

September 2002

FINANCIAL AUDIT

Independent Counsel
Expenditures for the
Six Months Ended
March 31, 2002



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Abbreviations

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



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

September 30, 2002

Congressional Committees

Enclosed is our report on the statements of expenditures of four offices of independent counsel for the 6 months ended March 31, 2002. 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.

If you or your staffs have any questions concerning this report, please contact me at (202) 512-9406 or Hodge Herry, Assistant Director, at (202) 512-9469. You can also reach us by e-mail at franzelj@gao.gov or herryh@gao.gov. Key contributors to this report were Carol Keightley, Kwabena Ansong, Theresa Patrizio, and Polly Cheung.

Jeanette M. Franzel
Director
Financial Management and Assurance



Congressional Committees

This report presents the results of our audits of expenditures¹ reported by four offices of independent counsel for the 6 months ended March 31, 2002. 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, 2002, we found

- the statements of expenditures presented in appendixes I through IV, for the offices of independent counsel David M. Barrett, Daniel S. Pearson, Robert W. Ray, and Donald C. Smaltz, 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.

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

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

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 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. However, to the extent practicable, the counsels identified and disclosed these costs in the notes to their statements presented in the appendixes to this report.

These statements and related notes do not include certain expenditures related to the investigations by independent counsels Carol Elder Bruce and Ralph I. Lancaster and by special counsel John C. Danforth that were officially terminated. Accordingly, independent counsels Bruce and Lancaster and special counsel Danforth no longer prepare financial statements. The investigations by independent counsels Carol Elder Bruce and Ralph I. Lancaster were officially terminated by the Court effective March 22, 2001, and July 11, 2001, respectively. The investigation by special counsel John C. Danforth was officially terminated when Mr. Danforth closed his office in March 2001. However, expenditures occurred during this period for each of these counsels. The Office of Independent Counsel (OIC)-Bruce had \$860 in expenditures during this period, which was the severance payment to OIC-Bruce's final employee. OIC-Lancaster's transactions during this period included \$27,337 in expenditures for final administrative activities and a \$33,344 decrease in rent resulting from a General Services Administration refund, resulting in a net \$6,007 decrease in OIC-Lancaster's total expenditures. Finally, the Office of Special Counsel

Danforth had \$12,312 in expenditures during this period to prepare administrative files for transfer to the archives.

Opinion on Statements of Expenditures

The statements of expenditures including the accompanying notes for the offices of independent counsel David M. Barrett, Daniel S. Pearson, Robert W. Ray, and Donald C. Smaltz, present fairly, in all material respects, the expenditures of these counsels for the 6 months ended March 31, 2002, on the basis of accounting described in note 1 to 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 bases of accounting are described in note 1 of each counsel's statement.

Consideration of Internal Control

In planning and performing our audits, we considered internal control over financial reporting and compliance.² 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, 2002. 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 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.

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

²The objectives of internal control are to provide reasonable assurance that management objectives regarding financial reporting (including safeguarding of assets) and compliance with laws and regulations are achieved.

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 bases 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 bases 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 bases 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 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.

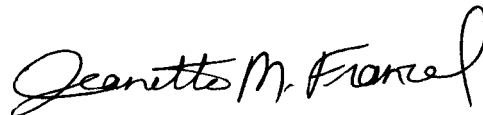
We did not test compliance with all laws and regulations applicable to the offices of independent counsel. We limited our tests of compliance to those laws and regulations that we deemed applicable to the statements of expenditures. We caution that noncompliance may occur and not be detected by these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

We obtained, but did not audit, information on costs that were paid from sources other than the permanent, indefinite appropriation. We obtained information on these costs from the independent counsel offices and the Department of Justice, including the FBI.

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 Department of Justice, and AOUSC for review and comment. These entities agreed with the facts and conclusions in our report.



Jeanette M. Franzel
Director
Financial Management and Assurance

September 9, 2002

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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 March 31, 2002

Personnel compensation and benefits	\$374,792
Travel (note 2)	40,223
Rent, communications, and utilities (note 3)	282,456
Contractual services (note 4)	198,999
Supplies and materials	9,273
Administrative services (note 5)	<u>69,132</u>
Total expenditures	<u>\$974,875</u>

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, 2002. 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.

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 and witnesses.

Note 3 - Rent, communications, and utilities

Approximately \$228,000 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 - 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 Pearson

DANIEL S. PEARSON

Office of Independent Counsel

Statement of Expenditures
(Cash basis)

Six Months Ended March 31, 2002

Personnel compensation and benefits	\$69,935
Rent, communications, and utilities (note 2)	26,870
Contractual services and capital assets (note 3)	11,599
Administrative services (note 4)	<u>6,661</u>
Total expenditures	<u>\$115,065</u>

The accompanying notes are an integral part of this statement.

DANIEL S. PEARSON

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-Daniel S. Pearson (OIC-Pearson) for the 6 months ended March 31, 2002. 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. Pearson was appointed on July 6, 1995, to investigate certain allegations against the Secretary of Commerce. On April 3, 1996, the Secretary was killed in a plane crash. Shortly thereafter, the Independent Counsel closed the investigation of the Secretary and transferred the investigation related to other parties to the Department of Justice. Expenditures during this period relate to final efforts to archive the investigative records.

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 - Rent, communications, and utilities

Approximately \$24,000 in office rent is included in rent, communications, and utilities.

Note 3 - Contractual services

Contractual services primarily consist of payments to experts for preparing independent counsel records for archiving.

Note 4 - Administrative services

AOUSC receives an administrative fee equal to 3 percent of OIC expenditures for performing disbursement and accounting functions for OIC-Pearson. 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 Ray

ROBERT W. RAY

Office of Independent Counsel

Statement of Expenditures
(Cash basis)

Six Months Ended March 31, 2002

Personnel compensation and benefits	\$913,675
Travel (note 2)	123,840
Rent, communications, and utilities (note 3)	281,105
Contractual services (note 4)	835,728
Acquisition of capital assets (note 5)	399
Supplies and materials (note 6)	16,211
Administrative services (note 7)	<u>126,341</u>
Total expenditures	<u>\$2,297,299</u>

The accompanying notes are an integral part of this statement.

ROBERT W. RAY

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-Robert W. Ray (OIC-Ray) for the 6 months ended March 31, 2002. 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 before the Government Reform and Oversight Committee, U.S. House of Representatives, on June 26, 1996. On January 16, 1998, the court expanded OIC-Starr's jurisdiction to include issues related to whether, in a civil case, certain individuals suborned perjury, obstructed justice, intimidated witnesses, or otherwise violated federal law in dealing with witnesses, potential witnesses, attorneys, or others (commonly referred to as the Lewinsky matter).

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-files 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 the termination of the investigative functions of the Independent Counsel as of March 31, 2002, except to the extent necessary to conclude any remaining

**Appendix III
Statement of Expenditures for Independent
Counsel Ray**

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 Lewinsky report. 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.

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-Ray personnel; detailees from other federal agencies, such as the Federal Bureau of Investigation (FBI); contractors; and witnesses.

Note 3 - Rent, communications, and utilities

Approximately \$247,000 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, and investigators and other specialists in areas of interest to the investigation.

Note 5 - 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 6 - Supplies and materials

The supplies and materials expenditures are primarily for office supplies used in the archiving of 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-Ray. 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 Smaltz

DONALD C. SMALTZ

Office of Independent Counsel

Statement of Expenditures
(Cash basis)

Six Months Ended March 31, 2002

Personnel compensation and benefits	\$214,185
Travel (note 2)	6,774
Rent, communications, and utilities (note 3)	54,969
Contractual services (note 4)	39,318
Supplies and materials and capital assets	2,907
Administrative services (note 5)	<u>24,497</u>
Total expenditures	<u>\$342,650</u>

The accompanying notes are an integral part of this statement.

DONALD C. SMALTZ

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-Donald C. Smaltz (OIC-Smaltz) for the 6 months ended March 31, 2002. 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. Smaltz was appointed on September 9, 1994, to investigate activities of a former Secretary of Agriculture. Mr. Smaltz submitted his final report to the Special Division of the U.S. Court of Appeals for the District of Columbia Circuit on January 30, 2001. The report was published on October 25, 2001, and the office was closed on March 31, 2002.

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 travel paid for OIC-Smaltz personnel.

Note 3 - Rent, communications, and utilities

Approximately \$35,000 in office rent is included in rent, communications, and utilities.

Note 4 - Contractual services

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

Note 5 - Administrative services

AOUSC receives an administrative fee equal to 3 percent of OIC expenditures for performing disbursement and accounting functions for OIC-Smaltz. 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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