

March 2005

FINANCIAL AUDIT

Independent and Special Counsel Expenditures for the Six Months Ended September 30, 2004



G A O

Accountability * Integrity * Reliability

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Abbreviations

AOUSC	Administrative Office of the U.S. Courts
GAO	Government Accountability Office
OIC	Office of Independent Counsel
OSC	Office of Special Counsel

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United States Government Accountability Office
Washington, D.C. 20548

March 31, 2005

Congressional Committees

Enclosed is our report on the statements of expenditures of two offices of independent counsel and one office of special counsel for the 6 months ended September 30, 2004. We are sending copies of this report to the Attorney General, the Director of the Administrative Office of the U.S. Courts, the Independent Counsels and Special Counsel included in our audit, and other interested parties. Copies of this report will be made available to others upon request. This report is also available at no charge on GAO's Web site at www.gao.gov.

If you or your staff have any questions concerning this report, please contact me at (202) 512-3406 or Hodge Herry, Assistant Director, at (202) 512-9469. You can also reach us at sebastians@gao.gov or herryh@gao.gov. Key contributors to this report were Kwabena Ansong and LaDonna Towler.

Steven J. Sebastian
Director
Financial Management and Assurance



Congressional Committees

This report presents the results of our audits of expenditures¹ reported by two offices of independent counsel and one office of special counsel for the 6 months ended September 30, 2004. The Department of Justice and the independent counsels are required under 28 U.S.C. § 594 (d)(2), (h) and § 596 (c)(1) to report on a semiannual basis the expenditures from a permanent, indefinite appropriation established within the Department of Justice to fund independent counsel activities. Under 28 U.S.C. § 596 (c) (2), we are required to audit the statements of expenditures prepared by the independent counsels. We also audited the statement of expenditures of Special Counsel Patrick J. Fitzgerald, who is authorized by the Department of Justice to fund his operation from the permanent, indefinite appropriation.

In our audits covering the 6 months ended September 30, 2004, we found

- the statements of expenditures presented in appendixes I through III, for each of the offices of Independent Counsel David M. Barrett and Independent Counsel Julie F. Thomas and for the office of Special Counsel Patrick J. Fitzgerald, respectively, are presented fairly, in all material respects, in conformity with the basis of accounting described in note 1 of each counsel's statement, which is principally the cash basis, a comprehensive basis of accounting other than U.S. generally accepted accounting principles;
- each of the counsels had effective internal control over financial reporting (including safeguarding assets) and compliance with laws and regulations as of September 30, 2004; and
- no reportable noncompliance with laws and regulations we tested.

The following sections provide background information; outline each conclusion in more detail; and discuss the objectives, scope, and methodology of our audits.

¹The term expenditures as used in this report generally means cash disbursed.

Background

The Ethics in Government Act of 1978 amended title 28 of the United States Code to authorize the judicial appointment of independent counsels when the Attorney General determines that reasonable grounds exist to warrant further investigation of high-ranking government officials for certain alleged crimes. The independent counsel law (28 U.S.C. §§ 591-599), which expired on June 30, 1999, was intended to preserve and promote the accountability and integrity of public officials and of the institutions of the federal government. Provisions of the law allowed the independent counsels serving at the expiration date to continue investigating pending matters until they determined that the investigations of such matters have been completed.

The independent counsel law directs the Department of Justice to pay all costs relating to the establishment and operation of any office of independent counsel. A permanent, indefinite appropriation was established within the Department of Justice to pay all necessary expenses for investigations and prosecutions by independent counsels appointed pursuant to the independent counsel law or other law. Also, the Department of Justice determined that the appropriation established by Public Law 100-202² to fund expenditures by independent counsels appointed pursuant to the independent counsel law or other law is available to fund the expenditures of U.S. Attorney Patrick J. Fitzgerald, who was appointed as a special counsel within the Department of Justice by the then Acting Attorney General.³

The independent counsel law also designates specific responsibilities to the Administrative Office of the U.S. Courts (AOUSC) for the administrative support of independent counsels. The Department of Justice periodically disburses lump-sum payments to AOUSC for this purpose.

The statements of expenditures and related notes included in this report do not include expenditures related to the investigation by Independent

²The permanent, indefinite appropriation was established by Pub. L. No. 100-202, § 101(a), title II, 101 Stat. 1329, 1329-9 (Dec. 22, 1987), 28 U.S.C. § 591 note.

³We reviewed the legal authority for the Department of Justice to use the permanent indefinite appropriation to fund the expenditures relating to Special Counsel Fitzgerald's investigation and, in our opinion to the Chairmen of the House and Senate Appropriations Committees, concluded that such was not an illegal, improper, or unauthorized use of the appropriation. B-302582 (Sept. 30, 2004).

Counsel Larry Thompson, which was officially closed effective June 1999, and accordingly, no longer prepares a statement of expenditures. However, during the 6 months ended September 30, 2004, \$28,502 was paid for litigation support services rendered by a vendor under a Department of Justice contract for the months of November 1998 through February 1999, while the office was still open.

The U.S. Court of Appeals for the D.C. Circuit also awarded reimbursements of approximately \$1,215 for attorney fees and expenses of individuals who had been investigated by the office of Independent Counsel Thomas but not indicted, as authorized by 28 U.S.C. § 593(f)(1). This reimbursement was made from the permanent fund established for the payment of judgments, and therefore, these expenditures are not reflected in the statement of expenditures for Independent Counsel Thomas.

Opinions on Statements of Expenditures

The statements of expenditures, including the accompanying notes, for each of the offices of Independent Counsel David M. Barrett and Independent Counsel Julie F. Thomas and for the office of Special Counsel Patrick J. Fitzgerald present fairly, in all material respects, the expenditures of each of these counsels for the 6 months ended September 30, 2004, on the basis of accounting described in note 1 of each office's statement.

The counsels prepared their statements of expenditures principally on a cash basis of accounting, which is a comprehensive basis of accounting other than U.S. generally accepted accounting principles. The basis of accounting is described in note 1 of each counsel's statement. Each of the counsel's statements includes only expenditures made from the permanent, indefinite appropriation.

During any 6-month reporting period, there may be other significant costs incurred in support of the work of the counsels. These costs are paid from appropriations other than the permanent, indefinite appropriation established to fund independent counsel activities. These costs arise when a counsel uses detailees from other federal agencies, such as the Federal Bureau of Investigation. Independent counsels are not required to reflect such costs in their statements of expenditures, and neither the independent counsels nor special counsel does so. For the 6 months ended September 30, 2004, there were no such support activities provided to the independent counsels. However, for Special Counsel Fitzgerald, detailees from the Federal Bureau of Investigation were involved in the investigation, but the associated costs were not readily identifiable and, therefore, the costs are

not reflected in the statement of expenditures for Special Counsel Fitzgerald.

Opinions on Internal Control

Each of the counsels maintained, in all material respects, effective internal control over financial reporting (including safeguarding assets) and compliance as of September 30, 2004, that provided reasonable assurance that misstatements, losses, or noncompliance material in relation to the statements of expenditures would be prevented or detected on a timely basis. Our opinion for each counsel is based on criteria we established in our *Standards for Internal Control in the Federal Government*.⁴

Compliance with Laws and Regulations

Our tests for compliance with selected provisions of laws and regulations disclosed no instances of noncompliance that would be reportable under U.S. generally accepted government auditing standards. However, the objective of our audit was not to provide an opinion on overall compliance with laws and regulations. Accordingly, we do not express such an opinion.

Objectives, Scope, and Methodology

The independent counsels are responsible for preparing statements of expenditures in conformity with the basis of accounting described in the accompanying notes. Though not required to do so, the special counsel also elected to prepare a statement of expenditures. The counsels are also responsible for establishing and maintaining internal control to provide reasonable assurance that the following internal control objectives are met.

- Financial reporting: Transactions are properly recorded, processed, and summarized to permit the preparation of the statements of expenditures in conformity with the basis of accounting described in the notes to the statements, and assets are safeguarded against loss from unauthorized acquisition, use, or disposition.
- Compliance with laws and regulations: Transactions are executed in accordance with laws and regulations that could have a direct and material effect on the counsels' statements of expenditures.

⁴GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999). <http://www.gao.gov/special.pubs/ai00021p.pdf>.

We are responsible for obtaining reasonable assurance about whether (1) each counsel's statement of expenditures is presented fairly, in all material respects, in conformity with the basis of accounting described in the notes accompanying their statements of expenditures and (2) each counsel maintained effective internal control over financial reporting and compliance as of September 30, 2004. We are also responsible for testing compliance with selected provisions of laws and regulations that could have a direct and material effect on the statements of expenditures.

In order to fulfill these responsibilities, for each counsel, we (1) examined, on a test basis, evidence supporting the amounts and disclosures in the statement of expenditures; (2) assessed the accounting principles used by management; (3) evaluated the overall presentation of the statement of expenditures; (4) obtained an understanding of internal control related to financial reporting (including safeguarding assets) and compliance with laws and regulations; (5) tested relevant internal control over financial reporting (including safeguarding assets) and compliance; and (6) tested compliance with selected provisions of 28 U.S.C. §§ 591-599, 5 U.S.C. Chapter 55, and regulations relating to pay administration.

We did not evaluate controls relevant to operating objectives, such as controls relevant to ensuring efficient operations. We limited our internal control testing to controls over financial reporting and compliance. Because of inherent limitations in internal control, misstatements due to error, fraud, losses, or noncompliance may nevertheless occur and not be detected. We also caution that projecting our evaluation to future periods is subject to the risk that controls may become inadequate because of changes in conditions or that the degree of compliance with controls may deteriorate.

We did not test compliance with all laws and regulations applicable to the offices of the independent and special counsel. We limited our tests of compliance to those laws and regulations that we deemed applicable to the statements of expenditures for the 6 months ended September 30, 2004. We caution that noncompliance may occur and not be detected by these tests and that such testing may not be sufficient for other purposes.

We performed our audits in accordance with U.S. generally accepted government auditing standards.

Agency Comments

We provided drafts of this report to the offices of independent counsel, the office of special counsel, the Department of Justice, and AOUSC for review and comment. These entities agreed with the facts and conclusions in our report.



Steven J. Sebastian
Director
Financial Management and Assurance

March 15, 2005

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Chairman

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Ranking Minority Member
Committee on Appropriations
United States Senate

The Honorable Susan M. Collins
Chairman

The Honorable Joseph I. Lieberman
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Committee on Government Reform
House of Representatives

The Honorable F. James Sensenbrenner, Jr.
Chairman
The Honorable John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary
House of Representatives

Statement of Expenditures for Independent Counsel Barrett

DAVID M. BARRETT
Office of Independent Counsel
Statement of Expenditures
(Cash basis)

Six Months Ended September 30, 2004

Personnel compensation and benefits	\$452,880
Travel (note 2)	51,102
Rent, communications, and utilities (note 3)	262,743
Contractual services (note 4)	346,829
Acquisition of capital assets (note 5)	1,395
Supplies and materials (note 6)	3,793
Administrative services (note 7)	<u>142,610</u>
Total expenditures	<u>\$1,261,352</u>

The accompanying notes are an integral part of this statement.

Appendix I
Statement of Expenditures for Independent
Counsel Barrett

DAVID M. BARRETT

Office of Independent Counsel

Notes to the Statement of Expenditures

Note 1 - Accounting policies

Reporting entity: The accompanying statement of expenditures presents the expenditures of the Office of Independent Counsel-David M. Barrett (OIC-Barrett) for the 6 months ended September 30, 2004. The statement of expenditures includes only expenditures made from the permanent, indefinite appropriation for the OIC that are processed during the period through the Administrative Office of the U.S. Courts (AOUSC) and the OIC. Mr. Barrett was appointed on May 24, 1995, to investigate certain allegations against the Secretary of Housing and Urban Development. On March 17, 2003, the Special Division of the U.S. Court of Appeals for the D.C. Circuit ordered that the Independent Counsel continue his work to the extent necessary or appropriate to perform the noninvestigative and nonprosecutorial tasks remaining as required to conclude the functions of his office. Expenditures during this period principally relate to preparing the final report for submission to the courts and to closing the office.

Basis of accounting: The accompanying statement of expenditures was prepared principally on the cash basis of accounting, which is a comprehensive basis of accounting other than U.S. generally accepted accounting principles. Under this method, except for personnel compensation and benefits, expenditures are recorded when the funds are disbursed by AOUSC or, for noncash transfers, when charged by AOUSC. Generally, personnel compensation and benefits are recorded at the end of the pay period when earned.

Note 2 - Travel

Travel primarily consists of expenditures for temporary duty travel for OIC-Barrett personnel.

Note 3 - Rent, communications, and utilities

Approximately \$229,800 in office rent is included in rent, communications, and utilities.

**Appendix I
Statement of Expenditures for Independent
Counsel Barrett**

Note 4 - Contractual services

Contractual services primarily consist of expenditures for the services of contractors and other experts in areas related to the investigation.

Note 5 - Acquisition of capital assets

The capital assets expenditures are primarily for automated data processing equipment. The assets will remain the property of the federal government at the conclusion of the investigation.

Note 6 - Supplies and materials

The supplies and materials expenditures are primarily for supplies for office use, including those for archiving records.

Note 7 - Administrative services

AOUSC receives an administrative fee equal to 3 percent of OIC expenditures for performing disbursement and accounting functions for OIC-Barrett. Payment of these fees generally occurs in the month following the services. Also included in administrative services are other costs incurred by AOUSC in providing administrative guidance and support to independent counsel offices. These costs were certified by AOUSC, paid from the independent counsel appropriation, and allocated to the OIC.

Statement of Expenditures for Independent Counsel Thomas

JULIE F. THOMAS	
Office of Independent Counsel	
Statement of Expenditures (Cash basis)	
Six Months Ended September 30, 2004	
Personnel compensation and benefits	\$120,099
Travel (note 2)	9,305
Rent, communications, and utilities (note 3)	5,426
Contractual services (note 4)	(5,360)
Supplies and materials (note 5)	524
Administrative services (note 6)	<u>7,706</u>
Total expenditures	<u>\$137,700</u>

The accompanying notes are an integral part of this statement.

Appendix II
Statement of Expenditures for Independent
Counsel Thomas

JULIE F. THOMAS

Office of Independent Counsel

Notes to the Statement of Expenditures

Note 1 – Accounting policies

Reporting entity: The accompanying statement of expenditures presents the expenditures of the Office of Independent Counsel-Julie F. Thomas (OIC-Thomas) for the 6 months ended September 30, 2004. The statement of expenditures includes only expenditures made from the permanent, indefinite appropriation for the OIC that are processed during the period through the Administrative Office of the U.S. Courts (AOUSC) and the OIC.

Kenneth W. Starr (OIC-Starr) was appointed on August 5, 1994, to assume the investigation of possible violations of federal criminal law in Re: Madison Guaranty Savings and Loan Association and other entities (Whitewater), which was begun by regulatory Independent Counsel Robert B. Fiske, Jr. The U.S. Court of Appeals subsequently expanded OIC-Starr's jurisdiction to include selected White House Travel Office and access-to-personnel-file issues on March 22, 1996, and June 21, 1996, respectively. On October 25, 1996, it further expanded OIC-Starr's jurisdiction to include issues related to statements made on June 26, 1996, before the Government Reform and Oversight Committee, U.S. House of Representatives. On January 16, 1998, the court expanded OIC-Starr's jurisdiction to include issues related to whether, in a civil case (commonly referred to as the Lewinsky matter), certain individuals suborned perjury, obstructed justice, intimidated witnesses, or otherwise violated federal law in dealing with witnesses, potential witnesses, attorneys, or others.

On October 18, 1999, Mr. Starr resigned his appointment, and was succeeded by Robert W. Ray as Independent Counsel effective the same date. On March 16, 2000, Mr. Ray submitted to the Special Division of the U.S. Court of Appeals for the D.C. Circuit two final reports on (1) the access-to-personnel-file issues and (2) the issues related to statements made before the Government Reform and Oversight Committee. On July 28, 2000, the court ordered the public release of the two reports. Further, on June 22, 2000, Mr. Ray submitted to the court a final report on the White House travel matter. On October 18, 2000, the court ordered the public release of that report. On January 19, 2001, Mr. Ray announced the conclusion of all current matters before the OIC.

On August 21, 2001, the Special Division of the U.S. Court of Appeals for the D.C. Circuit, at the request of the Independent Counsel, ordered the termination of the investigative functions of the Independent Counsel as of March 31, 2002, except to the extent necessary to conclude any remaining noninvestigative and

**Appendix II
Statement of Expenditures for Independent
Counsel Thomas**

nonprosecutorial tasks required by statute. On March 2, 2001, and May 18, 2001, Mr. Ray submitted to the court the final reports on the Whitewater and Lewinsky matters, respectively. On March 6, 2002, the court ordered the publication and release of the report on the Lewinsky matter. On March 20, 2002, the court ordered the publication and release of the Whitewater report. On March 12, 2002, Mr. Ray resigned his appointment and was succeeded by Ms. Julie F. Thomas as Independent Counsel effective that same date. In November 2003, the Special Division of the U.S. Court of Appeals for the D.C. Circuit ordered the termination of the office within 20 weeks. The office was permanently closed on March 23, 2004. Expenditures for this reporting period were for final preparation of records for transfer to the National Archives.

Basis of accounting: The accompanying statement of expenditures was prepared principally on the cash basis of accounting, which is a comprehensive basis of accounting other than U.S. generally accepted accounting principles. Under this method, except for personnel compensation and benefits, expenditures are recorded when the funds are disbursed by AOUSC or, for noncash transfers, when charged by AOUSC. Generally, personnel compensation and benefits are recorded at the end of the pay period when earned.

Note 2 - Travel

Travel primarily consists of expenditures for temporary duty travel for OIC-Thomas personnel.

Note 3 - Rent, communications, and utilities

Approximately \$4,000 is included for moving and relocating equipment in order to close the office.

Note 4 - Contractual services

A refund was received for contractual services rendered in a prior reporting period.

Note 5 - Supplies and materials

The supplies and materials expenditures are primarily for office supplies used in the archiving of records.

**Appendix II
Statement of Expenditures for Independent
Counsel Thomas**

Note 6 - Administrative services

AOUSC receives an administrative fee equal to 3 percent of OIC expenditures for performing disbursement and accounting functions for OIC-Thomas. Payment of these fees generally occurs in the month following the services. These costs were certified by AOUSC, paid from the independent counsel appropriation, and allocated to the OIC.

Statement of Expenditures for Special Counsel Fitzgerald

PATRICK J. FITZGERALD

Office of Special Counsel

Statement of Expenditures
(Cash basis)

Six Months Ended September 30, 2004

Personnel compensation and benefits	\$487,098
Travel (note 2)	44,565
Contractual services (note 3)	33,193
Supplies and materials (note 4)	6,489
Acquisition of equipment (note 5)	<u>13,554</u>
Total expenditures	<u>\$584,899</u>

The accompanying notes are an integral part of this statement.

**Appendix III
Statement of Expenditures for Special
Counsel Fitzgerald**

PATRICK J. FITZGERALD

Office of Special Counsel

Notes to the Statement of Expenditures

Note 1 - Accounting policies

Reporting entity: The accompanying statement of expenditures presents the expenditures of the Office of Special Counsel-Patrick J. Fitzgerald (OSC-Fitzgerald) for the 6 months ended September 30, 2004. The statement of expenditures includes only expenditures made from the permanent, indefinite appropriation for OSC-Fitzgerald that are processed during the period through the Department of Justice. On December 30, 2003, the Acting Attorney General appointed U.S. Attorney Patrick J. Fitzgerald as a Special Counsel to investigate whether officials of the current administration illegally disclosed the identity of an undercover Central Intelligence Agency officer.

Basis of accounting: The accompanying statement of expenditures was prepared principally on the cash basis of accounting, which is a comprehensive basis of accounting other than U.S. generally accepted accounting principles. Under this method, except for personnel compensation and benefits, expenditures are recorded when the funds are disbursed by the Department of Justice. Generally, personnel compensation and benefits are recorded at the end of the pay period when earned.

Note 2 - Travel

Travel primarily consists of expenditures for investigation-related travel for OSC-Fitzgerald personnel.

Note 3 - Contractual services

Contractual services primarily consist of expenditures for research services in areas of interest to the investigation.

**Appendix III
Statement of Expenditures for Special
Counsel Fitzgerald**

Note 4 – Supplies and materials

The supplies and materials expenditures are primarily for supplies for office use.

Note 5 - Acquisition of equipment

The expenditures are for automated data processing equipment, monitors, printers, and cabinets. These equipments will remain the property of the federal government at the conclusion of the investigation.

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