

March 2006

FINANCIAL AUDIT

Independent and Special Counsel Expenditures for the Six Months Ended September 30, 2005



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, 2006

Congressional Committees

Enclosed is our report on our audits of the statements of expenditures for the two active counsels—one office of independent counsel and one office of special counsel—for the 6 months ended September 30, 2005. Our audits were designed to determine whether the statements of expenditures were 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 Independent Counsel and Special Counsel included in our audits, 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.

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. Key contributors to this report were Paul Foderaro, Assistant Director; Kwabena Ansong; Joel Rodriguez; and Bethany Smith.

Steven J. Sebastian
Director
Financial Management and Assurance



Congressional Committees

This report presents the results of our audits of expenditures¹ reported by one office of independent counsel and one office of special counsel for the 6 months ended September 30, 2005. The Department of Justice and the independent counsel 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, 2005, we found

- the statements of expenditures presented in appendixes I and II, for the office of the Independent Counsel David M. Barrett 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, 2005; and
- no reportable noncompliance with laws and regulations we tested.

Our audits were designed to determine whether the statements of expenditures were 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 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 Julie F. Thomas, which was officially closed effective March 23, 2004, and accordingly, no longer prepares a statement of expenditures. However, during the 6 months ended September 30, 2005, the U.S. Court of Appeals for the D.C. Circuit awarded reimbursements of approximately \$49,587 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). Of this award, \$41,439 was paid out as of September 30, 2005, \$7,448 was paid out in November 2005, and \$700 has not yet been submitted for payment. The reimbursement was made from the permanent indefinite appropriation for the payment of Judgments.⁴

Opinions on Statements of Expenditures

The statements of expenditures, including the accompanying notes, for the office of Independent Counsel David M. Barrett and 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, 2005, 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.

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, 2005, 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*.⁵

⁴See, 31 U.S.C. 1304.

⁵GAO, *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>.

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.

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, 2005. 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., the Prompt Pay Act, and selected provisions related to pay administration and travel regulations.

Our audits were designed to determine whether the statements of expenditures were 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 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, 2005. 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 office of independent counsel Barrett, the office of special counsel Fitzgerald, 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 16, 2006

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Chairman

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Committee on Appropriations
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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, 2005

Personnel compensation and benefits	\$426,028
Travel (note 2)	1,103
Rent, communications, and utilities (note 3)	278,612
Contractual services (note 4)	116,863
Supplies and materials (note 5)	5,263
Acquisition of equipment (note 6)	6,179
Administrative services (note 7)	<u>32,223</u>
Total expenditures	<u>\$866,271</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, 2005. 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 a former 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 (Special Division) ordered that the independent counsel continue his office to the extent necessary or appropriate to perform the noninvestigative and nonprosecutorial tasks remaining as required to conclude the functions of his office. On August 13, 2004, the OIC filed its Final Report under seal with the Special Division. This was followed by a statutory review and comment period for persons named in the Report which lasted from March to November 2005. The Final Report was released to the public on January 19, 2006 pursuant to orders of the Special Division dated October 24, 2005 and December 13, 2005. The OIC is continuing in operation solely to fulfill its remaining noninvestigative and prosecutorial duties pursuant to law and orders of the Special Division.

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 consisted of expenditures for local travel paid for OIC-Barrett personnel.

Appendix I
Statement of Expenditures for Independent
Counsel Barrett

Note 3 - Rent, communications, and utilities

Approximately \$250,291 in office rent is included in rent, communications, and utilities.

Note 4 - Contractual services

Contractual services primarily consist of expenditures for the services of contractors relating to sealed matters in front of the Special Division concerning the final report.

Note 5 - Supplies and materials

Supplies and materials expenditures are for supplies for office use, including archiving records.

Note 6 - Acquisition of equipment

The expenditures are for noncapitalized personal property, such as general office equipment and computer equipment. This equipment will remain the property of the federal government at the conclusion of the investigation.

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, amounting to \$6,378 incurred by the Special Division in providing administrative guidance and support with respect to independent counsel offices. These costs were certified by AOUSC, paid from the independent counsel appropriation, and allocated solely to OIC Barrett.

Statement of Expenditures for Special Counsel Fitzgerald

PATRICK J. FITZGERALD

Office of Special Counsel

Statement of Expenditures
(Cash basis)

Six Months Ended September 30, 2005

Personnel compensation and benefits (note 2)	\$169,383
Travel (note 3)	5,088
Contractual services	3,573
Supplies and materials	<u>33</u>
Total expenditures	<u>\$178,077</u>

The accompanying notes are an integral part of this statement.

Appendix II
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, 2005. 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 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 - Personnel Costs

This reporting period included approximately \$35,195 for salaries and benefits associated with employees in the Criminal Division of the Department of Justice incurred during the period ended March 31, 2005.

Note 3 - Travel

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

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