

September 2003

FINANCIAL AUDIT

Independent Counsel  
Expenditures for the  
Six Months Ended  
March 31, 2003



G A O

Accountability \* Integrity \* Reliability

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# Contents

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Letter	1
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Auditor's Report	3
Background	3
Opinion on Statements of Expenditures	5
Consideration of Internal Control	5
Compliance with Laws and Regulations	6
Objectives, Scope, and Methodology	6
Agency Comments	7

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## Appendixes

<b>Appendix I: Statement of Expenditures for Independent Counsel Barrett</b>	10
<b>Appendix II: Statement of Expenditures for Independent Counsel Thomas</b>	13

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### Abbreviations

AOUSC	Administrative Office of the U.S. Courts
FBI	Federal Bureau of Investigation
OIC	Office of Independent Counsel

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

September 30, 2003

Congressional Committees

Enclosed is our report on the statements of expenditures of two offices of independent counsel for the 6 months ended March 31, 2003. 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 included in our audit, and other interested parties. Copies of this report will be made available to others upon request. This report will also be available at no charge on GAO's Web site at [www.gao.gov](http://www.gao.gov).

If you or your staffs have any questions concerning this report, please contact me at (202) 512-6906 or Hodge Herry, Assistant Director, at (202) 512-9469. You can also reach us by E-mail at [williamsM1@gao.gov](mailto:williamsM1@gao.gov) or [herryh@gao.gov](mailto:herryh@gao.gov). Key contributors to this report were Carol Keightley, Kwabena Ansong, and Heather Dunahoo.

McCoy Williams  
Director  
Financial Management and Assurance

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

### Congressional Committees

This report presents the results of our audits of expenditures<sup>1</sup> reported by two offices of independent counsel for the 6 months ended March 31, 2003. The Department of Justice and the independent counsels are required under 28 U.S.C. 594 (d)(2), (h) and 596 (c)(1) (2000) to report on expenditures from a permanent, indefinite appropriation established within the Department of Justice to fund independent counsel activities. We are required under 28 U.S.C. 596 (c)(2) to audit the statements of expenditures prepared by the independent counsels.

In our audits covering the 6 months ended March 31, 2003, we found

- the statements of expenditures presented in appendixes I and II, for the offices of independent counsel (OIC) David M. Barrett and Julie F. Thomas, 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;
- no material weaknesses in internal control over financial reporting (including safeguarding assets) and compliance with laws and regulations; 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 scope of our audits.

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## 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 (2000)) was intended to preserve and promote the accountability and integrity of public officials and of the institutions of the federal government. The

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<sup>1</sup>The term expenditures as used in this report generally means cash disbursed.

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independent counsel law expired on June 30, 1999. Provisions of the law allow the independent counsels serving at the expiration date to continue investigating pending matters until they determine 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 independent counsel offices from the permanent, indefinite appropriation established to fund independent counsel activities. The independent counsel law also designates specific responsibilities to the Administrative Office of the U.S. Courts (AOUSC) for independent counsels' administrative support. The Department of Justice periodically disburses lump-sum payments to AOUSC for this purpose.

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 (FBI). Independent counsels are not required to reflect such costs in their statements of expenditures nor do they do so. For the 6 months ended March 31, 2003, there were no costs reported by other agencies in support of independent counsel activities.

Also, these statements and related notes do not include certain expenditures related to the investigation by former independent counsel Daniel M. Pearson. Mr. Pearson's office officially closed in April 2002, and accordingly, no longer prepares financial statements. However, OIC Pearson had \$2,585 in expenditures this period for payment of late contractor billings. Further, a lump-sum leave payment is expected to be made from the independent counsel permanent, indefinite appropriation at some future point pending the satisfactory completion of administrative responsibilities by a former OIC Pearson employee.

In addition, these statements and related notes do not include certain expenditures related to the investigation by Special Counsel John C. Danforth. The investigation by Special Counsel Danforth was officially terminated when Mr. Danforth closed his office in March 2001. Accordingly, Special Counsel Danforth no longer prepares financial statements. However, the Department of Justice paid \$22,612 from the permanent, indefinite appropriation during this period for delayed billings for rental of copying equipment and a correction to the account for

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background investigation services provided by the Office of Personnel Management for the Office of Special Counsel Danforth. Justice originally mistakenly charged the latter to another unit within the Department of Justice.

The office of independent counsel Ralph I. Lancaster is also officially closed and no longer prepares financial statements. However, the U.S. Court of Appeals for the D.C. Circuit awarded reimbursement of \$32,437 for attorneys' fees and expenses of individuals who had been investigated by Mr. Lancaster but not indicted, as authorized by 28 U.S.C. 593(f)(1). The reimbursement was made from the permanent fund established for the payment of judgments.

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## Opinion on Statements of Expenditures

The statements of expenditures, including the accompanying notes for the offices of independent counsel David M. Barrett and Julie F. Thomas, present fairly, in all material respects, the expenditures of these counsels for the 6 months ended March 31, 2003, 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.

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## Consideration of Internal Control

In planning and performing our audits, we considered internal control over financial reporting and compliance.<sup>2</sup> We did this to determine our procedures for auditing the statements of expenditures, not to express an opinion on internal control. Accordingly, we do not express an opinion on internal control over financial reporting and compliance. However, for the controls we tested, we found no material weaknesses in internal control over financial reporting (including safeguarding assets) and compliance for the 6-month period ended March 31, 2003. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that

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<sup>2</sup>The objectives of internal control are to provide reasonable assurance that management maintained effective internal control over financial reporting (including safeguarding assets) and compliance with laws and regulations.

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errors, fraud, or noncompliance in amounts that would be material to the statements of expenditures may occur and not be detected promptly by employees in the normal course of performing their duties. Our internal control work would not necessarily disclose all material weaknesses.

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## 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.

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## 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. The counsels are also responsible for establishing, maintaining, and assessing internal control to provide reasonable assurance that the following internal control objectives are met and for complying with applicable laws and regulations.

- **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 (1) obtaining reasonable assurance about whether the counsels' statements of expenditures are presented fairly, in all material respects, in conformity with the basis of accounting described in the notes accompanying their statements of expenditures, (2) obtaining a sufficient understanding of internal control over financial reporting and compliance to plan the audits, and (3) testing compliance with selected provisions of laws and regulations that have a direct and material effect on the statements.

In order to fulfill these responsibilities, for each counsel, we (1) examined, on a test basis, evidence supporting the amounts and disclosures in the

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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, and (5) tested compliance with selected provisions of 28 U.S.C. 591-599 (2000), 5 U.S.C. Chapter 55, and regulations relating to pay administration.

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. In addition, we caution that our internal control testing may not be sufficient for other purposes.

We did not test compliance with all laws and regulations applicable to the offices of independent counsel. We limited our tests of compliance to those laws and regulations that we deemed applicable to the statements of expenditures. 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.

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## Agency Comments

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



McCoy Williams  
Director  
Financial Management and Assurance

September 15, 2003

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Committee on Appropriations  
United States Senate

The Honorable Susan M. Collins  
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The Honorable Joseph I. Lieberman  
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The Honorable Tom Davis  
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The Honorable Henry A. Waxman  
Ranking Minority Member  
Committee on Government Reform  
House of Representatives

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

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# Statement of Expenditures for Independent Counsel Barrett

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DAVID M. BARRETT

Office of Independent Counsel

Statement of Expenditures  
(Cash basis)

Six Months Ended March 31, 2003

Personnel compensation and benefits	\$440,364
Travel (note 2)	23,425
Rent, communications, and utilities (note 3)	276,414
Contractual services (note 4)	103,393
Supplies and materials (note 5)	2,123
Acquisition of capital assets (note 6)	1,368
Administrative services (note 7)	<u>84,550</u>
<b>Total expenditures</b>	<b><u>\$931,637</u></b>

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The accompanying notes are an integral part of this statement.

**DAVID M. BARRETT**

**Office of Independent Counsel**

**Notes to 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 March 31, 2003. The statement of expenditures includes only expenditures made from the permanent, indefinite appropriation for the OIC that are processed 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 District of Columbia Circuit ordered that the Independent Counsel continue his office to the extent necessary or appropriate to perform the noninvestigative and nonprosecutorial tasks remaining of his statutory duties as required to conclude the functions of his office. Expenditures during this period principally relate to preparing the final report for submission to the Court 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. Most personnel compensation and benefits are recorded at the end of the pay period when earned.

**Note 2 - Travel**

Travel generally includes expenditures for investigation-related travel paid for OIC-Barrett personnel.

**Note 3 - Rent, communications, and utilities**

Approximately \$236,000 in office rent is included in rent, communications, and utilities.

**Note 4 - Contractual services**

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

**Note 5 - Supplies and materials**

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

**Note 6 - Acquisition of capital assets**

The capital assets expenditures are primarily for automated data processing equipment. These assets 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 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 March 31, 2003

Personnel compensation and benefits	\$377,132
Travel (note 2)	7,851
Rent, communications, and utilities (note 3)	108,093
Contractual services (note 4)	118,856
Supplies and materials (note 5)	896
Administrative services (note 6)	<u>60,284</u>
<b>Total expenditures</b>	<b><u>\$673,112</u></b>

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The accompanying notes are an integral part of this statement.

**JULIE F. THOMAS**

**Office of Independent Counsel**

**Notes to 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 March 31, 2003. The statement of expenditures includes only expenditures made from the permanent, indefinite appropriation for the OIC that are processed 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 District of Columbia 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 District of Columbia Circuit, at the request of the Independent Counsel, ordered

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

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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 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. Expenditures during this period were for archiving investigative materials and reviewing petitions for reimbursement of attorneys' fees.

**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. Most personnel compensation and benefits are recorded at the end of the pay period when earned.

**Note 2 - Travel**

Travel generally includes expenditures for investigation-related travel paid for OIC-Thomas personnel and contractors.

**Note 3 - Rent, communications, and utilities**

Approximately \$80,000 in office rent is included in rent, communications, and utilities.

**Note 4 - Contractual services**

Contractual services primarily consist of expenditures for computer support and maintenance, the repair and maintenance of office equipment, and specialists in areas of interest to the investigation.

**Note 5 - Supplies and materials**

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

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

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**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. 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.

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