



United States Department of Justice

Assistant Attorney General

3/18/86

Charles J. Cooper
Assistant Attorney General
Office of Legal Counsel

The Attorney General has asked me to advise him about what he believes may be a discrepancy between this Department's policies concerning use of a government vehicle by his spouse, and the rules set forth by the General Accounting Office (GAO). In the attached report (page 50, ftn. a), GAO has summarized its present position concerning the use of vehicles by spouses. I am aware that your office has addressed this topic in the past, but I do not have your recent opinion(s) on this subject. Please send me a copy of any opinions you have that may be the basis of the Department policy referred to by the Attorney General. Thank you.

W. Lawrence Wallace

W. Lawrence Wallace
Assistant Attorney General
for Administration

He is by-passed

Memorandum



Subject

Department Policy on Use of Government
Vehicles by Attorney General's Spouse

Date

APR 17 1986

To

From

W. Lawrence Wallace
Assistant Attorney General
for Administration

Samuel A. Alito, Jr. *Saa*
Deputy Assistant Attorney
General
Office of Legal Counsel

Pursuant to your memorandum of March 18, 1986, I am forwarding a copy of an opinion of this Office dated January 23, 1984 ("Use of Department of Justice Vehicles by Attorney General's Spouse").

We have not reexamined the specific conclusions of this opinion, which was prepared well before the Comptroller General's report on the same subject, and cannot state whether we might reconsider any of those conclusions in light of the Comptroller General's apparent position.

If you or the Attorney General should have any questions regarding this matter, we would be happy to review it and advise you accordingly.

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

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(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

BY THE U.S. GENERAL ACCOUNTING OFFICE
Report To The Chairman, Subcommittee On
Legislation And National Security,
Committee On Government Operations
House of Representatives

Use Of Government Motor Vehicles For The
Transportation Of Government Officials And
The Relatives Of Government Officials

GAO asked federal agencies for information on the use of government motor vehicles, during the period January to June 1985, to transport (1) officials between their residences and their places of employment, and (2) relatives of officials between various locations.

Of the 128 officials GAO was told were provided transportation between their residences and places of employment, GAO believes that 79 received unauthorized transportation. Of the 17 relatives of officials GAO was told were provided transportation between various locations, GAO believes that 7 received unauthorized transportation. Five received transportation that sometimes was unauthorized.



GAO/GGD-85-76
SEPTEMBER 16, 1985

AGENCIES' AND GAO'S VIEWS ON THE AUTHORITIES
FOR THE 128 OFFICIALS AND THEIR RELATIVES PROVIDED
TRANSPORTATION DURING THE PERIOD JANUARY 1 TO JUNE 30, 1985

<u>Official/relative receiving transportation</u>	<u>Frequency</u>	<u>Authority/circumstances/remarks as taken directly from the agency response to GAO's questionnaire</u>	<u>GAO comments to agency's response</u>
COMMERCE, DEPARTMENT OF			
Secretary	Daily	"31 U.S.C. 1344"	Authorized - cabinet department head.
Wife of Secretary	Very infrequently	"When the wife of the Secretary must meet the Secretary at an official function because it is not logistically possible for them to ride together or when the Secretary's wife is representing the Secretary, in his absence, at an official function." (The wife of the Secretary has on occasion been provided with transportation to attend official functions with the Secretary not in attendance.	Partially authorized. Authorized when meeting cabinet member at official function. Not authorized when attending official function alone. (note a) Spouses are not themselves considered representatives of the United States.
DEFENSE, DEPARTMENT OF			
Secretary	Daily	"31 U.S.C. 1344(b)(2)"	Authorized - cabinet department head
Wife of Secretary	As required for official activities	"As required for official representational activities or as dictated by security considerations." (The wife of the Secretary has on occasion been provided with transportation to attend official functions with the Secretary not in attendance.	Partially authorized. Authorized when meeting cabinet member at official function. Not authorized when attending function alone. (note a). Spouses are not themselves considered representatives of the United States. Transportation for security reasons not authorized without specific evidence of a (Continued on next page)

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AGENCIES' AND GAO'S VIEWS ON THE AUTHORITIES
FOR THE 128 OFFICIALS AND THEIR RELATIVES PROVIDED
TRANSPORTATION DURING THE PERIOD JANUARY 1 TO JUNE 30, 1985

<u>Official/relative receiving transportation</u>	<u>Frequency</u>	<u>Authority/circumstances/remarks as taken directly from the agency response to GAO's questionnaire</u>	<u>GAO comments to agency's response</u>
DEFENSE, DEPARTMENT OF (CONTINUED)			
Deputy Secretary	Daily	"31 U.S.C. 1344(b)(2) and 10 U.S.C. 2637"	"clear and present danger" and a showing that the use of a government vehicle would increase protection of the official passenger. (note b) Authorized - 10 U.S.C. § 2637.
Wife of Deputy Secretary	As required for official activities	"As required for official representational activities or as dictated by security considerations." (The wife of the Deputy Secretary has on occasion been provided with transportation to attend official functions with the Deputy Secretary not in attendance.)	Partially authorized. Authorized when meeting deputy secretary at official function. Not authorized when attending function alone. (note a) Spouses are not themselves considered representatives of the United States. Transportation for security reasons not authorized without specific evidence of a "clear and present danger" and showing that the use of a government vehicle would increase protection of the official passenger. (notes a, b)
Under Secretary of Defense for Policy	Daily	"31 U.S.C. 1344(b)(2) and 10 U.S.C. 2637"	Authorized - 10 U.S.C. 2637

AGENCIES' AND GAO'S VIEWS ON THE AUTHORITIES
FOR THE 128 OFFICIALS AND THEIR RELATIVES PROVIDED
TRANSPORTATION DURING THE PERIOD JANUARY 1 TO JUNE 30, 1985

Official/relative receiving transportation	Frequency	Authority/circumstances/remarks as taken directly from the agency response to GAO's questionnaire	GAO comments to agency's response
DEFENSE, DEPARTMENT OF (CONTINUED)			
Wife of Under Secretary of Defense for Policy	Official functions	"When attending official social functions with the Under Secretary, attendant to his official responsibilities. No independent use of transpor- tation." "31 U.S.C. 1344(b) (2) and 10 U.S.C. 2637"	Authorized. (note a) Spouses of official entitled to rou- tine transportation may be transported to meet that of- ficial at an official function.
General Counsel	Occasionally	"Occasionally receives transpor- tation in the evening from home to official functions and on occasion from home to the airport"	Not authorized. Transpor- tation from home to official functions not authorized (note f). Transportation from home-to-airport may be authorized if provided in accordance with Federal Travel Regulations. (note d)
Chairman, Joint Chiefs of Staff	Daily	"10 U.S.C. 2637 and DOD DIR. 4500.36 dated April 10, 1985"	Authorized - 10 U.S.C. 2637.
Chief of Staff, U.S. Air Force	Daily	"Title 10, U.S.C. Section 2637 (1985) (Section 614, P.L. 98-525 DOD Authorization Act, 1985)"	Authorized - 10 U.S.C. 2637.
Chief of Staff, U.S. Army	Daily	"DOD Directive 4500.36"	Authorized - 10 U.S.C. § 2637.
Vice Chief of Staff, U.S. Army	When acting chief	"DOD Directive 4500.36"	Not authorized. Acting Chief of Staff is not authorized home-to-work transportation. (note e)

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<u>Official/relative receiving transportation</u>	<u>Frequency</u>	<u>Authority/circumstances/remarks as taken directly from the agency response to GAO's questionnaire</u>	<u>GAO comments to agency's response</u>
HEALTH AND HUMAN SERVICES, DEPARTMENT OF			
Secretary	Daily	"Department's Material Management Manual and 31 U.S.Code, Section 1344"	Authorized - Cabinet Department head
HOUSING AND URBAN DEVELOPMENT DEPARTMENT OF			
Secretary	Daily	"Title 31, Section 638a(c)(2) U.S.Code and the Comptroller General's Opinion B-210555"	Authorized - Cabinet Department head
INFORMATION AGENCY, U.S.			
Director	Daily	"The Director has almost daily 8:45 am meetings at the Department of State. Almost nightly he attends social functions related to his office."	Not authorized. Position not within statutory exceptions. Convenience to official passenger not sufficient justification to overcome statutory prohibition. (note f)
Wife of the Director	Occasionally	"Occasionally the car will pick up the wife of the Director then pick up the Director enroute to a function (approximately five to ten times per year). This enables the Director to continue working for that additional time."	Not authorized. Transportation of spouse of Director permitted only when the Director himself is authorized transportation. (note a)

FOOTNOTES TO APPENDIX II

- a/Spouses of government employees may be transported in government vehicles only when: (1) the spouse is accompanying an official whose transportation is itself authorized to or from his home and an official function and his or her transportation does not result in additional expense to the government, (2) the spouse of an official entitled to routine home-to-work transportation is being transported to or from an official or quasi-official function and the spouse's presence at the function is in the government's interest and circumstances make it awkward or impossible for the official to accompany the spouse enroute, or (3) government transportation is necessary for security reasons in accordance with the criteria of footnote a. See B-210555.9, June 28, 1984. Spouses are not themselves considered representatives of the United States, except overseas, and cannot "represent" the Government official at functions he or she does not attend.
- b/The provision of home-to-work transportation to government employees is permissible for security reasons when: (1) there is a clear and present danger of violent criminal activity directed at the employee in question, (2) there is a showing that the provision of transportation in a Government car would provide protection not otherwise available, and (3) the decision to provide home-to-work transportation is made with circumspection and is not based on speculative or remote fears of criminal activity. See 54 Comptroller General 855 (1975); B-210555.3, February 7, 1984.
- c/Home-to-work transportation pursuant to the "field work" exception of 31 U.S.C. § 1344(a) is permissible when the employee's work includes a large proportion of time "on the road" away from an office or other headquarters, travelling from place to place; e.g., investigators, collectors, etc. See B-212512, March 16, 1984.
- d/The transportation of employees in travel status is governed by the Federal Travel Regulations and is not restricted by 31 U.S.C. § 1344. See B-210555.3, February 7, 1984; B-210555.5, December 8, 1983.
- e/Persons "acting" in the position of an official entitled to routine home-to-work transportation are not themselves entitled to home-to-work transportation for that reason. The privilege of home-to-work transportation is applicable only to persons officially occupying the positions excepted in 31 U.S.C. § 1344(b).

f/The fact that government home-to-work transportation may result in increased efficiency or convenience is not sufficient to overcome the plain statutory prohibition of 31 U.S.C. § 1344. In 62 Comptroller General 440, 447 we held that, "unless certain narrow exceptions apply, agencies may not properly exercise administrative discretion to provide home-to-work transportation for their officers and employees." See also B-210555.3, February 7, 1984.

(210555)