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Sub-Committee Staff Questions

Q: What action has the administration taken to inform its appointees of the laws governing the use of government vehicles and their personal liability for illegal use of such vehicles?

A: The Comptroller General's June 1983 opinion received widespread attention throughout the government. Additionally, given the delay in enforcement, no specific advice was given by the Administration concerning the use of government vehicles. Agencies have been relying on advice provided by their General Counsels concerning questions about the use of government vehicles.

OMB would only have provided government-wide advice ministerially, based on an opinion from the Department of Justice. Pending resolution of this matter through legislation, OMB saw no reason to seek an opinion on the matter from the Department of Justice.

Q: What criteria did the OMB use to determine which government employees should be included in this proposed amendment and which ones should be omitted?

A: [This matter is dealt with explicitly in the draft testimony.]

Basically, OMB considered several options but ultimately chose Executive Level II as a cut-off because:

- It limits transportation to a small number of persons who are designated by the Congress as being at very senior levels of government.

- We wanted a uniform, government-wide criterion. If we began selecting agencies for inclusion on a case-by-case basis, the pressure from those not selected will continue; and Congress and the executive will be compelled to address this issue again. Finally, case-by-case resolution would not produce uniform results.

Q: What is the significance in listing some employees in section (a) and other employees in section (b)?

A: There is no intended significance in listing some employees in section (a) and others in section (b). The employees referenced in section (b) are listed only with reference to portal-to-portal transportation and no other activity.

Q: What is the rationale for allowing the President or an agency head to authorize government transportation to an employee for 90 days, renewable quarterly?

A: Ninety days was selected as a reasonable time for which the President or an agency head could authorize government transportation to an employee who needed it. While the various factors affecting safety and security are, for the most part, difficult to ascertain in advance, this figure, rather than an open-ended period, was chosen as a reasonable limitation on the authorization to receive such transportation. Moreover, the requirement for quarterly renewal guarantees periodic review of the need for the transportation.

Q: What definition of agency applies in this provision?

A: The applicable definition of "agency" is the same one which the Congress intended when it originally passed 31 U.S.C. 1344(a)(2). Thus, use of the term "agency" in the draft legislation is intended to fit the same context in which "agency" was used in the original legislation.

Q: What are examples of situations that would be covered by including "other operational considerations" in this provision?

A: Examples of "other operational considerations" could include various medical, safety, and family circumstances which are difficult to predict in advance. It is simply impossible to imagine all the situations which could arise requiring flexibility in the use of government transportation. For example, the Comptroller General has already authorized the use of government transportation where an individual has certain medical conditions which would preclude driving.

I think it is important to stress that the Administration's bill is intended to accomplish two goals: First, it attempts to limit the overall number of government officials using such transportation; and second, it seeks to do so in a fashion which preserves flexibility for unanticipated circumstances. Taken together, these features, in my judgment, ensure that the proposed legislation is both omitted in scope and get responsive to genuine needs as they arise.

Q: Why is the exception provided in current law for "medical officers on out-patient medical service" needed?

A: I do not know the basis for this exception or why it is needed.

Q: What guidance has OMB given to the agencies concerning implementation of the current law governing the use of government vehicles for an official purpose?

A: The Comptroller General's June 1983 opinion received widespread attention throughout the government. Additionally, given the delay in enforcement, no specific advice was given by the Administration concerning the use of government vehicles. Agencies have been relying on advice provided by their General Counsels concerning questions about the use of government vehicles.

OMB would only have provided government-wide advice ministerially, based on an opinion from the Department of Justice. Pending resolution of this matter through legislation, OMB saw no reason to seek an opinion on the matter from the Department of Justice.

Q: For the record, which employees of the government currently are deemed to have cabinet level status? What restrictions govern the authority to make such designations?

A: The following individuals are currently deemed to have cabinet-level status: Donald Regan, Chief of Staff; William Casey, Director of Central Intelligence; and Vernon Walters, U.S. Ambassador to the United Nations. These designations are made by the President pursuant to _____.

[Check with John Roberts.]

VIRL ?
OMB

Q: What problems might arise if motor pool dispatchers and drivers are required to refuse to carry out illegal transportation requests of other government employees?

A: Requiring dispatchers and drivers to refuse to carry out "illegal" transportation requests would, in my judgment, create immense problems for everyone concerned. Among other things, doing so simply would not be fair to the individuals having to make these decisions. Consider, for example the difficulty posed by the situation where a driver felt required to inform a Cabinet secretary that he could not drive to a certain destination or pick up someone because he had determined it was illegal. Such a requirement would create endless opportunities for needless friction.

Q: Does the Secret Service have separate legal authority to provide home-to-work transportation to any individual to whom it provides protection? If so, please provide the cite to the law.

A: [Check with John Roberts.]

Q: Under what authority is William McFarlane now receiving government-furnished commuting services?

A: [Check with John Roberts.]

Q: How many government employees located outside the continental United States currently receive government-furnished home-to-work transportation? For the record, please provide a listing of the categories of employees provided such service, together with the number of employees in each category.

A: I have no way of knowing how many government employees located outside the continental United States currently receive government-furnished portal-to-portal transportation. I would suggest that you ask the Department of State to furnish this information.

Q: What benefits does the government derive from providing commuting services to officers and employees of the government?

A: The principal benefit that the government derives by providing portal-to-portal transportation is additional work from those people being driven. If you stop to consider the fact that the people receiving such transportation are generally at level of government service where the demands are, in many instances, quite extraordinary, providing such transportation actually enables the government to receive additional efforts from these people and, at the same time, may mean that they can spend more time with their families. Additionally, this service may be particularly important for those officials living far from the metropolitan area or in areas not readily serviced by taxis or other means of public transportation. Furthermore, for those government officials having sensitive national security responsibilities, providing transportation also carries with it increased accessibility to the White House, the Situation Room, and the nation's defense installations primarily through sophisticated communications systems including, where necessary, scrambler phones. This crucial benefit would simply be unavailable were these individuals required to spend substantial time each day commuting in their own vehicles or in public transportation.

Q: What other functions do chauffeurs assigned to vehicles that are dedicated to a single officer or employee of the government normally perform in addition to driving?

A: To the best of my knowledge, there are very few instances of chauffeurs being assigned to one individual. In the case of OMB, for example, there are two drivers for the entire institution. These drivers also perform additional services such as answering telephones and delivering messages both with the OMB car and, when they are not driving, throughout the institution.

Q: How many additional automobiles would need to be purchased or leased in order to provide government-furnished transportation between home and work to all the officers and employees covered in this proposal? How many of these vehicles would be armored?

A: While there would probably have to be some additional automobiles purchased or leased, I do not think that the number would be very large. As to how many of these vehicles would be armored and would receive other security enhancements, I do not think it would be appropriate to give these details in an open hearing.

Q: How many additional chauffeurs would need to be hired if this proposal becomes law without change?

A: To the best of my knowledge, no additional ^{drivers} ~~chauffeurs~~ need to be hired.

Q: FOLLOW UP: Are you counting one chauffeur per vehicle so that overtime would be required for each chauffeur? Or, do you envision hiring 2 or 3 chauffeurs for each vehicle, each covering an 8-hour shift in the day?

A: I would envision there being one chauffeur per vehicle and, upon occasion, some overtime expense.

Q: How much will this proposal cost the government annually if enacted without change? For the record, please provide a breakdown of these costs?

A: I do not know precisely how much the proposal would cost the government annually if enacted without change. In my testimony, I estimated that the cost would range between _____ and _____ per official for some 33 extra officials beyond those already entitled to portal-to-portal transportation as construed by the Comptroller General.

Q: How will this proposal enhance the current motor pool operations in the agencies?

A: I do not believe this proposal will alter substantially the current motor pool operations in various agencies. There may be instances in which there is more overtime called for, particularly among smaller agencies. However, with those agencies having substantial numbers of carpools, I doubt that the proposal would affect them substantially.

Q: How can OMB justify this proposal in light of this Administration's reducing and/or eliminating funds for what it feels are unnecessary programs?

A: First of all, let me point out that the officials receiving such transportation would be doing so only because it serves the interest of the government and not their own personal convenience. In drafting the proposal, we tried to be as restrictive as possible and to limit the number of officials receiving portal-to-portal transportation to a relatively small number of high-level officials and certain other designated persons. For example, department and agencies deputies would receive portal-to-portal transportation only where it is authorized in writing by the department or agency head and only for the convenience of the department or agency.

As I have already indicated, there is clearly a trade-off between the provision of this service and the ability of the government to receive more work from these officials. Additionally, I should point out that given past practice, our proposal will actually save money by restricting the total number of eligible people. By making it absolutely explicit who is to receive portal-to-portal transportation, the proposal would eliminate many of the ambiguities which, in the past, have led to substantially larger numbers of people receiving this service than would under the

Administration's proposal.

Q: Should the officials who would be provided home-to-work transportation be required to reimburse the government for its cost?

A: I would not think reimbursement, in this case, should be required. As noted, the service is provided for the benefit of the government -- not for the convenience of the official.

Q: When is the transportation of spouses of government officials at government expense justified?

A: I believe that the Comptroller General has already issued guidance with respect to when spouses of government officials may be transported at government expense. I believe that, for example, when the official is going to an official function and the spouse is attending that the spouse may be permitted to ride in the government vehicle.

Q: What criteria should be used to determine if an official's activities may be properly considered field work?

A: I do not have any opinion as to the criteria for determining what is or is not "field work".

Q: When the President or an agency head determines that home-to-work transportation should be provided on a temporary basis (Subsection (a)(3), why shouldn't this transportation terminate if the need has subsided prior to the end of 90 days?

A: I agree. If the need for this transportation terminates prior to the end of the 90-day period, then the portal-to-portal transportation should terminate immediately.

Q: For the record, please provide more succinct language for subsections (a) (3) and (b) (2) (A) and (B) so as to deter discretionary interpretation.

A: As currently proposed subsection (a) (3) contains three limitations intended to prevent discretionary interpretation. First, the determination is for 90 days, renewable on a quarterly basis. Second, the determination may be made only under "highly unusual circumstances" or other operational considerations making such transportation essential to the conduct of official business. Third, the authority to make such determinations rests with the agency head and is nondelegable.

As for subsections (b) (2) (A) and (B), use of the term "appropriate" is intended to provide the type of flexibility which, in my judgment, is necessary for the efficient implementation of the proposal. Moreover, keep in mind that, in each instance, the provision of such portal-to-portal transportation is only made when it serves the government's interests, not those of the individual.

Q: What are the justifications for providing home-to-work transportation for the deputy heads of executive departments?

A: As I have indicated in my testimony, the deputy heads of Executive departments would, under this proposal, be covered because they are functioning at a level of government service sufficiently high such that the relatively minor additional expense in providing this service is far offset by the additional benefit which the government receives from these individuals being able to devote more time to their official responsibilities.

Q: How will an official's safety and security be ensured by the use of a government car?

A: In some instances, government vehicles have additional safety and security enhancements. Furthermore, I think it follows that having a professionally trained driver will, in and of itself enhance the official's safety and security.

Furthermore, in instances where there are motor pools, a government vehicle -- which may be a different car from day to day -- may be harder to identify and associate with a particular officials. This would not be the case were the official using a private car or public transportation.

Finally, drivers who are trained in special security tactics will obviously be able to provide additional safety and security. Let me add a further point. Although I mention this with some reluctance, I nonetheless feel obliged to note that in recent years terrorist incidents have been escalating in frequency around the world. While to date there have been very few such instances of this nature domestically, we should nonetheless consider -- an prepare for -- the possibility that one day our highest level officials could face such threats. In my view, prudence dictates that we undertake such measures now and that doing so is not only cost-effective but a means of protecting the country's vital security interests.

Q: Should the provision of home-to-work transportation for government employees be considered income for taxation purposes?

A: I believe that this question is currently being considered by the Internal Revenue Service. I think it appropriate to wait until the Internal Revenue Service offers its guidance on the subject before commenting further.

Q: Under this proposal, how many of the officials authorized to use a government vehicle for home-to-work transportation would also be provided a chauffeur?

A: I do not believe that the current situation would be affected much by this proposal.

Q: For what other functions will the official's car and chauffeur be used besides home-to-work transportation?

A: Again, some degree of flexibility is necessary given the fact that unforeseen circumstances will undoubtedly arise. This question is a proper one and reflects legitimate concern that the car and chauffeur be properly used. I believe, however, that abuses are less likely to occur under the OMB proposal because:

- o only a relatively limited number of persons will receive such transportation,
- o others receiving it by designation will receive it for a limited period of time, and
- o decisions to provide such transportation are nondelegable.

DRAFT

Q. Isn't the "personal security/operational necessity" provision open-ended? Doesn't it threaten to become an exception that swallows the rule?

A Under the current conditions, I think everyone would agree that security considerations cannot be overlooked. Also, we believe it is impossible to predict in advance when there may be a temporary need for such transportation -- for example, during a period of intense activity when they need to be in constant contact with top White House and agency officials, or they may need access to a secure communications system.

We believe the bill is a reasonable way of dealing with these situations, with appropriate safeguards to assure that the privilege will not be abused.

-- First, the bill would provide that authorization of such transportation would be only by the President or the agency head, on a non-delegable basis.

-- Second, this determination would be for a period of 90 days only, and would have to be rejustified or discontinued at the end of that time.

-- Third, the substantive test we have adopted is a stringent one: that use of transportation be "essential to the conduct of official business." The personal convenience or comfort of the official is, not a reason for providing such

transportation. We think that these safeguards together will ensure that use of such transportation is not abused.

Q: What efforts were made to discuss the bill with the Comptroller General?

A: OMB has had extensive discussions with the Comptroller General over the last few months on the principles surrounding when portal-to-portal transportation is appropriate. I am told we have substantive agreement on which people should be covered. Although GAO may have some additional suggestions to make about the actual language of the bill, I understand that GAO supports our general approach, and believes that the cost of providing it under our proposal will be reasonable.

Q: What are estimates of the annual cost of providing such transportation?

A: We have not attempted to estimate the marginal cost of providing such transportation, because we believe it can be furnished out of existing agency resources.

Q. How many additional people would be entitled to transportation under the Administration bill?

In the Executive Branch, under the strictest reading of the GAO opinion, only 14 persons currently are entitled to such transportation under the general statute -- the President and the heads of the 13 cabinet agencies. Under the DOD authorization bill passed last year, an additional 10 persons received such transportation.

The Administration bill would add the Vice President on a permanent basis;

-- the Vice President;

-- it would also add 12 deputy heads of Cabinet agencies (the Deputy at DOD already receives transportation);

-- 16 people whose positions are classified at Executive Level II and who are not covered by one of the preceding categories.

-- Also, the bill specifically names the following senior officials:

The Director of the FBI

The White House Chief of Staff

The Assistant to the President for National Security
Affairs

The Commandants of the Coast Guard and the Marine
Corps

-- any other persons the President may determine are of
Cabinet rank.

In addition, certain other persons would sometimes qualify
because they are under Secret Service protection. (18 U.S.C.
3506(a)).

I believe that is a total of 33 positions we can identify in
advance.

It would not be accurate, however, to say that the number of
persons who actually receive such transportation would be
increased by 33. As the Committee knows, many senior
government officials -- for example, the Vice President --
have over the past 20 years received such transportation
under opinions of counsel. We believe the bill would
actually reduce the number of persons who receive such
transportation, although I do not have specific numbers.

Q. What are estimates of the annual cost of providing such
transportation.

A. We have not attempted to estimate the marginal cost of providing such transportation, because we believe that in most cases it can be furnished out of existing agency resources, without hiring additional employees or buying additional vehicles.

It is our understanding that GAO has attempted to develop cost estimates based on various different assumptions about the kind of cars used, estimated miles driven in each direction, driver overtime, etc. I understand that GAO has calculated that the incremental cost of providing portal-to-portal transportation to one person will range between \$1100 and \$9500 per year, depending on the assumptions. For example, a car drawn from a pool is much less costly than a dedicated car and driver. Although we have not reviewed the GAO calculations, I would note that, even at the upper limit of its cost estimate, the cost appears reasonable, especially considering while commuting.

Q. What is the position of the Comptroller General on the bill?

A. We have worked closely with the GAO over the past months, and the bill we submitted is an attempt to respond to the GAO's concerns.

Although the Comptroller General may not agree with every detail of our proposal and may have amendments to suggest, we do have substantive agreement.

Q. Why was Executive level II chosen as a cut-off point? That cut seems arbitrary. What about persons who head agencies who are classified in level III, such as the head of GSA?

A. There were several options considered, but we finally chose Level II because:

-- It limits transportation to a small number of persons who are designated as being at very senior levels.

-- Because we wanted a uniform, government-wide criterion. If we begin picking agencies for inclusion on a case-by-case basis, the pressure from those not selected will continue; and Congress and the Executive will be compelled to address this issue again. Finally, case-by-case resolution would not provide uniform results.

Q. What Defense personnel were covered by the 1984 DOD Authorization bill?

A. Deputy Secretary of Defense

The Secretaries of the Army, Navy and Air Force

The Chairman of the Joint Chiefs of Staff

The Chiefs of Staff of the Army and Air Force, the Chief of Naval Operations, and the Commandant of the Marine Corps

The Under Secretaries of Defense (2)

Q. Who are the Executive Level II officials covered by the Executive Level II provisions of the bill and not otherwise entitled to such transportation?

A. Administrator, Agency for International Development.

Administrator of the National Aeronautics and Space Administration.

Administrator of Veteran's Affairs.

Chairman, Nuclear Regulatory Commission.

Chairman, Council of Economic Advisers

Chairman, Board of Governors of the Federal Reserve System

Director of the Office of Management and Budget.

Director of the Office of Science and Technology

Director of the United States Arms Control and Disarmament Agency.

Director of the United States Information Agency.

Director of Central Intelligence.

Administrator, Federal Aviation Administration.

Director of the National Science Foundation.

Director of the Office of Personnel Management.

Administrator, Federal Highway Administration

Administrator of the Environmental Protection Agency.

Q. How does OMB justify continued provision of such transportation to agency officials not listed in the statute in the face of the GAO opinion?

A. There has been a good-faith disagreement between GAO and the Executive Branch about the proper interpretation of the statute.

At least over the last 20 years (and perhaps before that), agency general counsels have concluded that certain agency officials were entitled to receive portal-to-portal transportation based on the good of the service, and not on the convenience of the person involved. These opinions were based on readings of Justice Department and GAO opinions which stated that Congress did not intend in enacting U.S.C. 1344 to make the Cabinet officers and other expressly designated parties the sole potential recipients of portal-to-portal transportation. Different agency counsels interpreted these provisions differently. When Congress disagreed with the use being made of that transportation, it controlled the agencies in various ways -- including, for example, passage of a rider to the HUD-Independent Agencies appropriation that prohibited such transportation for almost all officials funded by that bill.

GAO recognized this confusion in its 1983 opinion. In light of that ambiguity and the contribution its prior opinions had

made to the situation, GAO urged Congress to adopt legislation to cure the problem once and for all.

This is an area where I think it is important that we end the confusion and unnecessary transaction costs in trying to determine who is eligible. Our proposal provides a fair method of ending this dispute once and for all, on a uniform government-wide basis.

I also want to point out that, although on its face the bill may appear to increase the number of persons receiving such transportation, in actual practice it may well serve to decrease the number below that which has obtained in recent years. Congress has on several occasions collected data showing how many agency officials are being provided such transportation on some basis. It is our belief that, by ending the ambiguity in this area, the bill actually will serve to sharply limit provision of such transportation in future years.

Q. What OMB officials have used this transportation and upon what ground can they justify such use in light of the GAO opinion of 1983 and the recent GAO opinion to Senator Proxmire stating that they are not entitled to such transportation?

A. As OMB has stated in recent letters to GAO and members of Congress, two officials of OMB during this administration have used such transportation. Director Stockman, prior to his resignation, and Deputy Director Wright.

As noted in our prior letters, transportation for Mr. Stockman was authorized on the basis of repeated, and specific threats to the personal security of the Director. Use of such transportation by Mr. Wright was authorized at the height of the budget preparation process, when he needed to be in contact with White House and OMB officials. As OMB has previously noted, Mr. Wright stopped using this transportation immediately upon the Chairman's request that GAO begin enforcing its 1983 opinion.

Q. What use of this transportation has there been by White House officials?

A. I am unaware of what use of transportation has been authorized by the White House, or what those grounds for those decisions were, although I believe it is reasonable to

speculate that the personal security ground undoubtedly is an important consideration for those officials.

(We may be able to give a more complete response. Chris Hicks and John Roberts are now considering whether the Hicks letter to the Hill spelling out White House use should be released prior to the hearing, or whether they should be prepared to send up a letter later, to eliminate one possible basis on which the committee might refuse to proceed.)

THE WHITE HOUSE

WASHINGTON

November 26, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Portal-to-Portal

You have asked for a status report on the portal-to-portal bill. The Administration-supported Brooks bill, H.R. 3614 (Tab A), has been ordered reported without amendment, but no report has yet been filed. OMB advises that if the bill goes to the floor it will probably be considered under the suspension calendar. Senator Proxmire has introduced a rival bill, S. 1842 (Tab B), that would authorize portal-to-portal for those currently covered by 31 U.S.C. § 1344 and, in addition, (1) the Vice President, (2) the Chief Justice, and (3) up to 13 executive branch officials designated by the President.

THE WHITE HOUSE

WASHINGTON

October 30, 1985

*Follow up
get a legislative
update for me -
11/17*

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Portal-to-Portal

and is consistent with our discussion.

You have asked for my comments on Chris Hicks's memorandum to Mr. ~~Rosen~~, analyzing the portal-to-portal bill that Chairman Brooks is prepared to introduce. I have no quarrel with Hicks's analysis, nor with the recommendation of Hicks and Horowitz that we support the bill. I have attached a copy of the bill itself for your information (the marginalia are not mine).

The main problem with the Brooks bill from our point of view is not the scope of coverage -- which will work out to about the same as our bill -- but the manner in which the service is authorized. The Brooks bill has precisely what we tried to avoid -- discretion in the President to choose who does and does not receive portal-to-portal. The President may choose six officials in the EOP and ten others in executive agencies, with no salary level limitation.

Aside from these chosen sixteen, the Brooks bill authorizes portal-to-portal for the Cabinet Secretaries and the United States Trade Representative, one principal deputy for each of these if authorized by the Secretary, ambassadors abroad and the ambassador to the United Nations, the Deputy Secretary of Defense and Under Secretaries of Defense, as well as the Secretaries of the Air Force, Army, and Navy, and the Joint Chiefs and the Commandant of the Coast Guard. The Director of the CIA and FBI, and the Chairman of the Fed, are also covered. There is also authority for temporary emergency portal-to-portal, and for those receiving Secret Service protection.

I think we should support the bill, faute de mieux. If we do not support this bill we will end up with no bill, and I think the current confusion is intolerable. The exercise of the President's discretion will doubtless become a major controversy, but at this point I think that is unavoidable.

Latest development: Congressman Bob Walker (R-PA) has told Brooks he will offer amendments to the bill restricting Congressional portal-to-portal. Walker apparently views this as an opportunity to embarrass the Democratic leadership on the Hill. Unless we get Walker to back off, Brooks will not proceed with the bill.