

September 2007

FINANCIAL AUDIT

Special Counsel Expenditures for the Six Months Ended March 31, 2007



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Abbreviations

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

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United States Government Accountability Office
Washington, DC 20548

September 28, 2007

Congressional Committees

Enclosed is our report on our audit of the statement of expenditures for the Office of Special Counsel Patrick J. Fitzgerald for the 6 months ended March 31, 2007. Our audit was designed to determine whether the statement of expenditures was fairly stated in all material respects. We were not required to express an opinion on the reasonableness or appropriateness of any related expenditures and we are not expressing any opinion thereon. We are sending copies of this report to the Attorney General, the Director of the Administrative Office of the U.S. Courts, the Special Counsel, and other interested parties. Copies of this report will be made available to others upon request. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

Please contact me at (202) 512-3406 or sebastians@gao.gov if you or your staff have any questions concerning this report. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are Julie Phillips, Assistant Director; Kwabena Ansong; and Alyson Mahan.

Steven J. Sebastian
Director
Financial Management and Assurance



United States Government Accountability Office
Washington, DC 20548

Congressional Committees

This report presents the results of our audit of expenditures¹ reported by the Office of Special Counsel Patrick J. Fitzgerald for the 6 months ended March 31, 2007. 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 statement of expenditures prepared by any active independent counsels. For the 6 months ended March 31, 2007, there were no active independent counsels. However, we audited the statement of expenditures of Special Counsel Fitzgerald, who is authorized by the Department of Justice to fund his operation from the permanent, indefinite appropriation.

In our audit covering the 6 months ended March 31, 2007, we found

- the statement of expenditures presented in appendix I for the Office of Special Counsel Patrick J. Fitzgerald, is presented fairly, in all material respects, in conformity with the basis of accounting described in note 1 of the counsel's statement, which is principally the cash basis, a comprehensive basis of accounting other than U.S. generally accepted accounting principles;
- Special Counsel Fitzgerald had effective internal control over financial reporting (including safeguarding assets) and compliance with laws and regulations as of March 31, 2007; and
- no reportable noncompliance with laws and regulations we tested.

Our audit was designed to determine whether the statement of expenditures is fairly stated in all material respects. We were not required to express an opinion on the reasonableness or appropriateness of any related expenditures and we are not expressing any opinion thereon.

The following sections provide background information; outline our conclusions with respect to our opinion and compliance with laws and regulations; discuss the objectives, scope, methodology of our audit; and contain agency comments.

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 directed 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. 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

As ordered by the Special Division, the Office of Independent Counsel Barrett, the last independent counsel to serve under the law, was terminated on May 3, 2006, and accordingly, no longer prepares a statement of expenditures. However, after that date, the Administrative Office of the United States Courts (AOUSC) continued to perform administrative responsibilities and maintain the administrative records for the terminated office. During the 6 months ended March 31, 2007, several payments on that counsel's behalf were made, including \$26,922 primarily for severance pay, \$6,991 for printing of the final report, and \$1,113 for

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).

support services rendered by AOUSC.⁴ However, we are not expressing an opinion on these amounts.

Opinion on Statement of Expenditures

The statement of expenditures, including the accompanying notes, for the Office of Special Counsel Patrick J. Fitzgerald presents fairly, in all material respects, the expenditures of the counsel for the 6 months ended March 31, 2007, on the basis of accounting described in note 1 of the counsel's statement.

The counsel prepared the statement 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 the counsel's statement. The counsel's statement includes only expenditures made from the permanent, indefinite appropriation.

Opinion on Internal Control

Special Counsel Fitzgerald maintained, in all material respects, effective internal control over financial reporting (including safeguarding assets) and compliance with laws and regulations as of March 31, 2007, that provided reasonable assurance that misstatements, losses, or noncompliance material in relation to the statement of expenditures would be prevented or detected on a timely basis. Our opinion is based on criteria we established in our *Standards for Internal Control in the Federal Government*.⁵

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.

⁴The Independent Counsel Law designated specific responsibilities to AOUSC for the administrative support of independent counsels. The Department of Justice periodically disburses lump-sum payments to AOUSC for this purpose.

⁵GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](http://www.gao.gov/special.pubs/ai00021p.pdf) (Washington, D.C.: November 1999). <http://www.gao.gov/special.pubs/ai00021p.pdf>.

Objectives, Scope, and Methodology

Though not required to do so, the special counsel elected to prepare a statement of expenditures in conformity with the basis of accounting described in the accompanying notes. Additionally, the counsel is 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 statement of expenditures in conformity with the basis of accounting described in the notes to the statement, 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 counsel's statement of expenditures.

We are responsible for obtaining reasonable assurance about whether (1) the counsel's statement of expenditures is presented fairly, in all material respects, in conformity with the basis of accounting described in the notes accompanying the statement of expenditures; and (2) the special counsel maintained effective internal control over financial reporting and compliance as of March 31, 2007. We are also responsible for testing compliance with selected provisions of laws and regulations that could have a direct and material effect on the counsel's statement of expenditures.

In order to fulfill these responsibilities, 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 Title 5 of the United States Code, the Prompt Pay Act, and selected provisions related to pay administration and travel regulations.

Our audit was designed to determine whether the statement of expenditures was fairly stated in all material respects. We were not required to, nor do we express an opinion on, the reasonableness or appropriateness of any related expenditures.

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 Office of the Special Counsel. We limited our tests of compliance to those laws and regulations that could have a direct and material effect on the statement of expenditures for the 6 months ended March 31, 2007. 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 audit in accordance with U.S. generally accepted government auditing standards.

Agency Comments

We provided drafts of this report to 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

September 20, 2007

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House of Representatives

Appendix I: Statement of Expenditures for Special Counsel Fitzgerald

PATRICK J. FITZGERALD
Office of Special Counsel
Statement of Expenditures
(Principally cash basis - see Note 1)
Six Months Ended March 31, 2007

Personnel compensation and benefits	\$592,837
Witness expenses (note 2)	25,932
Travel (note 3)	112,025
Contractual services (note 4)	11,438
Acquisition of equipment (note 5)	23,479
Supplies and materials (note 6)	<u>5,127</u>
Total expenditures	<u>\$770,838</u>

The accompanying notes are an integral part of this statement.

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 March 31, 2007. 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 then 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 (CIA) officer. In March 2007, an administration official was convicted of perjury, lying to the Federal Bureau of Investigation (FBI), and obstruction of justice in the investigation. Expenditures during this period principally relate to the investigation and trial of this official on perjury and obstruction of justice charges.

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 - Witness expenses

Witness expenses consist of fact and expert witness fees and expenses which are required to be paid to witnesses who testify on behalf of the government.

Note 3 - Travel

Travel primarily consists of expenditures for investigation and trial-related travel for Office of Special Counsel personnel.

Note 4 - contractual services

Contractual services primarily consist of expenditures for maintaining and servicing office equipment and for research and data transcription services in areas of interest to the investigation and trial.

Note 5 - Acquisition of equipment

The expenditures are for noncapitalized personal property, such as general office equipment and computer equipment used for copying, maintenance, and destruction of documents. This equipment 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.

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