability limits. However, the FBI officials said they did not know why this one agreement contained no liability limit. Because of this exception, we are recommending in a separate letter that the Director, FBI, ensure that all future agreements contain language limiting the amount of the Government's liability.

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Mr. Chairman, this concludes our statement. We shall be happy to answer any questions that you or other members of the subcommittee might have.