

March 2008

# FINANCIAL AUDIT

## Special Counsel Expenditures for the Six Months Ended September 30, 2007



G A O

Accountability \* Integrity \* Reliability

---

# Contents

---

Letter	1
Auditor's Report	2
Background	3
Opinion on Statement of Expenditures	3
Opinion on Internal Control	4
Compliance with Laws and Regulations	4
Objectives, Scope, and Methodology	4
Agency Comments	6
Appendix	
Appendix I: Statement of Expenditures for Special Counsel Fitzgerald	9

---

---

## Abbreviations

GAO	Government Accountability Office
FBI	Federal Bureau of Investigation
OSC	Office of Special Counsel

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.



United States Government Accountability Office  
Washington, D.C. 20548

March 31, 2008

Congressional Committees

Enclosed is our report on our audit of the statement of expenditures for the office of special counsel Patrick J. Fitzgerald for the 6 months ended September 30, 2007. Our audit was designed to determine whether the statement of expenditures was fairly stated in all material respects. We were not required to express an opinion on the reasonableness or appropriateness of any related expenditures, and we are not expressing any opinion thereon. We are sending copies of this report to the Attorney General, the Director of the Administrative Office of the U.S. Courts, the Special Counsel, and other interested parties. In addition, the report 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](mailto:sebastians@gao.gov) if you or your staff have any questions concerning this report. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are Julie Phillips, Assistant Director; Kwabena Ansong; and Judy Lee.

Steven J. Sebastian  
Director  
Financial Management and Assurance



## Congressional Committees

This report presents the results of our audit of expenditures<sup>1</sup> reported by the Office of Special Counsel Patrick J. Fitzgerald for the 6 months ended September 30, 2007. The independent counsels were required under 28 U.S.C. 596 §(c)(1) to prepare a statement of expenditures on a semiannual basis. Under 28 U.S.C. 596 §(c)(2), we were required to conduct a financial review of a midyear statement and a financial audit of a year-end statement. We satisfied this requirement through semiannual financial audits of the statement of expenditures.

For the 6 months ended September 30, 2007, there were no active independent counsels. However, we are required to perform a semiannual financial review of expenditures from the permanent indefinite appropriation<sup>2</sup> used to pay special counsel Fitzgerald's expenses. While not required under the permanent indefinite appropriation to perform a financial audit, we have done so for special counsel Fitzgerald—as we previously performed for independent counsels approved under the expired law.

In our audit covering the 6 months ended September 30, 2007, we found

- the statement of expenditures presented in appendix I for the Office of Special Counsel Patrick J. Fitzgerald, is presented fairly, in all material respects, in conformity with the basis of accounting described in note 1 of the counsel's statement, which is principally the cash basis, a comprehensive basis of accounting other than U.S. generally accepted accounting principles;
- Special Counsel Fitzgerald had effective internal control over financial reporting (including safeguarding assets) and compliance with laws and regulations as of September 30, 2007; and
- no reportable noncompliance with laws and regulations we tested.

---

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

<sup>2</sup>The 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.

---

Our audit was designed to determine whether the statement of expenditures is fairly stated in all material respects. We were not required to express an opinion on the reasonableness or appropriateness of any related expenditures, and we are not expressing any opinion thereon.

The following sections provide background information; outline our conclusions with respect to our opinions and compliance with laws and regulations; and discuss the objectives, scope, and methodology of our audit and the disposition of agency comments.

---

## Background

A permanent, indefinite appropriation was established within the Department of Justice to pay all necessary expenses for investigations and prosecutions by independent counsels appointed pursuant to the expired independent counsel law or other law. The Department of Justice determined that the appropriation established by Public Law 100-202 to fund expenditures by independent counsels appointed pursuant to the independent counsel law or other law is available to fund the expenditures of U.S. Attorney Patrick J. Fitzgerald, who was appointed as a special counsel within the Department of Justice by the then Acting Attorney General.<sup>3</sup>

---

## Opinion on Statement of Expenditures

The statement of expenditures, including the accompanying notes, for the Office of Special Counsel Patrick J. Fitzgerald presents fairly, in all material respects, the expenditures of the counsel for the 6 months ended September 30, 2007, on the basis of accounting described in note 1 of the counsel's statement.

The counsel prepared the statement 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 the counsel's statement. The counsel's statement includes only expenditures made from the permanent, indefinite appropriation.

---

<sup>3</sup>We reviewed the legal authority for the Department of Justice to use the permanent, indefinite appropriation to fund the expenditures 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).

---

---

## Opinion on Internal Control

Special Counsel Fitzgerald maintained, in all material respects, effective internal control over financial reporting (including safeguarding assets) and compliance with laws and regulations as of September 30, 2007, that provided reasonable assurance that misstatements, losses, or noncompliance material in relation to the statement of expenditures would be prevented or detected on a timely basis. Our opinion is based on criteria in the *Standards for Internal Control in the Federal Government*.<sup>4</sup>

---

## Compliance with Laws and Regulations

Our tests for compliance with selected provisions of laws and regulations disclosed no instances of noncompliance with respect to Special Counsel Fitzgerald 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.

---

## Objectives, Scope, and Methodology

Though not required to do so, Special Counsel Fitzgerald elected to prepare a statement of expenditures in conformity with the basis of accounting described in the accompanying notes. Additionally, the counsel is responsible for establishing and maintaining internal control to provide reasonable assurance that the following internal control objectives are met:

- **Financial reporting:** Transactions are properly recorded, processed, and summarized to permit the preparation of the statement of expenditures in conformity with the basis of accounting described in the notes to the statement, 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 counsel's statement of expenditures.

We are responsible for obtaining reasonable assurance about whether (1) the counsel's statement of expenditures is presented fairly, in all material

---

<sup>4</sup>GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999). <http://www.gao.gov/special.pubs/ai00021p.pdf>.

---

respects, in conformity with the basis of accounting described in the notes accompanying the statement of expenditures; and (2) the special counsel maintained effective internal control over financial reporting and compliance as of September 30, 2007. We are also responsible for testing compliance with selected provisions of laws and regulations that could have a direct and material effect on the counsel's statement of expenditures.

In order to fulfill these responsibilities, 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; (5) tested relevant internal control over financial reporting (including safeguarding assets) and compliance; and (6) tested compliance 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.

Our audit was designed to determine whether the statement of expenditures was fairly stated in all material respects. We were not required to, nor do we express an opinion on, the reasonableness or appropriateness of any related expenditures.

We did not evaluate controls relevant to operating objectives, such as controls relevant to ensuring efficient operations. 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.

We did not test compliance with all laws and regulations applicable to the Office of the Special Counsel. We limited our tests of compliance to those laws and regulations that could have a direct and material effect on the statement of expenditures for the 6 months ended September 30, 2007. 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 audit in accordance with U.S. generally accepted government auditing standards.

---

## Agency Comments

We provided a draft of this report to the office of Special Counsel and the Department of Justice for review and comment. The special counsel provided comments to clarify matters discussed in the notes to the statement of expenditures, which we have incorporated as appropriate. In commenting on our report, the entities agreed with the facts and conclusions in the report.



Steven J. Sebastian  
Director  
Financial Management and Assurance

March 31, 2008



---

*List of Committees*

The Honorable Robert C. Byrd  
Chairman  
The Honorable Thad Cochran  
Ranking Member  
Committee on Appropriations  
United States Senate

The Honorable Joseph I. Lieberman  
Chairman  
The Honorable Susan M. Collins  
Ranking Member  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate

The Honorable Patrick J. Leahy  
Chairman  
The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
United States Senate

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

The Honorable Henry A. Waxman  
Chairman  
The Honorable Thomas M. Davis  
Ranking Member  
Committee on Oversight and Government Reform  
House of Representatives

---

The Honorable John Conyers, Jr.  
Chairman  
The Honorable Lamar S. Smith  
Ranking Member  
Committee on the Judiciary  
House of Representatives

# Statement of Expenditures for Special Counsel Fitzgerald

PATRICK J. FITZGERALD

Office of Special Counsel

Statement of Expenditures  
(Principally cash basis - see Note 1)

Six Months Ended September 30, 2007

Personnel compensation and benefits	\$96,019
Witness expenses (note 2)	440
Travel (note 3)	68,550
Contractual services (note 4)	22,139
Supplies and materials (note 5)	<u>272</u>
<b>Total expenditures</b>	<b><u>\$187,420</u></b>

---

The accompanying notes are an integral part of this statement.

---

**Appendix I  
Statement of Expenditures for Special  
Counsel Fitzgerald**

PATRICK J. FITZGERALD

Office of Special Counsel

Notes to the Statement of Expenditures

**Note 1 - Accounting policies**

Reporting entity: The accompanying statement of expenditures presents the expenditures of the Office of Special Counsel-Patrick J. Fitzgerald (OSC-Fitzgerald) for the 6 months ended September 30, 2007. The statement of expenditures includes only expenditures made from the permanent, indefinite appropriation for OSC-Fitzgerald that are processed during the period through the Department of Justice. On December 30, 2003, the then Acting Attorney General appointed U.S. Attorney Patrick J. Fitzgerald as a Special Counsel to investigate whether officials of the current administration illegally disclosed the identity of an undercover Central Intelligence Agency officer. In March 2007, an administration official was convicted of perjury, lying to the Federal Bureau of Investigation, and obstruction of justice in the investigation. Expenditures during this period principally relate to the sentencing and appeal of this official on perjury and obstruction of justice charges, as well as some expenses paid during this period which were reimbursements of travel and lodging expenses incurred during the trial.

On July 2, 2007, the president of the United States commuted the prison term imposed by the sentencing judge upon the administration official who was convicted after a jury trial. On December 11, 2007 the administration official dropped his appeal of his convictions. This matter is now concluded for all practical purposes, but the office of special counsel will continue for limited purposes, such as responding to Congressional requests for information.

Basis of accounting: The accompanying statement of expenditures was prepared principally on the cash basis of accounting, which is a comprehensive

---

**Appendix I  
Statement of Expenditures for Special  
Counsel Fitzgerald**

---

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 the Department of Justice. Generally, personnel compensation and benefits are recorded at the end of the pay period when earned.

**Note 2 - Witness expenses**

Witness expenses consist of fact and expert witness fees and expenses which are required to be paid to witnesses who testify on behalf of the government.

**Note 3 - Travel**

Travel primarily consists of expenditures for investigation and trial-related travel for office of special counsel personnel.

**Note 4 - Contractual services**

Contractual services primarily consist of expenditures for maintaining and servicing office equipment and for research and data transcription services in areas of interest to the investigation and trial.

**Note 5 - Supplies and materials**

The supplies and materials expenditures are primarily for supplies for office use.

---

## GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

---

## Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site ([www.gao.gov](http://www.gao.gov)). Each weekday, GAO posts newly released reports, testimony, and correspondence on its Web site. To have GAO e-mail you a list of newly posted products every afternoon, go to [www.gao.gov](http://www.gao.gov) and select "E-mail Updates."

---

## Order by Mail or Phone

The first copy of each printed report is free. Additional copies are \$2 each. A check or money order should be made out to the Superintendent of Documents. GAO also accepts VISA and Mastercard. Orders for 100 or more copies mailed to a single address are discounted 25 percent. Orders should be sent to:

U.S. Government Accountability Office  
441 G Street NW, Room LM  
Washington, D.C. 20548

To order by Phone: Voice: (202) 512-6000  
TDD: (202) 512-2537  
Fax: (202) 512-6061

---

## To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: [www.gao.gov/fraudnet/fraudnet.htm](http://www.gao.gov/fraudnet/fraudnet.htm)

E-mail: [fraudnet@gao.gov](mailto:fraudnet@gao.gov)

Automated answering system: (800) 424-5454 or (202) 512-7470

---

## Congressional Relations

Ralph Dawn, Managing Director, [dawnr@gao.gov](mailto:dawnr@gao.gov), (202) 512-4400  
U.S. Government Accountability Office, 441 G Street NW, Room 7125  
Washington, D.C. 20548

---

## Public Affairs

Chuck Young, Managing Director, [youngc1@gao.gov](mailto:youngc1@gao.gov), (202) 512-4800  
U.S. Government Accountability Office, 441 G Street NW, Room 7149  
Washington, D.C. 20548