

March 1995

FINANCIAL AUDIT

Expenditures by Three Independent Counsels for the Six Months Ended September 30, 1993



GAO	United States General Accounting Office Washington, D.C. 20548
	Accounting and Information Management Division
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	March 31, 1995
	Congressional Committees
	This report presents the results of our audits of expenditures reported by three independent counsels for the 6 months ended September 30, 1993. Independent counsels and the Department of Justice are required under 28 U.S.C. 594 to report on expenditures from a permanent, indefinite appropriation established within Justice to fund independent counsel activities. We are required under 28 U.S.C. 596 and Public Law 100-202 to audit those expenditures. We found that the statements of expenditures presented in appendixes I, II, and III for independent counsels Arlin M. Adams, Joseph E. diGenova, and Lawrence E. Walsh were reliable in all material respects.
	Further, our audits included limited tests of internal controls and compliance with laws and regulations that disclosed
	 a material weakness in internal controls over reporting of expenditures and
	 no material 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.
Background	 The independent counsel provisions of the Ethics in Government Act of 1978 (28 U.S.C. 591-599) established a process for the appointment of independent counsels so as to preserve and promote the accountability and integrity of public officials and of institutions of the federal government. The law provides for the judicial appointment of temporary, special prosecutors¹ 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 expired on December 15, 1992; however, the law's provisions allowed the three independent counsels serving in that position on that date—Mr. Adams, Mr. diGenova, and Mr. Walsh—to continue their work until completed. On June 30, 1994, and subsequent to this audit period, the Independent Counsel Reauthorization Act of 1994 (Public Law 103-270) was enacted,

 $^{^{1}}$ In 1983, the title of these positions was changed from special prosecutor to independent counsel.

	reauthorizing the independent counsel law for an additional 5 years. The act contains various amendments aimed at addressing problems identified in our prior independent counsel reports. ² For example, these amendments require added cost controls over independent counsel expenditures and designate specific responsibilities to the Administrative Office of the United States Courts (AOUSC) for independent counsels' administrative support.
	The independent counsel law directs the Department of Justice to pay all costs relating to the establishment and operation of independent counsel offices. In 1987, Public Law 100-202 established a permanent, indefinite appropriation within Justice to fund expenditures by independent counsels. Independent counsels are required to report their expenditures from the appropriation for each 6-month period in which they have operations. We are required to audit expenditures from the independent counsel appropriation and to report our findings to appropriate committees of the Congress.
	Independent counsels may also incur costs that are paid from appropriations other than the permanent, indefinite appropriation established to fund independent counsel activities. These costs arise, for example, from the use of detailees from other federal agencies, such as the Federal Bureau of Investigation (FBI). While independent counsels are not required to and do not include the cost of all their activities in reported expenditures, the nature of these other costs is identified and discussed in the notes to the statements of expenditures presented in the appendixes to this report.
Opinion on Statements of Expenditures	The statements of expenditures for independent counsels Arlin M. Adams, Joseph E. diGenova, and Lawrence E. Walsh present fairly, in all material respects, the respective expenditures of these independent counsel offices for the 6 months ended September 30, 1993. The statements of expenditures and related notes regarding bases of accounting and additional pertinent information are provided in appendixes I through III.
Consideration of Internal Control Structure	For this audit period, the internal controls we considered for each of the three independent counsels and for AOUSC regarding the administrative
	² Financial audits of expenditures by independent counsels (GAO/AFMD-93-1, October 9, 1992; GAO/AFMD-93-60, April 21, 1993; and GAO/AIMD-94-76, April 15, 1994).

support and accounting services it performs for independent counsels were those designed to

- safeguard assets against loss from unauthorized use or disposition;
- assure the execution of transactions in accordance with management authority and with laws and regulations; and
- properly record, process, and summarize transactions to permit the preparation of expenditure statements in accordance with applicable bases of accounting.

With the exception of Independent Counsel Walsh, independent counsels and AOUSC continued to have a material weakness in internal controls over reported expenditures. A material weakness is a condition in which the design or operation of one or more of the internal control structure elements does not reduce to a relatively low risk that errors or irregularities in amounts that would be material to the expenditure statements may occur and not be detected promptly by employees in the normal course of performing their duties.

In 1986, Justice entered into an agreement with AOUSC to transfer the processing of payments for independent counsel expenditures from Justice to AOUSC, and Justice periodically disburses lump-sum payments to AOUSC for this purpose. Independent counsel offices typically submit payment vouchers, payroll information, and supporting documentation to AOUSC. On the independent counsels' behalf, AOUSC expends funds and records the expenditures in its payroll and accounting systems. AOUSC also prepares monthly summarized expenditure reports and submits them to independent counsels.

Independent counsels have generally fulfilled their financial reporting requirements by using the summarized expenditure reports prepared by AOUSC. During this audit period, and as discussed in our prior reports,³ AOUSC expenditure reports have had errors, thus requiring us to propose—and independent counsels to accept—audit adjustments.

During this audit period, Independent Counsel Walsh's office maintained its own separate accounting system and performed procedures to reconcile AOUSC reports to its own records, enabling it to identify any errors in the AOUSC reports. The other two independent counsels during this audit period continued to rely almost solely on AOUSC reports in

³Financial audits of expenditures by independent counsels (GAO/AFMD-93-1, October 9, 1992; GAO/AFMD-93-60, April 21, 1993; and GAO/AIMD-94-76, April 15, 1994).

	reporting expenditures. We believe that independent counsels may continue to experience problems reporting their expenditures until AOUSC establishes effective internal controls for accurately summarizing independent counsel expenditures.
	In our prior reports, we identified other internal control weaknesses at independent counsel offices and AOUSC including, for example, inadequate segregation of duties and inadequate procedures to ensure compliance with applicable laws. We attributed many of the problems regarding independent counsels' noncompliance with certain laws and regulations to a lack of comprehensive guidance, either in the independent counsel law or elsewhere, on the financial management structure and operation of independent counsel offices. In response to our prior reports, independent counsels and AOUSC officials acknowledged that corrective action was needed and have taken steps to improve internal controls through greater segregation of duties, increased interaction between independent counsel and AOUSC employees, and the ongoing development of handbooks and other written guidance.
	Also, since the issuance of our prior reports, and subsequent to this audit period, the Congress addressed many of the problems we found by passing the Independent Counsel Reauthorization Act of 1994. The act amends the independent counsel law by requiring independent counsels to generally comply with the established policies of the Department of Justice regarding expenditure of funds and by establishing additional restrictions on the compensation and travel expenses paid to independent counsels or their employees.
Compliance With Laws and Regulations	Our tests for compliance with selected provisions of laws and regulations disclosed no material instances of noncompliance during the 6 months ended September 30, 1993.
Objectives, Scope, and Methodology	In order to carry out their financial operations and to ensure accountability, independent counsels are responsible for
	 preparing statements of expenditures, establishing and maintaining internal controls and systems to provide reasonable assurance that the internal control objectives previously mentioned are met, and complying with applicable laws and regulations.

We are responsible for obtaining reasonable assurance about whether the statements of expenditures reported by independent counsels are reliable (free of material misstatement and presented fairly in accordance with the bases of accounting described in accompanying notes). We are also responsible for considering the internal control structure in order to determine our auditing procedures for expressing an opinion on the statements of expenditures, not to provide assurance on the internal control structure. In addition, we are responsible for testing compliance with selected provisions of laws and regulations.

In order to fulfill these responsibilities, for each independent counsel, we

- examined, on a test basis, evidence supporting the amounts and disclosures in the statement of expenditures and notes thereto, except items indicated as unaudited;
- assessed the accounting principles used and significant estimates made by management;
- evaluated the overall presentation of the statement of expenditures;
- obtained an understanding of the design of relevant internal control structure policies and procedures, determined whether they had been placed in operation, assessed the associated control risk, and conducted limited tests of relevant internal controls, including those over expenditure authorizations and financial reporting; and
- tested compliance with certain aspects of selected provisions of the independent counsel provisions of the Ethics in Government Act of 1978 (28 U.S.C. 591-599), 5 U.S.C. Chapter 55, and implementing regulations, relating to pay administration.

It is important to note that because of inherent limitations in any internal control structure, losses, noncompliance, or misstatements may nevertheless occur and not be detected. Also, projecting any 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. As a result of the material internal control weakness over reported expenditures previously discussed, we extended our substantive testing in order to opine on the expenditure reports presented in the appendixes to this report.

We obtained, but did not audit, information on costs that were not paid from the permanent, indefinite appropriation established to fund independent counsel activities. We obtained information on these costs from the independent counsel offices; the Department of Justice, including the FBI; the Internal Revenue Service; and the Office of Inspector General of the Department of Housing and Urban Development.

We discussed the results of our work with the three independent counsels or their representatives and with representatives of AOUSC and incorporated their comments where appropriate.

We performed our audits in accordance with generally accepted government auditing standards. We completed our audit work on February 23, 1995.

We are sending copies of this report to the Attorney General, the Director of the Administrative Office of the U.S. Courts, the three independent counsels included in our audit, and other interested parties. Copies will be made available to others upon request.

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David L. Clark Director, Legislative Reviews and Audit Oversight

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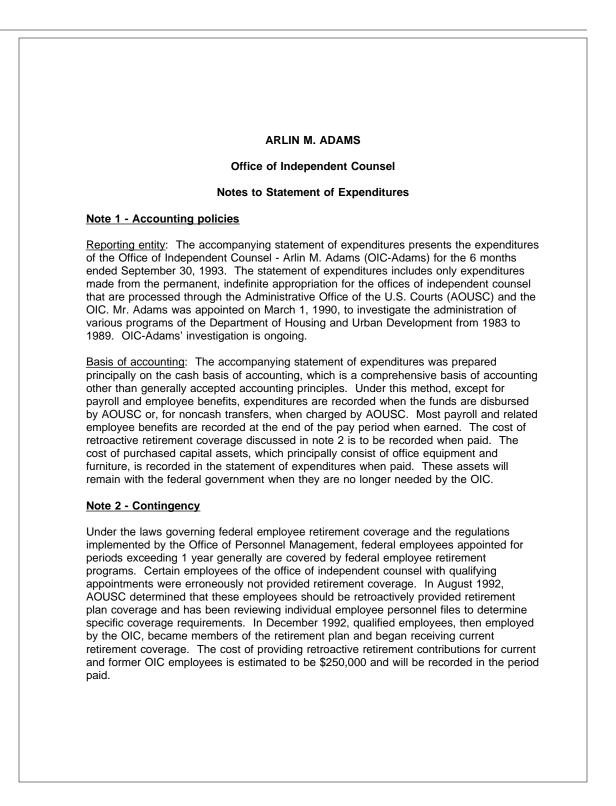
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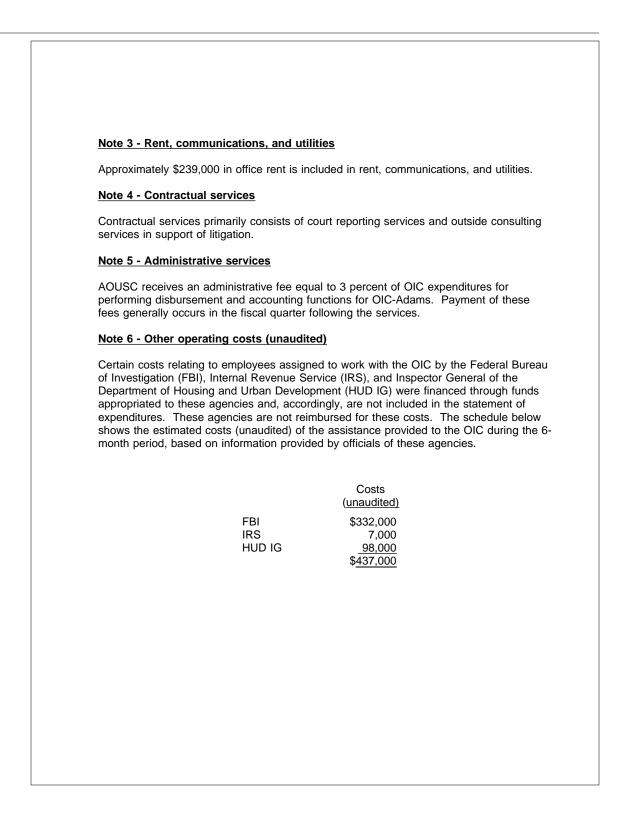
Abbreviations

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

Statement of Expenditures for Independent Counsel Adams

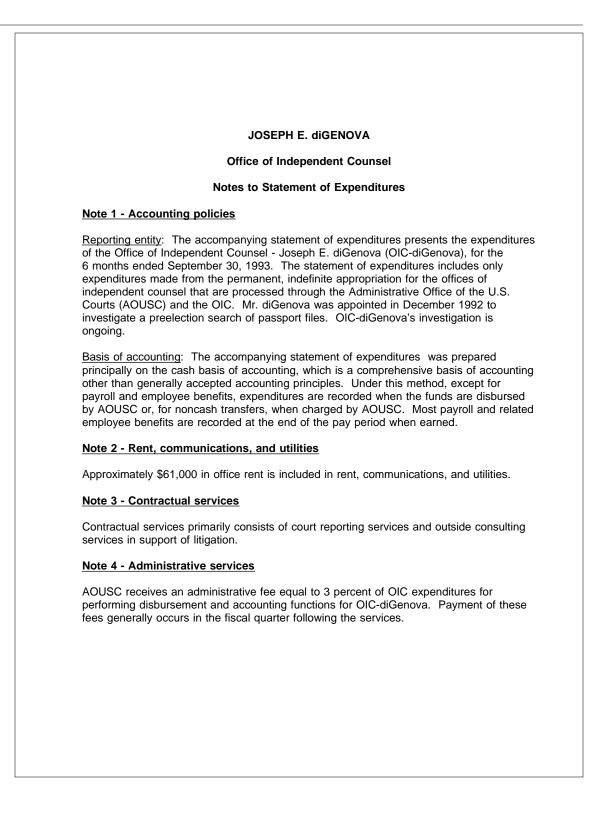
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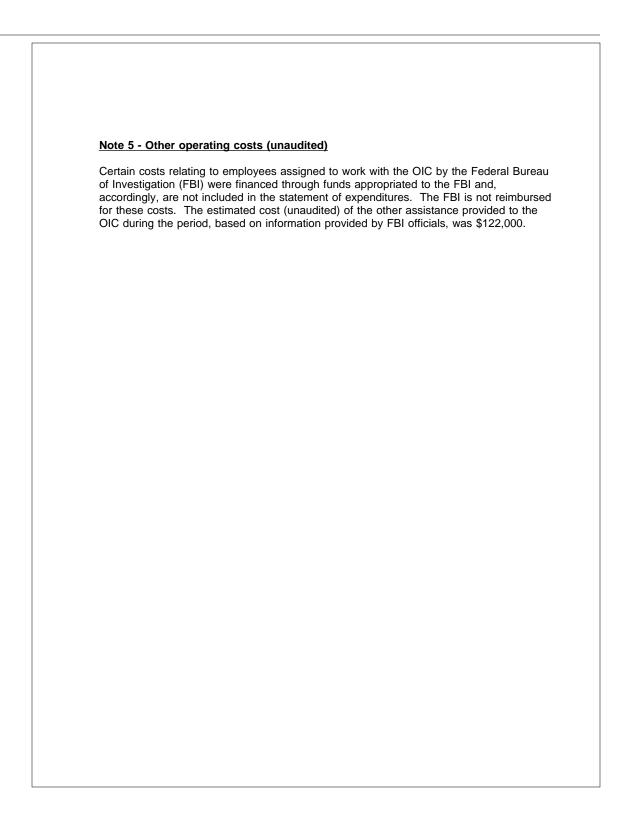




Statement of Expenditures for Independent Counsel diGenova

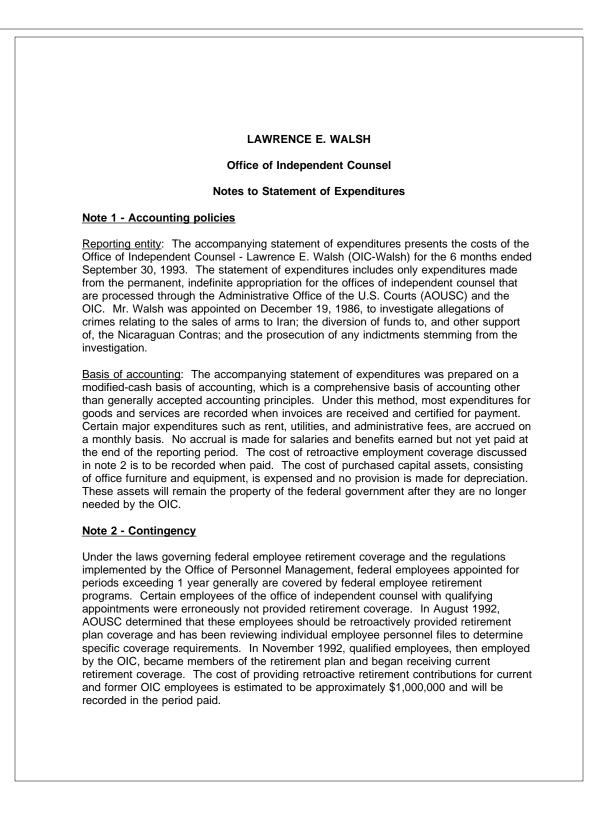
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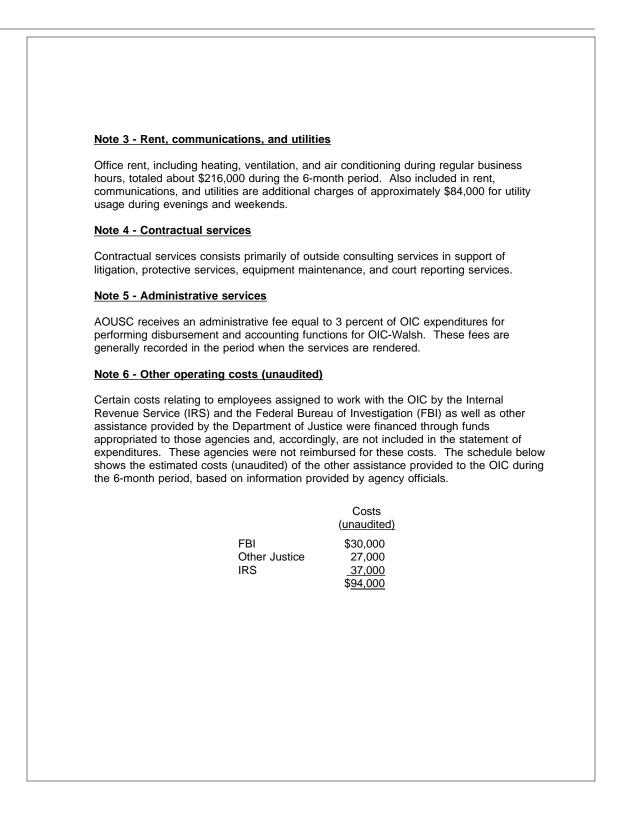




Statement of Expenditures for Independent Counsel Walsh

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