

March 2004

FINANCIAL AUDIT

Independent Counsel  
Expenditures for the  
Six Months Ended  
September 30, 2003



G A O

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### Abbreviations

AOUSC   Administrative Office of the U.S. Courts  
OIC      Office of Independent Counsel

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

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March 31, 2004

Congressional Committees

Enclosed is our report on the statements of expenditures of two offices of independent counsel for the 6 months ended September 30, 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 at [williamsM1@gao.gov](mailto:williamsM1@gao.gov) or [herryh@gao.gov](mailto:herryh@gao.gov). Key contributors to this report were Kwabena Ansong and Carol Keightley.

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 September 30, 2003. The independent counsels are required under 28 U.S.C. § 596 (c)(1) (2000) to report on their expenditures on a semiannual basis and we are required under 28 U.S.C. § 596 (c)(2) to audit these statements.

In our audits covering the 6 months ended September 30, 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.

## 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 independent counsel law expired on June 30, 1999. Provisions of that law allow the independent counsels serving at the expiration date to continue

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

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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 any office of independent counsel. A permanent, indefinite appropriation was established within the Department of Justice to pay all necessary expenses of investigation and prosecutions by independent counsels appointed pursuant to the independent counsel law or other law. 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. Independent counsels are not required to reflect such costs in their statements of expenditures nor do they do so. For the 6 months ended September 30, 2003, there were no costs reported by other agencies in support of independent counsel activities.

The offices of independent counsel Ralph I. Lancaster and Donald C. Smaltz are officially closed and no longer prepare financial statements. However, the U.S. Court of Appeals for the District of Columbia (D.C.) Circuit awarded reimbursements of \$1,447 and \$18,758, respectively, for attorneys' fees and expenses of individuals who had been investigated by Messrs. Lancaster and Smaltz but not indicted, as authorized by 28 U.S.C. § 593(f)(1). The U.S. Court of Appeals for the D.C. Circuit also awarded reimbursements of \$85,312 for attorney fees and expenses of individuals who had been investigated by the office of independent counsel Thomas but not indicted. These reimbursements were 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 September 30, 2003, on the basis of accounting described in note 1 of each office's statement.

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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 September 30, 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 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.

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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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- **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 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



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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

March 15, 2004

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*List of Committees*

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Chairman

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Ranking Minority Member  
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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

# Statement of Expenditures for Independent Counsel Barrett

DAVID M. BARRETT  
Office of Independent Counsel  
Statement of Expenditures  
(Cash basis)

Six Months Ended September 30, 2003

Personnel compensation and benefits	\$373,499
Travel (note 2)	25,884
Rent, communications, and utilities (note 3)	272,536
Contractual services (note 4)	99,195
Supplies and materials (note 5)	4,892
Administrative services (note 6)	<u>63,079</u>
<b>Total expenditures</b>	<b><u>\$839,085</u></b>

The accompanying notes are an integral part of this statement.

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**Appendix I  
Statement of Expenditures for Independent  
Counsel Barrett**

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**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 September 30, 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 D.C. Circuit ordered that the Independent Counsel continue his work to the extent necessary or appropriate to perform the noninvestigative and nonprosecutorial tasks remaining 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 includes expenditures for temporary duty travel for OIC-Barrett personnel.

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

Approximately \$235,000 in office rent is included in rent, communications, and utilities.

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**Appendix I**  
**Statement of Expenditures for Independent**  
**Counsel Barrett**

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**Note 4 - Contractual services**

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

**Note 5 - Supplies and materials**

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

**Note 6 - 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 September 30, 2003

Personnel compensation and benefits	\$301,578
Travel (note 2)	14,139
Rent, communications, and utilities (note 3)	94,180
Contractual services (note 4)	73,293
Supplies and materials (note 5)	2,566
Acquisition of capital assets (note 6)	4,639
Administrative services (note 7)	<u>41,505</u>
<b>Total expenditures</b>	<b><u>\$531,900</u></b>

The accompanying notes are an integral part of this statement.

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

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**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 September 30, 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 D.C. 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 D.C. 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. In November 2003, the Special Division of the U.S. Court of Appeals for the D.C. Circuit ordered the termination of the office within 20 weeks. All staff will be terminated by March 23, 2004. Expenditures during this period were for final preparation of records for transfer to the National Archives 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 includes expenditures for temporary duty travel for OIC-Thomas personnel.

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

Approximately \$79,000 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**

**Note 6 - Acquisition of capital assets**

The capital assets expenditures are primarily for personal laptop computers. 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-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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