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THE WHITE HOUSE

WASHINGTON

March 30, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS /S/

SUBJECT:

Talking Points for Meeting With
General Counsels on Use of Limousines
by Spouses

° The Department of Justice Office of Legal Counsel recently issued an opinion on use of government automobiles by Cabinet spouses. I think it is fair to say that the opinion departed from the generally prevailing understanding of what is permissible in this area. Accordingly I thought it advisable to bring you all together to discuss the problem and ensure that we are all in compliance with the new understanding of what the law demands.

° The OLC opinion proceeds from the basic propositions that appropriated funds may only be expended for official purposes and that appropriated funds cannot generally be used to pay the expenses of those who are not federal employees. Cabinet spouses, the opinion reasons, cannot be considered federal employees, because even designating them unpaid employees would violate the anti-nepotism statute. Since the spouses are not employees, there is no authority for the independent expenditures of appropriated funds for their expenses, including travel expenses.

° The scope of the conclusion in the OLC opinion was demonstrated by the answers in the opinion to several hypothetical examples of spousal travel. The opinion concluded that a Cabinet spouse could not use government transportation (1) for purely personal matters, such as grocery shopping or going to the airport, (2) to attend private social functions to which she alone has been invited, even if charitable in nature, or (3) to attend meetings of organizations of which she is a member. Official transportation is rather clearly inappropriate in these cases, and I would hope they were covered by any existing advice or guidelines you provided to your respective departments.

° The OLC opinion also concluded that government transportation was inappropriate (4) when the spouse attended social functions as the guest of the spouse of a Senator, Congressman, or Cabinet officer, even if the function was in honor of a foreign diplomat's spouse or the spouse of a Senator, Congressman or Cabinet officer, and (5) when the spouse attended White House functions relating to volunteer efforts involving spouses of government officials.

° Finally, the OLC opinion concluded that official transportation was inappropriate when (6) the spouse and Cabinet officer have both been invited to an event by virtue of the Cabinet officer's position, and the spouse proceeds to the event separately, (7) when the spouse attends an official social function honoring the spouse of a national leader, and (8) when the spouse attends ceremonies in Government buildings involving Government officials, such as swearings in.

° The OLC opinion recognized that in several of the above examples the spouse's presence could readily be viewed as in the interests of the Government, but ruled that that did not justify spending appropriated funds on her transportation. In sum, the only instance in which the OLC opinion concluded that it was acceptable to provide transportation to a Cabinet spouse was when the spouse accompanied the Cabinet officer, on a "space available" basis.

° It must be emphasized that the Cabinet officer's automobile is not his automobile to use as he sees fit, as is often the case with corporate automobiles provided in the private sector. The government automobile -- even the one assigned to the Cabinet officer -- may only be used for official purposes. Under the approach taken by OLC, a Cabinet spouse is viewed as essentially no different than any other private citizen, and accordingly generally may not be provided government transportation.

° The problem of spousal transportation is related to the portal-to-portal problem. As you may know, GAO issued an opinion last summer strictly interpreting the portal-to-portal statute, 31 U.S.C. § 1344. The GAO opinion rejected arguments advanced over time permitting portal-to-portal service for officials other than the President and the twelve Cabinet department heads. GAO recognized that its opinion was a departure from established practice based in part on prior GAO opinions, and accordingly announced that it would apply its new reading only after the close of the current session of Congress -- probably in the early fall. GAO also recognized that its new reading may be too restrictive, and urged Congress to consider ameliorative legislation. We are exploring the question with GAO and Congress at this time.

[N.B.: The foregoing does not discuss the issue of reimbursement for spousal transportation in violation of the OLC opinion. The Attorney General has reimbursed the Justice Department; Secretary Regan has announced that he will not reimburse the Treasury Department. We need to decide how to handle the reimbursement issue.]

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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Name of Correspondent: Robert B. Shanks

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Subject: January 23, 1984 Office of Legal Counsel
Opinion on Use of Department of Justice
Vehicles by Attorney General's spouse

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<u>WAT 18</u>		<u>Referral Note:</u>	<u>A 84103128</u>		<u>1/1</u>
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U.S. Department of Justice
Office of Legal Counsel

Office of the
Deputy Assistant Attorney General

Washington, D.C. 20530

MAR 27 1984

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AW

MEMORANDUM

TO: Fred F. Fielding
Counsel to the President
The White House

FROM: Robert B. Shanks *RBS*
Deputy Assistant Attorney General
Office of Legal Counsel

RE: January 23, 1984 Office of Legal Counsel Opinion
on Use of Department of Justice Vehicles by
Attorney General's Spouse.

Enclosed is a copy of the above opinion. By the time this reaches you, we will have spoken with either you or Dick Hauser to advise you that we have no objection to your making this opinion available to agency general counsel.

cc: Richard Hauser
Deputy Counsel to the President



Office of the
Deputy Assistant Attorney General

Washington, D.C. 20530

JAN 23 1984

MEMORANDUM FOR MICHAEL E. SHAHEEN, JR.
Counsel
Office of Professional Responsibility

Re: Use of Department of Justice Vehicles
by Attorney General's Spouse

This responds to your written request of August 22, 1983 regarding the authority of the Department of Justice to make available to the spouse of the Attorney General a chauffeur-driven automobile leased by the Department. 1/ Specifically, you asked:

1. Under what circumstances may such a vehicle be provided to the Attorney General's spouse;
2. Whether the Attorney General's spouse functions in an official or quasi-official capacity;
3. Whether the Attorney General's spouse may be provided transportation by the White House Office or a political organization.

Additionally, you have provided us with some examples of the kinds of trips that might be taken in a Justice Department vehicle by the Attorney General's spouse. See note 1, supra. In this memorandum, we first provide a background discussion of the limits on the general use of Department of Justice

1/ Your written request has been supplemented by discussions between our offices on October 26 and November 15, 1983, and by a November 22 written list that sets forth eight categories of possible uses of the car by the Attorney General's spouse. This list of examples is addressed in the "Application" section of this memorandum, infra.

vehicles. We then discuss those limits as they would apply to the examples you have provided. 2/

Legal Background

Any discussion of the appropriate use of government vehicles must proceed from an analysis of 31 U.S.C. § 1344, which provides that passenger motor vehicles of the United States Government may be used for official purposes only. See 31 U.S.C. § 1344 3/; Comptroller General Opinion B-210555,

2/ We emphasize here that we address these examples only as hypothetical situations. We of course leave to you all fact-finding and judgments with respect to whether past use has comported with applicable limitations. See 28 C.F.R. § 0.39a.

3/ Section 1344 provides as follows:

(a) Except as specifically provided by law, an appropriation may be expended to maintain, operate, and repair passenger motor vehicles or aircraft of the United States Government that are used only for an official purpose. An official purpose does not include transporting officers or employees of the Government between their domiciles and places of employment except --

(1) medical officers on out-patient medical service; and

(2) officers or employees performing field work requiring transportation between their domiciles and places of employment when the transportation is approved by the head of the agency.

(b) This section does not apply to a motor vehicle or aircraft for the official use of --

(1) the President;

(2) the heads of executive departments listed in section 101 of title 5; or

(3) principal diplomatic and consular officials.

re "Use of Government Vehicles for Transportation Between Home and Work" (June 3, 1983); see also DOJ Order 2540.4A (Aug. 17, 1982) (Use of Department of Justice Motor Pool Vehicles). Thus, as a preliminary matter, a government vehicle may be used by the Attorney General's spouse -- or by any other individual -- only for the purpose of carrying out official government business. More specifically, a Department of Justice vehicle may be used only for official Department of Justice purposes. See 31 U.S.C. § 1301 ("Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.").

Section 1344 does not define the term "official purposes," other than to provide, with certain stated exceptions, that the term does not include transportation of government employees between their homes and places of employment ("portal-to-portal transportation"). 4/ The Comptroller General has, in the past, explained that the "primary purpose" of prohibiting portal-to-portal transportation "is to prevent the use of Government vehicles for the personal convenience of employees." See 57 Comp. Gen. 226, 227 (1978). While this is an important guide in construing Section 1344, it is also important to note that even transportation that is not for the personal convenience of employees -- transportation that could be viewed by a reasonable person as being in the interests of the government -- may nonetheless be prohibited under Section 1344. In a recent opinion addressing the meaning of "official business" with respect to portal-to-portal transportation for those not specifically entitled to such transportation by Section 1344, the Comptroller General clearly rejected the notion that what constitutes "official business" is a decision lying solely within the discretion of an agency head, or that an agency head may authorize portal-to-portal transportation whenever it is in the "interests of the government." See B-210555 (June 3, 1983). Because that opinion specifically addressed the explicit statutory prohibition against portal-to-portal transportation, it is not directly applicable to the question of spousal transportation. Nonetheless, the opinion

4/ Because the Attorney General is the head of an executive department, motor vehicles for his official use are not subject to this limitation of § 1344. See 31 U.S.C. § 1344(b), note 3, supra.

emphasizes the importance of the principle that the use of government vehicles must be for an authorized official purpose. 5/

5/ In this respect, we would note that the continuing validity of the October 18, 1976 memorandum from Assistant Attorney General for Administration Pommerening to Attorney General Levi, re "Travel by Government Vehicles," which you supplied to us, is subject to doubt. The Pommerening memorandum sets forth nine categories of permissible use of government vehicles by the Attorney General. The first six categories relate solely to the Attorney General's use; the last three categories address use by the spouse of the Attorney General. The memorandum relies on earlier Comptroller General decisions that "a Government vehicle may be used whenever it is in the interests of the Government to do so," noting that "these decisions conclude that control over such use of a Government vehicle is primarily a matter of administrative discretion to be exercised by the agency or department concerned." Opinion B-210555 clearly has narrowed the scope of administrative discretion in this area.

In any event, while the Pommerening memorandum is not absolutely clear, we believe it authorizes separate transportation for the Attorney General's spouse only "when she participates in an official function as his representative" (category 8). Category 7, which would permit transportation of the Attorney General's spouse in five categories authorized for the Attorney General, appears to authorize such transportation only because she would be accompanying the Attorney General when he is himself on official business. Category 9 states that use of government vehicles would be justified "to transport the spouse of the Attorney General in any circumstances where security so dictates," but presents as the only example of this the circumstance in which "the Attorney General has been assigned a security detail and his spouse will accompany him." Department of Justice appropriations provide for FBI protection of the Attorney General, see Pub. L. No. 96-132, 93 Stat. 1040, § 9(B), and Pub. L. No. 98-166, 97 Stat. 1071, § 205 (continuing authority in 93 Stat. 1040), but we are aware of no authority to make independent expenditures of appropriated funds to provide security for the Attorney General's spouse, even if such security could be provided in the form of a DOJ chauffeur-driven automobile. We have in the past indicated that a federal function may be involved in the protection of a private citizen, so as to justify protection by United States Marshals, but we have also indicated that such

(continued)

A central principle in determining what is an authorized, official purpose, is that appropriated funds cannot generally be used to pay the expenses of persons who are not federal employees. See Comp. Gen. Op. B-204877 (Nov. 27, 1981) ("[w]ith a few statutorily established exceptions, we are not aware of any authority to pay the travel and per diem expenses of individuals who are not Federal officers or employees"). This principle is given force, for example, in 31 U.S.C. § 1345, which prohibits the payment of travel, transportation, and subsistence expenses of private parties at meetings, except as specifically provided by law. 6/ One "limited exception" to Section 1345 is found at 5 U.S.C. § 5703, which permits the payment of travel expenses of persons serving the government intermittently or without pay. See General Accounting Office, Principles of Federal

5/ (continued)

protection would be justified only in light of special law enforcement purposes, such as protecting government witnesses or in response "to some particular, serious threat of violation of federal law." See Memorandum for Associate Attorney General Giuliani, from Deputy Assistant Attorney General Tarr, Office of Legal Counsel, re "Special Deputations," at 11, n.16 (March 18, 1983). Thus, separate transportation of the Attorney General's spouse for security reasons could be authorized only under unusual circumstances justified by special law enforcement purposes.

6/ 31 U.S.C. § 1345 provides as follows:

Except as specifically provided by law, an appropriation may not be used for travel, transportation, and subsistence expenses for a meeting. This section does not prohibit --

(1) an agency from paying the expenses of an officer or employee of the United States Government carrying out an official duty; and

(2) the Secretary of Agriculture from paying necessary expenses for a meeting called by the Secretary for 4-H Boys and Girls Clubs as part of the cooperative extension work of the Department of Agriculture.

Appropriations Law at 3-37 (1982). 7/ Generally, such persons are viewed as temporary employees or "quasi-employees" during the period of their service to the government. Under this theory, the Comptroller General has construed Section 5703 to authorize the payment of expenses of a private person to come to Washington to confer with government officials without formally inducting him into government service on the theory that the person was serving without compensation. 33 Comp. Gen. 39 (1953); 27 Comp. Gen. 183 (1947). On the same theory, the Comptroller General also ruled that the government may pay the expenses of a witness to attend an administrative hearing. 48 Comp. Gen. 110 (1968). Additionally, the Comptroller General has ruled that the government may pay the expenses of a person who was not a government employee to travel with a military officer who was unable to travel alone to undergo a mandatory physical examination in connection with disability status. 52 Comp. Gen. 97 (1972). That opinion cited an earlier unpublished opinion, B-169917 (1970), which concluded that the government could pay the expenses of a wife to accompany her employee-husband back to his duty station when he became incapacitated while on official travel. These persons could be regarded as "serving without compensation" even though they were not

7/ 5 U.S.C. § 5703 provides as follows:

An employee serving intermittently in the Government service as an expert or consultant and paid on a daily when-actually-employed basis, or serving without pay or at \$1 a year, may be allowed travel or transportation expenses, under this subchapter, while away from his home or regular place of business and at the place of employment or service.

As another example of a statutory exception to the rule against paying expenses of non-employees, fees and expenses of witnesses are authorized to be paid by Department of Justice Appropriation Acts. See Department of Justice Appropriation Act, Fiscal Year 1980, Pub. L. No. 96-132, 93 Stat. 1040, 1041; see also Pub. L. No. 98-166, 97 Stat. § 205(a) (continuing authority in 93 Stat. 1040).

actually appointed as employees. 8/ The Department of Justice travel regulations, § 1.1(b)(2), similarly permit the payment of travel expenses of "individuals serving without pay." See also Memorandum to Deputy Associate Attorney General Green, from Deputy Assistant Attorney General Ulman, OLC, re "Travel and Subsistence Expenses for FBI, Director-Designate Judge Johnson" (Oct. 19, 1977) (DOJ can pay travel expenses for trip to Washington related to confirmation hearing if designee meets with Department official on official business during trip and Attorney General or his delegate determines that meeting is of "substantial benefit" to the Department); 53 Comp. Gen. 424, 425 (1973) (setting forth standard relied on in Ulman memorandum). 9/

One limiting principle applied to Section 5703 is that "the individual is legitimately performing a direct service for the Government such as making a presentation or advising

8/ Opinion B-169917 reflects a narrow exception. The Comptroller General has required that administrative approval for an attendant be based on a certificate by the employee's physician stating that the employee requires an attendant in order to return to his permanent duty station. See B-169917.

9/ We would note, however, that in any event not everyone entitled to "government transportation" is entitled to the use of chauffeur-driven government vehicles, which are generally made available to a limited class of employees. With respect to use of Department of Justice vehicles, for example, the only officials authorized to use Department of Justice Motor Pool Vehicles are those listed in Appendix I to DOJ Order 2540.4A re "Use of Department of Justice Motor Pool Vehicles." While the Appendix would permit transportation to "[s]uch other officials as may from time to time, based upon need, be designated by . . . JMD" (Appendix I, item z) (emphasis added), the Attorney General's spouse does not appear on this list. Cf. Memorandum for General Counsel Knapp, Department of Housing and Urban Development, from Assistant Attorney General Olson, Office of Legal Counsel, re "Use of Government Automobiles to Transport Federal Employees Between Home and Work" (June 10, 1983) (use of government automobile prohibited between home and office on day when employee returns from or departs on official business, even though GSA regulations would permit reimbursement of taxi or private automobile costs for same travel).

in an area of expertise." See Principles of Federal Appropriations Law, supra, at 3-39 (emphasis added). As explained by the Comptroller General, Section 5703 "is not a device for circumventing 31 U.S.C. § 551." The "direct service" test cannot be met merely because payment of the expenses may in some way enhance the agency's program objectives. Principles of Federal Appropriations Law, supra, at 3-39.

There are several special considerations that affect the application of these general principles to the spouses of government officials. A government official's spouse may of course have an independent appointment to a government position. Additionally, under some circumstances a spouse may be viewed as serving the government without compensation, as discussed above. These possibilities, however, and the provision of government transportation, are subject to several important limits.

One significant obstacle to viewing the Attorney General's spouse as serving the Department as an uncompensated employee is found at 5 U.S.C. § 3110, which imposes restrictions on the employment of relatives of certain public officials. Subsection (b) of that statute provides that:

A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a civilian position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual.

This Office has previously construed Section 3110 to apply to uncompensated, as well as to compensated services. See Memorandum for the Attorney General from Acting Assistant Attorney General Harmon, Office of Legal Counsel, re "Employment of Relatives Who Will Serve Without Compensation"

(Mar. 23, 1977). In 1977, we concluded, pursuant to Section 3110, that Mrs. Carter could not be appointed as Chairman of a Commission on Mental Health, although she might serve in an honorary capacity. See Memorandum for Associate Counsel to the President Huron, from Acting Assistant Attorney General Harmon, Office of Legal Counsel, re "Possible Appointment of Mrs. Carter as Chairman of the Commission on Mental Health" (Feb. 18, 1977). Moreover, the First Lady could not undertake, for example, "the day-to-day work of the White House Office, such as answering correspondence or telephone calls, which is . . . a governmental function of the kind ordinarily performed by regular members of the White House staff." March 23, 1977 Memo, at 8. However, we have not construed Section 3110 to prohibit the First Lady from carrying on the "traditional duties of First Lady in directing operation of the Executive Residence, making arrangements for entertainment, etc." Moreover, Section 3110 would not prohibit the First Lady from representing the President at certain official functions, because on such occasions "members of the President's family appear essentially on the President's behalf not in an official capacity or position." See id. (emphasis added).

In our view, Section 3110 would prohibit the Attorney General from appointing his spouse to, or recommending her for, even an uncompensated official position within the Department of Justice, even on a temporary or intermittent basis. Like the First Lady, she might on occasion appear as the Attorney General's representative in his absence, but we expect such occasions would arise infrequently. 10/

In addition to the problem raised by Section 3110, spousal transportation must be viewed in light of precedents that specifically address travel by government officials' spouses. See, e.g., Clark v. United States, 162 Ct. Cl. 477, 484 (1963) (wife's use of government car to do some marketing or take child to doctors not permissible, although under circumstances

10/ As we see it, the exception to § 3110 permitting the First Lady to appear in the President's stead might also apply to the Attorney General's spouse on rare occasions when the Attorney General is expected to attend a function purely for reasons of official protocol and is unable to be there himself. In such cases, where there are no official duties to be performed, the Attorney General's spouse may appear in his behalf without violating § 3110.

of case, offense not so major as to warrant employee's discharge). There have been several occasions on which the Comptroller General or this Office has considered the question of government travel for an employee's spouse. In Opinion B-204877, the Comptroller General reiterated that under Chapter 57 of Title 5 of the United States Code, which sets forth travel and subsistence provisions, "it is clear that an officer or employee of the United States who is traveling on official business is not entitled to be accompanied at Government expense by his or her spouse." B-204877, at 1 (Nov. 27, 1981). The Comptroller General applied this principle to travel by members of Congress not actually governed by Chapter 57, when he considered whether "for purposes of protocol, spouses of committee members and staff members of the House of Representatives may legally accompany them in authorized foreign travel and, if it is legal, how the travel expenses would be handled." Id. The Comptroller General concluded that even when spouses were made a part of an official delegation by designation of a committee chairman, federal funds could not be used to pay their travel expenses. See id. at 2. Noting that federal funds may be used for the purposes for which they are appropriated, and none other, see 31 U.S.C. § 1301, the Comptroller General explained that "[w]ith a few statutorily established exceptions, we are not aware of any authority to pay the travel and per diem expenses of individuals who are not Federal officers or employees. This is true even though the presence of spouses might in some way enhance the achieving of the purposes of the trip." B-204877, at 1. The Comptroller General did agree, however, consistent with applicable Department of Defense regulations, that spouses included in an official delegation by a pertinent committee chairman could travel in military aircraft on a "space available" basis. Expenses, however, such as in-flight meals or differential hotel costs, could not be paid with federal funds. B-204877, at 2-3.

This Office applied these principles to travel by the Attorney General and Mrs. Smith in an October 1982 opinion addressing the Attorney General's planned trip to Europe and Asia. During that trip, Mrs. Smith was scheduled to attend diplomatic functions with the Attorney General, as well as to attend independently several meetings on behalf of the government. This Office stated:

We are reluctant to conclude on the basis of the itinerary alone that these appointments and protocol functions are so necessary

to the trip from the perspective of this Department that they would justify a determination Mrs. Smith will be on official travel. On the other hand, we agree with the view set forth by the Comptroller General, that spouses of government officials who serve the government's interests by traveling with the official delegation should be given, when feasible, transportation without charge on a "space available" basis. Mrs. Smith clearly falls within this category, and we accordingly advise you that she may travel in the military airplane, without charge, so long as there is space available for her. Her other expenses should be paid from private funds in accordance with the principles set forth by the Comptroller General.

Memorandum for the Attorney General, re Travel by Mrs. Smith on Trip to Europe and Asia, at 4 (October 18, 1982).

Both the Comptroller General's opinion and this Office's October 1982 opinion illustrate that the fact that the presence of a spouse might be in the interests of the government and might enhance the accomplishment of a government objective does not itself create authority to expend appropriated funds for spousal travel. In short, circumstances that permit a spouse to be transported on an otherwise authorized trip in the interests of the government, on a "space available" basis, may nonetheless fail to justify the independent expenditure of appropriated funds for such travel. See also 57 Comp. Gen. 226, 228 (1978) ("where the transportation of a dependent in a Government vehicle is such that the dependent merely accompanies an employee on an otherwise authorized trip scheduled for the transaction of official business, and the agency involved makes a determination that it is in the Government's interest for the dependent to accompany the employee (for instance, for morale purposes), we do not believe that the provisions of section [1344] would be violated").

Moreover, the fact that someone may be invited to an event as the spouse of a government official does not necessarily confer even "quasi-official" status. For example, the Comptroller General has rejected use of Department of Interior funds for a December 1981 breakfast given by the wife of the Secretary

of Interior for the wives of Cabinet members and White House officials, because the breakfast was attended "entirely by private persons." See Comp. Gen. Op. B-206173, re "Department of Interior -Funding of Receptions at Arlington House" (Feb. 23, 1982); see also B-204877, supra, at 1; United States Department of Housing and Urban Development, Inspector General Report (Sept. 21, 1982) (finding unauthorized the use of a government vehicle for nine trips involving the Under Secretary's wife, when she was not accompanied by the Under Secretary, including trips to bring her downtown so she could attend evening functions with the Under Secretary); cf. "Examination of President Nixon's Tax Returns for 1969-1972, H. Rep. No. 966, 93d Cong., 2d Session 161 (1974) (President realized taxable income when members of his family accompanied him on official trips but themselves had no official functions).

Application to Hypotheticals

Against this background, we consider the three general questions you have raised. First, as discussed above, a Department of Justice vehicle may be provided to the Attorney General's spouse only for the conduct of an official Department of Justice purpose for which there is authority to provide such transportation. 11/ Second, the Attorney General's spouse

11/ We address here only those occasions on which the Attorney General's spouse is provided a vehicle independently of the Attorney General. When she travels with the Attorney General in a government car, on an official trip, she presumably does so on a "space available" basis. See discussion infra.

We have considered whether the appropriations for official reception and representation expenses, which can be used "to fund official activities that further the interests of the Department of Justice," see DOJ Order 2110.31, "Expenditure of Representation Funds," are available to supply the Attorney General's spouse with transportation to official government functions. Use of the fund for "[h]ire, purchase, operation, or repair of any motor-propelled, passenger-carrying vehicle," however, is specifically prohibited by DOJ order. See id. at 6(d)(1).

could function in an official government capacity if appointed to some government position or to perform a particular government function, but her role as spouse alone does not confer on her such an official position, and in fact limits the positions to which she might be appointed. See 31 U.S.C. § 3110. Moreover, even if the presence of the Attorney General's spouse enhances achievement of official objectives, or the Attorney General's spouse functions in some "quasi-official" capacity, the expenditure of appropriated Department of Justice funds on her behalf is not ordinarily authorized. Third, whether some other government organization, such as the White House, may pay for such transportation depends on whether that organization has authority to expend its appropriated funds in such a fashion. ^{12/} On the other hand, transportation provided or reimbursed by private organizations is not subject to the limits placed on the expenditure of appropriated funds, but may be prohibited by the conflict of interest laws, depending on the source and

12/ The White House may be able to provide transportation under circumstances in which this Department could not. Unlike the Attorney General, the President has several possible sources of appropriated funds from which a nonemployee traveling for official purposes of the Presidency might be paid expenses. See, e.g., 3 U.S.C. § 102 (expense account, which is "to assist in defraying expenses relating to or resulting from the discharge of [the President's] official duties" and which specifically mandates that there shall be no accounting by the President, except for income tax purposes); the "Unanticipated Needs" fund, 3 U.S.C. § 108 (expressly made "without regard to any provision of law regulating the employment or compensation of persons in the Government service or regulating expenditures of Government funds"). See, e.g., Memorandum to Assistant Attorney General Harmon from Attorney-Adviser Taylor, Office of Legal Counsel, re "Payment of Travel Expenses by a Person Traveling on Behalf of the President" (Feb. 24, 1977). This is not to suggest, however, that White House funds should be used to reimburse the Department for any unauthorized use of its vehicles that may already have occurred.

the reasons for providing such transportation. See, e.g., 18 U.S.C. § 209; 28 C.F.R. Part 45. We would be happy to provide more guidance on this point if a specific situation arises. 13/

In addition to these general questions, your office submitted to us a list of examples of various possible uses of transportation by the Attorney General's spouse. Your list sets forth the following possible uses:

1. to attend to purely personal matters, such as shopping for groceries, going to the hairdresser's, visiting a physician, or traveling to and from airports;
2. to attend social functions at private homes or clubs, restaurants and hotels to which she alone has been invited as the guest of a private organization, such as the League of Republican Women, the Junior League, or the Heart Association, or of a private citizen;
3. to attend meetings of organizations of which she is a member, such as the Opera Ball Committee or the National Symphony, at the Kennedy Center or at restaurants.
4. to attend social functions at private homes or clubs, restaurants and hotels to which she alone had been invited as the guest of the spouse of a Senator, Congressman or Cabinet Officer, where the function is in honor of a foreign diplomat's spouse, or the spouse of a Senator, Congressman or Cabinet Officer;
5. to attend luncheons or meetings at the White House which were part of, or related to, volunteer efforts involving spouses of elected and appointed U.S. Government officials;
6. to attend official social functions to which both she and the Attorney General had been invited by virtue of his position and to which she proceeds separately, meeting the Attorney General there;

13/ As a prospective matter, of course, the Department of Justice may not permit its motor vehicles to be used for nonauthorized purposes, even if reimbursement is anticipated.

7. to attend official social functions honoring the spouse of a national leader (e.g., Mrs. Ronald Reagan, Mrs. Anwar Sadat) held at Government buildings to which she had been invited; and
8. to attend ceremonies held in Government buildings involving U.S. Government officials, such as the swearing in of new diplomats.

In our view, the first three examples reflect purely personal purposes for which there would be no apparent authority to expend funds appropriated for Department of Justice business. Shopping or visiting a physician, attending private social functions, or attending meetings of organizations of which the Attorney General's spouse is a member do not constitute official business of the Department. Additionally, those private social functions to which the Attorney General's spouse is invited, even if she is invited because she is the spouse of a Cabinet member (Example #4), have no authorized Department of Justice purpose justifying the expenditure of Department of Justice appropriations. See, e.g., Comp. Gen. Op. B-206173 (breakfast party for Cabinet spouses).

In the same sense, we would consider participation in volunteer efforts by spouses of government officials to have no authorized Department of Justice purpose, even if the volunteer activities are conducted under the auspices of the White House. Of course, if the White House has authority to transport private citizens for such purposes, it may provide such transportation to the Attorney General's spouse. See note 12, supra. We are aware of no authority, however, to expend Department of Justice appropriations for such purposes.

Examples #6, #7 and #8 arguably have a clearer nexus to some official Department of Justice purpose, but we nonetheless conclude that that nexus alone does not authorize the expenditure of Department of Justice appropriations to provide the Attorney General's spouse with independent transportation to the events. While the presence of the Attorney General's spouse at these events might be said to be in the interests of the government, and could be viewed as enhancing the Attorney General's role as a Cabinet officer, we are not aware of any special circumstances that would provide authority to expend Department of Justice appropriations to transport her to these events. Thus,

while attendance at such functions may be viewed as being in the interests of the Department, and thus would be appropriate occasions for the Attorney General's spouse to accompany the Attorney General on a "space available" basis, we do not believe she can be provided her own Department of Justice vehicle on such occasions.

Conclusion

We have no doubt that the presence of the Attorney General's spouse often enhances the conduct of Department of Justice affairs. In addition, she may frequently be invited to events solely on the basis of her status as the spouse of the Attorney General. Nonetheless, the Attorney General's spouse is a private person for whom there is generally no authority to make independent expenditures of Department of Justice appropriations to transport her to such events.

Robert B. Shanks
Deputy Assistant Attorney General
Office of Legal Counsel

FFF MTG. W/DEPARTMENT & AGENCY GENERAL COUNSELS

MONDAY, APRIL 2, 1984 - 9:30 am

ROOSEVELT ROOM (30 min.)

RE: SPOUSAL USE OF GOVERNMENT CARS

NAME

DEPT.

Argetsinger, J.C.	Action ✓
Barnes, A. James	EPA ✓
Britt, Stephen J.	Civil Aero - DOT
Carmen, Mindy	Energy ✓
Corcoran, Maureen	Educ
Coy, Robert E.	Vets Adm ✓
Crawford, Susan	Army - Defense
del Real, Juan A.	HHS ✓
Dietel, J. Edwin	CIA ✓
Gray, C. Boyden	VP
Gerber, Joel	Intl Rev - Treas.
Glick, Warren W.	Ex-Im
Harvey, Thomas E.	USIA ✓
Knapp, John J.	HUD ✓
Knapp, Rosalind	DOT
Kozak, Michael G.	State
Lilly, Francis X.	Labor
Marra, Anthony	OPIC
Morris, Joseph	OPM
Murphy, John P.	Vets Adm ✓
Niederlehner, Leonard	Defense ✓
Oliver, Daniel	Agric ✓
O'Neill, Hugh	Navy - Defense
Platt, Alexander	USTR ✓
Simms, Larry	DOJ ✓
Sullivan, Eugene R.	Air Force - Defense
Thompson, Paul	NSC ✓
Wagner, Marilyn	Commerce ✓
Walker, Mary L.	Interior
Waxman, Margery	Treas ✓
Wright, Joseph	OMB

CARL ROWAN

RELEASE SUNDAY/MONDAY, APRIL 1/2, 1984

Nonsense Over Use of Official 'Limousines'

By Carl T. Rowan

WASHINGTON -- My own profession and a few members of Congress get this periodic urge to churn up public outrage about the uses and alleged abuses of official "limousines" in the nation's capital.

As sure as a serious ethics question makes the headlines, such as the troubles of Attorney General-designate Edwin Meese III, reporters for the Washington Post are going to go searching for the wife of some Cabinet member who went to the beauty parlor, or a cocktail party, in an official car.

And the press can count on getting a demagogic statement from Sen. William Proxmire (D-Wis.), whose claim to fame is that he hates Executive Branch perks and loves to ridicule expenditures that he thinks are foolish.

Proxmire and the media people who are self-styled watchdogs of officials who ride government cars know that the average American can be churned into a quick hatred of a Washington bureaucrat who goes to a private dinner party in wheels put on the road by Uncle Sam -- even if that official is lightening a 14-hour work day for which he gets paid \$70,000 a year, as against the \$500,000 he was making before accepting the president's call to service.

The nit-picking zealots are going to discredit some very important laws about ethics in government by trying to stretch them so as to discredit people who use relatively costless perks in ways that clearly serve the interest of the country.

Such a stink has been made over piddling things that in 1982 only 190 federal officials could ride a government car from home to work. The average reader may say, "That's too many, considering the annual cost of \$3.4 million. Let 'em take the bus."

But that average reader must face some questions:

* In this era of terrorism where our country is spending millions upon millions to protect diplomats, businessmen abroad, officials in this country from shootings and kidnappings, do we want to tell important officials of the Defense and State Departments, the Central Intelligence Agency, the National Security Council that even after a 12-hour work day they must hail a cab or drive alone to an important dinner instead of taking a little compact car from the transportation pool?

* Do we want to tell a Cabinet wife that she may not ride her husband's official car to an occasion that may be social, and absolutely may not go in that car to an urgently needed hair appointment for a suddenly scheduled official event of great consequence?

The media have got the Executive Branch running scared. Outgoing Attorney General William French Smith has repaid the government \$11,000 for his wife's use of a government car. I tip my cap to Treasury Secretary Donald Regan who says he isn't about to pay for his wife's use of a government car on 75 occasions, "mostly for personal reasons," to use words from the Washington Post.

As one who faced this issue during four-and-a-half years in government, I know that there can be no hard line as to what is a "personal reason." My wife went to well over a hundred social affairs, under protest, certainly without enthusiasm, because she and I agreed that her presence would serve the country. No wife of a secretary of state ever was more diligent in going to National Day parties and other social affairs of the least prestigious embassies in Washington than Virginia Rusk. Do we say that the wife of a top official can take an official car to an embassy party, but she can't have the driver rush to the cleaners to get the outfit she wants to wear to the embassy?

The Congress makes government cars and drivers available to 11 of its senior members. In fact, one leading lawmaker was chauffeured to my house for lunch last Sunday. It didn't bother me. I'm willing to concede that eating my cooking and talking three hours with my friends is probably the hardest work that member of Congress did all month.

When I was director of the U.S. Information Agency, my sons, then ages 13 and 11, reached the final rounds of a bowling tournament. Feeling guilty over the time spent away from them, I vowed that on Saturday morning I would accompany them to their bowling matches, even though I could not stay and watch. Then, in a foolish fit of circumspection, I told my chauffeur that I would drive my own car, since I didn't dare have him deliver the boys to a bowling tournament.

When I reached my office, a Vietnam War-tensioned Lyndon Johnson was on "the flame thrower," the direct line to me, saying that he had been trying to reach me desperately on my car telephone.

"I wasn't in the official car, Mr. President," I said. "For good personal reasons, I was driving my own car."

"Lordy, you don't want to be another Gen. George Marshall," Johnson said. "He was out of touch, riding a horse in Rock Creek Park when the Japanese attacked Pearl Harbor."

I did not again abandon my official car and its radio, because I was worried about some trifling attack about "unethical" usages of my "limousine." If I got to play golf late on a Saturday afternoon I went in the official car, and I carried in my pocket a little radio linking me to the White House -- a radio that delighted me by often going off just as an opponent was trying to sink a three-foot putt to win a dollar.

I knew that I wasn't chiseling Uncle Sam in the usage of my car. I was doing what I was sure was in my country's interest. And that's why I think a lot of Americans have gone bonkers in their demagoguery about official "limousines."

Sure, there have been some gross abuses, but they are glaringly obvious. We have let those bad cases push us to a stance of absurdity about what can be done with a cheap little government vehicle by important officials who, along with their wives and children, are making incredible sacrifices.

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NEWS AMERICA SYNDICATE

THE WHITE HOUSE
WASHINGTON

Date 4.9.84

Suspense Date _____

MEMORANDUM FOR: *John*

FROM: **DIANNA G. HOLLAND**

ACTION

- Approved
- Please handle/review
- For your information
- For your recommendation
- For the files
- Please see me
- Please prepare response for
_____ signature
- As we discussed
- Return to me for filing

COMMENT

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

March 15, 1984

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: FRED F. FIELDING
FROM: EDWARD V. HICKEY, JR.

E. V. H.

Attached is a listing, which has been extracted from White House Garage dispatch records, of information pertaining to transportation provided for Mr. Meese during the period 1 February - 14 March 1984.

The Garage is an Army activity (US Army Transportation Agency (White House)) and is subject to Army regulations concerning records maintenance and disposal. Paragraph 2-3d of US Army Technical Manual 38-750 dated 31 May 1981 (copy appended) directs that dispatch record documents will be destroyed after one month. As a result, we have no records of transportation provided prior to February 1st.

Attachments

To J. Adams

MAR 15 1984

<u>Time</u>	<u>Report to</u>	<u>From</u>	<u>To</u>
<u>Wednesday, February 1, 1984</u>			
0640	Mr. Meese	1075 Springhill Rd.	WH West Basement
0845	Mr. Meese	WH West Lobby	Russell S.O.B.
1000	Mr. Meese	Russell S.O.B.	WH West Lobby
1615	Mr. Meese	WH West Lobby	Hart S.O.B.
1800	Mr. Meese	Hart S.O.B.	WH West Lobby
<u>Thursday, February 2, 1984</u>			
0625	Mr. Meese	1075 Springhill Rd.	WH West Basement
<u>Friday, February 3, 1984</u>			
0640	Mr. Meese	1075 Springhill Rd.	WH West Basement
1000	Mr. Meese	WH West Basement	Hart S.O.B.
1145	Mr. Meese	Hart S.O.B.	WH West Basement
1745	Mr. Meese	WH West Lobby	Hay Adams
1840	Mr. Meese	Hay Adams	1075 Springhill Rd.
1945	Mr. Meese	1075 Springhill Rd.	Hay Adams
2245	Mr. Meese	Hay Adams	1075 Springhill Rd.
<u>Saturday, February 4, 1984</u>			
1800	Mr. Meese	1075 Springhill Rd.	Sheraton Washington and return
<u>Sunday, February 5, 1984</u>			
None			

<u>Time</u>	<u>Report to</u>	<u>From</u>	<u>To</u>
<u>Monday, February 6, 1984</u>			
0640	Mr. Meese	1075 Springhill Rd.	WH West Basement
<u>Tuesday, February 7, 1984</u>			
0600	Mr. Meese	1075 Springhill Rd.	Pentagon
1545	Mr. Meese	WH West Lobby	Hart S.O.B. and return
1955	Mr. Meese	WH West Basement	State Dept & 1075 Springhill Rd.
<u>Wednesday, February 8, 1984</u>			
0640	Mr. Meese	1075 Springhill Rd.	WH West Basement
<u>Thursday, February 9, 1984</u>			
0640	Mr. Meese	1075 Springhill Rd.	WH West Basement
1315	Mr. Meese	WH West Basement	Capitol Hill
1700	Mr. Meese	Capitol Hill	WH West Lobby
1830	Mr. Meese	WH West Basement	1075 Springhill Rd.
<u>Friday, February 10, 1984</u>			
0815	Mr. Meese	1075 Springhill Rd.	600 New Hampshire Ave.
<u>Saturday, February 11, 1984</u>			
0730	Mr. Meese	1075 Springhill Rd.	State Dept.
0930	Mr. Meese	State Dept.	WH West Basement
1000	Mr. Meese	WH West Basement	1075 Springhill Rd.
1715	Mr. Meese	1075 Springhill Rd.	Capitol Hill Club
2100	Mr. Meese	Capitol Hill Club	1075 Springhill Rd.

<u>Time</u>	<u>Report to</u>	<u>From</u>	<u>To</u>
<u>Sunday, February 12, 1984</u>			
None			
<u>Monday, February 13, 1984</u>			
0640	Mr. Meese	1075 Springhill Rd.	WH West Basement
1345	Mr. Meese	WH West Basement	State Dept.
1410	Mr. Meese	State Dept.	WH West Basement
1800	Mr. Meese	WH West Basement	1900 Foxhall Rd.
2000	Mr. Meese	1900 Foxhall Rd.	1075 Springhill Rd.
<u>Tuesday, February 14, 1984</u>			
0640	Mr. Meese	1075 Springhill Rd.	WH West Basement
<u>Wednesday, February 15, 1984</u>			
0640	Mr. Meese	1074 Springhill Rd.	WH West Basement
1100	Mr. Meese	WH West Basement	GSA - 18th & E., NW and return
2230	Mr. Meese	WH West Lobby	1075 Springhill Rd.
<u>Thursday, February 16, 1984</u>			
0700	Mr. Meese	1075 Springhill Rd.	WH West Basement
<u>Friday, February 17, 1984</u>			
0630	Mr. Meese	1075 Springhill Rd.	WH West Basement
1200	Mr. Meese	WH West Basement	Old Colony Inn, Alexandria
1345	Mr. Meese	Old Colony Inn	WH West Basement
2030	Mr. Meese	WH West Basement	1075 Springhill Rd.

<u>Time</u>	<u>Report to</u>	<u>From</u>	<u>To</u>
<u>Saturday, February 18, 1984</u>			
0845	Mr. Meese	1075 Springhill Rd.	WH West Basement
1345	Mr. Meese	WH West Basement	1075 Springhill Rd.
<u>Sunday, February 19, 1984</u>			
None			
<u>Monday, February 20, 1984</u>			
None			
<u>Tuesday, February 21, 1984</u>			
0640	Mr. Meese	1075 Springhill Rd.	WH West Basement
1830	Mr. Meese	WH West Basement	1075 Springhill Rd.
<u>Wednesday, February 22, 1984</u>			
0640	Mr. Meese	1075 Springhill Rd.	WH West Basement
<u>Thursday, February 23, 1984</u>			
0700	Mr. Meese	1075 Springhill Rd.	WH West Basement
0945	Mr. Meese	WH West Basement	Rayburn H.O.B.
1045	Mr. Meese	Rayburn H.O.B.	WH West Basement
1930	Mr. Meese	WH West Lobby	Madison Hotel
2230	Mr. Meese	Madison Hotel	1075 Springhill Rd.
<u>Friday, February 24, 1984</u>			
0640	Mr. Meese	1075 Springhill Rd.	WH West Basement

<u>Time</u>	<u>Report to</u>	<u>From</u>	<u>To</u>
<u>Saturday, February 25, 1984</u>			
0730	Mr. Meese	1075 Springhill Rd.	WH West Basement
<u>Sunday, February 26, 1984</u>			
1600	Mr. Meese	1075 Springhill Rd.	WH West Basement
<u>Monday, February 27, 1984</u>			
1345	Mr. Meese	WH West Lobby	Capitol Hill
1515	Mr. Meese	Capitol Hill	WH West Lobby
1835	Mr. Meese	WH West Lobby	#1 Massachusetts Ave., NE
1945	Mr. Meese + 1	WH West Basement	Metro. Club
2215	Mr. Meese + 1	Metro Club	1075 Springhill Rd.
<u>Tuesday, February 28, 1984</u>			
0600	Mr. Meese	1075 Springhill Rd.	Pentagon and return
<u>Wednesday, February 29, 1984</u>			
0800	Mr. Meese	1075 Springhill Rd.	WH West Basement
1415	Mr. Meese	WH West Basement	Hart Bldg.
1500	Mr. Meese	Hart Bldg.	WH West Basement
1845	Mr. Meese	WH West Basement	1075 Springhill Rd.
<u>Thursday, March 1, 1984</u>			
0800	Mr. Meese	1075 Springhill Rd.	WH West Basement

Friday, March 2, 1984

<u>Time</u>	<u>Report to</u>	<u>From</u>	<u>To</u>
<u>Friday, March 2, 1984</u>			
0730	Mr. Meese	1075 Springhill Rd.	WH West Basement
0900	Mr. Meese & party	WH West Basement	Capitol Hill (two cars)
1845	Mr. Meese & party	Dirksen S.O.B.	WH West Basement (three cars)
2045	Mr. Meese	WH West Basement	1075 Springhill Rd.
<u>Saturday, March 3, 1984</u>			
0745	Mr. Meese	1075 Springhill Rd.	Washington Nat'l Airport
<u>Sunday, March 4, 1984</u>			
1825	Mr. Meese	Washington Nat'l A/P	1075 Springhill Rd.
<u>Monday, March 5, 1984</u>			
0640	Mr. Meese	1075 Springhill Rd.	WH West Basement
<u>Tuesday, March 6, 1984</u>			
0640	Mr. Meese	1075 Springhill Rd.	Heritage Foundation
0850	Mr. Meese	Heritage Foundation	WH West Basement
1945	Mr. Meese	WH West Basement	Sheraton Carlton
2145	Mr. Meese	Sheraton Carlton	1075 Springhill Rd.
<u>Wednesday, March 7, 1984</u>			
0640	Mr. Meese	1075 Springhill Rd.	WH West Basement

<u>Time</u>	<u>Report to</u>	<u>From</u>	<u>To</u>
<u>Thursday, March 8, 1984</u>			
0630	Mr. Meese	1075 Springhill Rd.	WH West Basement
<u>Friday, March 9, 1984</u>			
0700	Mr. Meese	1075 Springhill Rd.	Washington National Airport
<u>Saturday, March 10, 1984</u>			
None			
<u>Sunday, March 11, 1984</u>			
None			
<u>Monday, March 12, 1984</u>			
None			
<u>Tuesday, March 13, 1984</u>			
None			
<u>Wednesday, March 14, 1984</u>			
1425	Mr. Meese	Washington Nat'l A/P	WH West Basement
1930	Mr. Meese	WH West Basement	1075 Springhill Rd.

maximum extent. A separate form may be used for dispatch and control of "Radio Taxis." When used for radio cab dispatch, data annotated in columns "a" through "m" will be used as needed by local commanders instead of requirements prescribed by (8), (9), and (10) below.

(2) The form will become effective at the start of the operational day. The same page may be used for more than 1 day. In such cases, a line will be drawn below the last dispatch entry of the previous date, and the new date inserted. If there is a change in dispatchers during the use of this form the new dispatcher will sign his name on the corresponding line in column m.

(3) When equipment is dispatched for a period beyond 1 day, such as overnight trips or field exercises, the control record will be so annotated in column m. At the end of the dispatch, the time and date-in will be entered in column l.

(4) Towed equipment that will return with the dispatched equipment is shown by entering the nomenclature of the towed item in column m of the entry for the prime mover.

(5) Separate line entries will be made when the towed item will not return with the dispatched equipment.

(6) Equipment undergoing motor stables or routine maintenance need not be dispatched unless it will be leaving the motor pool area.

(7) Stationary powered equipment and power producing equipment, engine driven, may be dispatched or otherwise controlled by local policy.

(8) Date, the page number, and dispatcher's signature will be entered as prescribed locally.

(9) At the time a request is received, the following entries will be made in columns a through f.

(a) *Column a.* Enter the name of the person or activity requesting transportation or services of the equipment.

(b) *Column b.* For vehicular equipment enter the place or unit to which the operator is to report

with equipment. For other equipment enter the area or site in which the equipment is to be operated.

(c) *Column c.* Enter the telephone number of the requestor.

(d) *Column d.* Enter the time the operator is to report to place shown in column b.

(e) *Column e.* Determine the expected time of return and record in this column.

(f) *Column f.* For vehicles enter the farthest point the vehicle is expected to travel. For other equipment enter the farthest point from the equipment's normal site in which it will be operating. If it is the same site as shown in column b, leave blank.

(10) After the appropriate vehicle or equipment has been selected for the task, the following additional entries will be made prior to its dispatch.

(a) *Column g.* Enter the unit's identification number (e.g., bumper number, etc.).

(b) *Column h.* Enter a short descriptive noun or type of vehicle by capacity (e.g., sedan 2½-ton cargo, 20 ton crane, etc.).

(c) *Column i.* Enter the equipment registration number or serial number.

(d) *Column j.* Enter the name and grade of the equipment operator.

(e) *Column k.* Enter the time the equipment was dispatched.

(11) At the end of the equipment usage, the dispatcher will complete the following entries.

(a) *Column l.* Insert the time the equipment was returned.

(b) *Column m.* The assistant operator's name and grade will be annotated when the equipment is on extended dispatch and/or a need for a second operator exists. Other remarks may be entered.

d. Disposition.

(1) One month after all entries in column l have been completed, the form will be destroyed.

(2) If a record of accident or other unusual occurrence is recorded on the form, it will be kept until destruction is authorized by proper authority.

JV

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

FG010



- O - OUTGOING
 - H - INTERNAL
 - I - INCOMING
- Date Correspondence Received (YY/MM/DD) 1/1

Name of Correspondent: George P. Margulies

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Shroual Travel in Government Vehicles (Commerce)

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>W Holland</u>	ORIGINATOR	<u>84104102</u>			<u>1/1</u>
<u>W AT 18</u>	<u>A</u>	<u>84104103</u>		<u>S</u>	<u>84104113</u>
		<u>1/1</u>			<u>1/1</u>
		<u>1/1</u>			<u>1/1</u>
		<u>1/1</u>			<u>1/1</u>

ACTION CODES:

- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure
- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

DISPOSITION CODES:

- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

FOR OUTGOING CORRESPONDENCE:

- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
 Send all routing updates to Central Reference (Room 75, OEOB).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

RECORDS MANAGEMENT ONLY

CLASSIFICATION SECTION

No. of Additional Correspondents: _____ Media: *A* Individual Codes: *1130* _____

Prime Subject Code: *FG 010* Secondary Subject Codes: *TIV 001* _____
 FI 001-02 _____
 FG 020 _____

PRESIDENTIAL REPLY

Code	Date	Comment	Form
C	_____	Time: _____	P- _____
DSP	_____	Time: _____	Media: _____

SIGNATURE CODES:

- CPn - Presidential Correspondence**
- n - 0 - Unknown
- n - 1 - Ronald Wilson Reagan
- n - 2 - Ronald Reagan
- n - 3 - Ron
- n - 4 - Dutch
- n - 5 - Ron Reagan
- n - 6 - Ronald
- n - 7 - Ronnie

- CLn - First Lady's Correspondence**
- n - 0 - Unknown
- n - 1 - Nancy Reagan
- n - 2 - Nancy
- n - 3 - Mrs. Ronald Reagan

- CBn - Presidential & First Lady's Correspondence**
- n - 1 - Ronald Reagan - Nancy Reagan
- n - 2 - Ron - Nancy

MEDIA CODES:

- B - Box/package
- C - Copy
- D - Official document
- G - Message
- H - Handcarried
- L - Letter
- M - Mailgram
- O - Memo
- P - Photo
- R - Report
- S - Sealed
- T - Telegram
- V - Telephone
- X - Miscellaneous
- Y - Study



**GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE**
Washington, D.C. 20230

APR - 2 1984

220192 *cu*

MEMORANDUM FOR: Fred F. Fielding
Counsel to the President

FROM: *pl* Irving P. Margulies
General Counsel

SUBJECT: Spousal Travel in Government Vehicles

The following information is submitted in response to the meeting in your office this morning regarding the issue of travel by the spouses of Cabinet officers in Government vehicles.

The Department of Commerce maintains no separate log on the use of its vehicles by Mrs. Baldrige.

The Department has no published rule respecting reimbursement for misuse of Government vehicles.

Our regulation on the use of Government vehicles recognizes that, under the law, the Secretary is the only Departmental officer who may use an official vehicle between his domicile and place of employment. See section 2.04, Department Administrative Order 209-6, a copy of which is attached.

Attachment

United States of America DEPARTMENT OF COMMERCE	DEPARTMENT ADMINISTRATIVE ORDER <u>209-6</u>	
DEPARTMENT ADMINISTRATIVE ORDER SERIES	DATE OF ISSUANCE June 2, 1970	EFFECTIVE DATE June 2, 1970
SUBJECT USE OF GOVERNMENT-OWNED OR LEASED MOTOR VEHICLES AND AIRCRAFT		
<p><u>SECTION 1. PURPOSE.</u></p> <p>.01 The purpose of this order is to interpret the term "official purposes" as it applies to the use of Government-owned or leased motor vehicles and aircraft, and to delegate approval authority and prescribe related procedures for the use of such vehicles and aircraft in the excepted cases stated in The Act of August 2, 1946, 31 U.S.C. 638a(c).</p> <p>.02 This is a general revision of the order to update the contents.</p> <p><u>SECTION 2. GENERAL PROVISIONS.</u></p> <p>.01 The governing statute provides in part as follows:</p> <p>"Unless otherwise specifically provided, no appropriation available for any department shall be expended....for the maintenance, operation, and repair of any Government-owned passenger motor vehicle or aircraft not used exclusively for official purposes; and 'official purposes' shall not include the transportation of officers and employees between their domiciles and places of employment, except in cases of medical officers on out-patient medical service and except in the cases of officers and employees engaged in field work the character of whose duties make such transportation necessary and then only as to such latter cases when the same is approved by the head of the department concerned. Any officer or employee of the Government who willfully uses or authorizes the use of any Government-owned passenger motor vehicle or aircraft, or of any passenger motor vehicle or aircraft leased by the Government for other than official purposes or otherwise violates the provisions of this paragraph shall be suspended from duty by the head of the department concerned, without compensation, for not less than one month, and shall be suspended for a longer period or summarily removed from office if circumstances warrant. The limitations of this paragraph shall not apply to any motor vehicles or aircraft for official use of the President, the heads of the executive departments enumerated in Section 1 of this title, ambassadors, ministers, charges d'affaires, and other principal diplomatic and consular officials."</p> <p>.02 The prohibition contained in the statute against the use of Government-owned or leased passenger motor vehicles and aircraft for other than official purposes shall also apply to all other types of Government-owned or leased motor-propelled vehicles and aircraft.</p>		

.03 It is the Department's policy to interpret the term "official purposes" strictly. Official and non-official business must not be intermingled. While transportation between the domicile and place of duty is the only activity specifically excluded by the statute, the use of official vehicles for the purpose of attending to personal business affairs, pleasure trips, and the like, is obviously not for official purposes. However, if attendance at various functions is part of an individual's official duties in that he is acting on behalf of the Department in his official capacity, it is permissive within the meaning of "official purposes" to use Government vehicles. Employees and officers using, or authorizing the use of, official vehicles have the primary responsibility for assuring legal use of such vehicles.

.04 Under the law, the Secretary is the only officer of the Department of Commerce who may use an official motor vehicle between domicile and place of employment.

SECTION 3. EXCEPTION FOR CERTAIN FIELD EMPLOYEES.

.01 Pursuant to the authority vested in the Assistant Secretary for Administration under Department Organization Order 10-5, the heads of primary operating units are delegated authority to approve the use of Government-owned vehicles between domicile and place of duty for officers and employees engaged in field work, when the character of their duties makes transportation necessary, the duty station is inaccessible by public transportation, and no other means of transportation is available. Such approval may be given only on an individual employee basis, involving specific transportation (Decision of the Comptroller General B-80782 of January 26, 1949). This authority may not be redelegated.

.02 The following procedures will apply throughout the Department in requesting and approving the use of official vehicles for this purpose:

a. Approval will be requested in advance by memorandum to the head of the primary operating unit, stating the name of the individual involved, the points between which transportation is to be furnished, and the reasons why transportation must be provided. The following legend will be placed in the lower left corner of the last page of the memorandum:

Approved:

(Title)

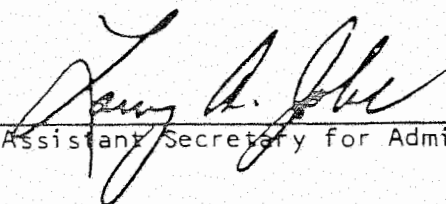
b. When it is impracticable to obtain approval in advance, because of failure of public transportation facilities or other reason, supervisors may

authorize the use of official vehicles and obtain approval after the fact. Requests for post approval will be submitted to the head of the primary operating unit in the form of schedules, covering not more than a half-year period (January 1-June 30, and July 1-December 31), listing for each individual, his name, points between which transported, dates transportation was furnished and reason it was necessary that transportation be provided. Schedules will be transmitted by memorandum, with space provided on the memorandum for approval, in accordance with subparagraph .02a of this section.

.03 In all instances, when it is found necessary to use official vehicles in transporting employees engaged in field work between domiciles and places of duty, supervisors in charge will be held responsible for assuring the most economical use of such vehicles by arranging group transportation when possible, eliminating unnecessary trips, and maintaining strict controls.

SECTION 4. EFFECT ON OTHER ORDERS.

This order supersedes Department Administrative Order 209-6 of August 6, 1964.


Assistant Secretary for Administration



23 NOV 1983

MEMORANDUM FOR: Francis D. DeGeorge
Acting Inspector General

FROM: Irving P. Margulies /s/
Deputy General Counsel

SUBJECT: Use of Vehicle by

This is in response to your memorandum requesting an opinion on the legality of having a Commerce driver pick him up in the morning at his residence once a week and drive him to the facility. In the evening a driver returns to his residence.

You also ask our opinion on the legality of the use of motor pool services, by both to drive them on weekends and evenings to and from Dulles Airport, with some of the trips originating or ending at their respective residences. Although it is not stated in your memorandum, we assume that all of the flights to or from Dulles were for official business.

There is no legal prohibition against the use of Government owned and operated vehicles in the circumstances you describe.

The applicability of 31 U.S.C. § 1344 to the use of government automobiles to transport Federal employees between home and work was treated, in considerable detail, in a June 10, 1983 memorandum from the Assistant Attorney General, Office of Legal Counsel, to the General Counsel of the Department of Housing and Urban Development (copy attached). Since permanent office is located at the Main Commerce Building, it is my conclusion, consistent with the responses to questions 3 and 4 in the OLC memorandum, that 31 U.S.C. § 1344 does not preclude transportation of between his home and Likewise, I concur with OLC's conclusion, stated in response to question 1 in the June 10 memorandum, that transportation between an employee's residence and an airport is not precluded by § 1344. Also attached, for your information, are several previous memoranda, written by this office, which discuss when government vehicles may be used to transport employees to or from their residence.

You also ask whether the weekly trips to _____ violate the provisions of Department Administrative Order 209-6, "Use of Government-Owned or Leased Motor Vehicles and Aircraft." The purpose of that DAO was to implement 31 U.S.C. § 638a(c), now recodified as 31 U.S.C. § 1344, rather than to impose any additional prohibitions on the use of motor vehicles. Therefore, it is my opinion that, so long as a particular use is consistent with the statute, it would not be prohibited by the DAO.

26 JUL 1952

MEMORANDUM TO: Sherman E. Unger
General Counsel

FROM: Irving P. Margulies IRVING P. MARGULIES
Deputy General Counsel

SUBJECT: Use of Government Vehicle to and from
Residence by Persons Other than the
Secretary

The basic statute which applies to the use of motor vehicles by officers or employees of the Department of Commerce is 31 U.S.C. § 638a(c)(2), (Tab 1). That statute requires that Government motor vehicles be used exclusively for "official purposes." Transportation between home and work, with exceptions not relevant here, is specifically excluded from the definition of "official purposes." The statute specifically permits the 12 heads of executive departments to use Government vehicles for commuting between their home and office.

This Department has consistently interpreted this statute as prohibiting any employee of the Department but the Secretary from using a government vehicle to commute between his home and office. Thus § 2.04 of DAO 209-6 (Tab 2) provides:

.04 Under the law, the Secretary is the only officer of the Department of Commerce who may use an official motor vehicle between domicile and place of employment.

The legislative history of § 638a clearly supports this interpretation. 1/

On several occasions, the Comptroller General has recognized that there are situations where the agency head may determine that an employee's use of a government vehicle between home and office can be considered the use of that vehicle for "official purposes".

1/ For a summary of the legislative history of § 638a see the memorandum attached at Tab 3.

For example, he has ruled that when there is serious concern about the safety of employees in foreign countries due to a clear and present danger of terrorist activities, furnishing transportation between home and place of employment is in the interest of the Government and may be authorized by the agency head as a matter of administrative discretion. 2/ However, the Comptroller General has made it clear that he expects agency heads to exercise restraint and to make such determinations only when absolutely necessary.

Several Departments have allowed their Deputy Secretary and other officials to use Government vehicles to transport them between their domicile and place of employment. 3/ The Department of Defense has justified this practice on national security grounds, arguing that the officials in question must be in constant communication with headquarters in the event of a national emergency. The Department of Transportation has justified a car for its Deputy Secretary on the same rationale because of a recent delegation to the Deputy of direct oversight responsibility for the Coast Guard, which becomes part of the Department of Defense in the event of war.

Senator Proxmire, who surveys the use of Government vehicles annually, was successful in specifically eliminating HUD's discretion by obtaining passage of a rider to the HUD appropriation act which specifically prohibits the expenditure of funds appropriated in that Act for the commuting expenses of anyone but the Secretary. 4/ In addition you may recall the situation earlier this year where Robert Nimmo, head of the Veterans Administration (not an executive department), was severely criticized for using a Government car to commute to work and eventually agreed to reimburse the Government for those expenses.

Senator Proxmire's request for information on the costs and use of government vehicles and our proposed response once again squarely raise this issue for this Department. Under § 638a and DAO 209-6 the Deputy Secretary (or any other Department official) may use a government vehicle to commute to and from work only on days when he actually serves as acting Secretary.

2/ 54 Comp. Gen. 855 (1975). Tab 4.
3/ For a list see Tab 5, p. S. 7796
4/ For a detailed discussion of the events which ultimately lead to the enactment of this appropriation restriction see Tab 6.

However, our proposed response indicates that, in fact, the Deputy Secretary has a car assigned for his personal use. This is apparently justified on the basis that he frequently serves as acting Secretary. In my opinion this justification is unsupportable and we must either 1) revise our regulations to authorize the Deputy Secretary's use of a car so that the proposed response to Senator Proxmire is supportable; or 2) make it clear to senior Departmental officials that they may use a vehicle to commute to and from work only on days when they are serving as acting Secretary and revise our response to Senator Proxmire accordingly.

It is possible to amend DAO 209-6 to authorize the Deputy Secretary to use a car from home to office because the national security functions of this Department (in particular strategic material), require that the Deputy Secretary be in contact with the Department at all times. However, I strongly recommend against such action. The justification is an attenuated version of the Defense Department's policies and opens the Department to criticism. The possibility of adverse public reaction and the defensive statements which may be required to rationalize our action seem to make amendment of our Departmental Order provisions unwise at this time.