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United States Government Accountability Office
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March 31, 2010

The Honorable Daniel K. Inouye
Chairman
The Honorable Thad Cochran
Vice Chairman
Committee on Appropriations
United States Senate

The Honorable David R. Obey
Chairman
The Honorable Jerry Lewis
Ranking Member
Committee on Appropriations
House of Representatives

Subject: Final Review of Expenses from the Department of Justice Permanent Indefinite Appropriation Covering the 7-Month Period Ending September 30, 2009

This report presents the results of our review of the expenses paid from the Department of Justice (DOJ) permanent, indefinite appropriation covering the 7-month period ending September 30, 2009. The expenses we reviewed were those paid out of the permanent, indefinite appropriation by DOJ between March 1, 2009, and September 30, 2009, to cover Independent and Special Counsel administrative activities. With the October 2009 repeal of the requirement for a GAO review and report on such expenses, this represents our final report.

Background

The independent counsel law directed DOJ to pay all costs related to the establishment and operation of any office of independent counsel.¹ A permanent, indefinite appropriation was established by Public Law 100-202² within DOJ to pay all necessary expenses for investigations and prosecutions by independent counsels appointed pursuant to the independent counsel law or other law. Subsequent to the termination of the independent counsel law, DOJ determined that the permanent, indefinite appropriation is available to fund the expenditures

¹28 U.S.C. § 594(d)(2).

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.

of U.S. Attorney Patrick J. Fitzgerald, who was appointed as a special counsel within DOJ by the then Acting Attorney General.³

On December 30, 2003, the then-Acting Attorney General appointed U.S. Attorney Fitzgerald as a Special Counsel to investigate whether officials of the George W. Bush administration illegally disclosed the identity of an undercover Central Intelligence Agency officer. In March 2007, after a jury trial, an administration official was convicted of perjury, lying to the Federal Bureau of Investigation, and obstruction of justice in the investigation. In July 2007, the President of the United States commuted the prison term imposed by the sentencing judge upon the administration official. The administration official dropped his appeal of his convictions in December 2007. The activities of the special counsel were, for all practical purposes, concluded as of March 2008. However, the office of the special counsel remained open to respond to congressional requests for information. The office began archiving case files during the 7-month period ending September 30, 2009.

Under Public Law 100-202, we were required to perform semiannual financial reviews of expenses paid from the fund and report our findings to the House and Senate Appropriations Committees. To satisfy this requirement, we reviewed expenses processed by DOJ and paid out of the permanent, indefinite appropriation to determine whether they were properly authorized and approved, supported by appropriate documentation, recorded accurately, and made in accordance with selected provisions of laws and regulations. On October 1, 2009, Public Law 111-68, Division A, section 1501(d), repealed the requirement for GAO's semiannual review and report. Specifically, section 1501(d) provided that GAO is no longer required to perform a semiannual review of expenses paid from the permanent, indefinite appropriation effective October 1, 2009. Consequently, we are issuing this final review under our general authority to report on the use of public funds in order to (1) report on the 7-month period ending September 30, 2009, that would have been covered under the repealed mandate, and (2) provide notice of the cessation of our reviews.

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. DOJ periodically disbursed lump-sum payments to AOUSC for this purpose.

As ordered by the Special Division, the Office of Independent Counsel Barrett—the last independent counsel office—was terminated on May 3, 2006. After that date, the AOUSC continued to perform its administrative responsibilities. There

³We reviewed the legal authority for the Department of Justice to use the permanent, indefinite appropriation to fund the expenses relating to Special Counsel Fitzgerald's investigation and, in our opinion to the Chairmen of the House and Senate Appropriations Committees, concluded that such use was not an illegal, improper, or unauthorized use of the appropriation. B-302582 (Sept. 30, 2004).

have been no independent counsels in operation since May 3, 2006. However, there was one active special counsel.

Results of Our Review

Expenses Related to Special Counsel Fitzgerald

Our review of the expenses on behalf of Special Counsel Fitzgerald covering the 7 months ending September 30, 2009, found that DOJ processed and paid expenses totaling \$55,433. The expenses consisted of personnel compensation and benefits, travel and lodging, and contractual services. We found that all expenses were supported by appropriate documentation and were properly authorized, approved, and recorded. A breakdown of expenses incurred related to the office of Special Counsel Fitzgerald's for the 7 months ended September 30, 2009, is presented in table 1 below.

Table 1: Special Counsel Fitzgerald Office's Expenses for the 7 Months Ended September 30, 2009

Description	Amount
Personnel compensation and benefits	\$7,181
Travel and lodging	7,049
Contractual services	41,978
Credits for payroll processing fee reversals	(775)
Total	<u>\$55,433</u>

Source: DOJ Financial Management Information System

For the period of our review, personnel compensation and benefits of employees assigned to assist with the archival of the special counsel case files totaled \$7,181. The special counsel also incurred travel expenses of \$7,049 to assist with the archival of the case files. In addition, the special counsel incurred contractual service expenses totaling \$41,978 related to payments to a vendor assisting with the archival process.

During our review, we also found several credits totaling \$775 related to reversals of National Finance Center payroll processing fees that DOJ erroneously charged to the special counsel. We determined that all credits were supported by appropriate documentation.

Our tests for compliance with selected provisions of laws and regulations disclosed no instances of noncompliance with respect to the expenses processed and paid by DOJ that would be reportable under U.S. generally accepted government auditing standards.

Expenses Related to Closed Independent Counsels

On September 15, 2009, the AOUSC requested reimbursement of \$65,781 for expenses related to the formerly active independent counsels. According to the AOUSC, the vast majority of this amount related to expenses that the AOUSC had previously paid on behalf of Independent Counsel Barrett but for which the AOUSC was not previously reimbursed. However, the AOUSC was unable to provide us with detailed support for these expenses.

Objectives, Scope, and Methodology

Our objectives were to determine whether the expenses processed by DOJ and paid out of the permanent, indefinite appropriation for the 7-month period ending September 30, 2009, were properly authorized and approved, supported by appropriate documentation, recorded accurately, and made in accordance with selected provisions of laws and regulations.

To perform our review, we obtained expense data files from DOJ and traced the recorded expenses to supporting documentation including payroll records, travel vouchers, and invoices. We reviewed all expenses paid out of the permanent, indefinite appropriation between March 1, 2009, and September 30, 2009, for proper authorization and approval to determine whether they were supported by appropriate documentation and recorded accurately by DOJ. We also reviewed expenses to determine whether they were made in accordance with selected provisions of Title 5 of the United States Code, the Prompt Payment Act, and selected provisions related to pay administration and travel regulations. We were not required to, nor did we test, the appropriateness of the expenses.

We conducted this performance audit from January 2010, through March 2010, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our review objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our review objectives. We provided a draft of this correspondence to the Department of Justice, Justice Management Division, and Special Counsel Fitzgerald. These entities agreed with the facts and conclusions presented in our draft correspondence.

We are sending copies of this report to the Chairman and Ranking Members of the Senate and House Committees on Appropriations, the Attorney General, the Special Counsel, and other interested parties. In addition, this correspondence is available at no cost on GAO's Web site at <http://www.gao.gov>. Please contact me at (202) 512-3406 or sebastians@gao.gov if you or your staff have any questions concerning this correspondence. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this

correspondence. GAO staff who made major contributions to this correspondence are Julie Phillips, Assistant Director; Vivian Gutierrez; and Richard Cambosos.

A handwritten signature in black ink, reading "Steven J. Sebastian". The signature is written in a cursive style with a large, stylized initial "S".

Steven J. Sebastian
Director
Financial Management and Assurance

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