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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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October 2, 1985

RELEASED

The Honorable Fred F. Fielding
Counsel to the President

Dear Mr. Fielding:

We have received your letter of September 18, 1985, expressing distress at some of the statements made in my letter of August 19, 1985 to Senator William Proxmire. In particular, you are troubled by the conclusion that concerning home-to-work transportation in Government vehicles "the officers and employees of the White House staff who might be involved should immediately cease such use of Government vehicles unless adequate justification is provided."

Our August 19 letter was in response to a direct question about the extent of White House staff use of Government-provided home-to-work transportation and the justification for such use, if any. As you may be aware, my staff had sought assiduously to obtain information from the Office of the President about the extent of and justification for this use. At the same time, we were also surveying every other agency or instrumentality in the continental United States in connection with a more comprehensive report on this subject which we were requested to make to Congressman Jack Brooks, Chairman of the House Government Operations Committee. The White House was the only Government body which never replied. That is why we framed our statement to Senator William Proxmire in hypothetical terms, as indicated by the words underlined above.

Your letter of September 18 now provides some of the information we were seeking. We would advise the following about the continued use of Government cars for home-to-work transportation for the Chief of Staff and the National Security Adviser.

If, as you suggest, the Secret Service has determined that there is a present threat to the physical security of the Chief of Staff, and that the provision of Government transportation is essential to afford him adequate protection, I would consider those circumstances as meeting the criteria expressed in many of our decisions for granting an exception to the home-to-work transportation prohibition for security reasons.

The justification for the continued use of a Government car and chauffeur to transport the National Security Adviser is not as clear. You offer two possible grounds. You say that in an opinion of the Department of Justice applicable to the National Security Adviser's predecessor in the previous administration, it was stated that "the position of the National Security Adviser makes him an important potential target for terrorists or disturbed persons." (Emphasis added.)

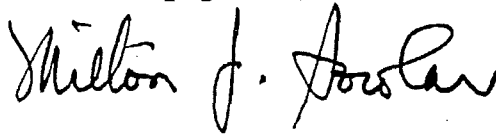
The elements of a valid security justification for an exception to the home-to-work transportation prohibition were restated quite explicitly on page 3 of our letter to Senator Proxmire; that is, the existence of a "clear and present danger" to the employee in question, involving an immediate, not remote or speculative threat to his physical safety, and the need for a Government car to provide protection not otherwise available.

The second justification offered for the National Security Adviser's home-to-work transportation is also based on the same legal opinion from the Department of Justice in the previous administration. You state: "That opinion noted the need for the National Security Adviser to be able to communicate with the President at all times." The GAO has also, on rare occasions, recognized extraordinary circumstances when the provision of Government transportation was essential to accomplish a Government purpose that could not be accomplished in any other way. (Examples include a mass transportation strike and widespread blizzard conditions that prevented essential employees from reporting to work by any other means.) We do not question the need of the National Security Adviser to be in constant touch with the President. If the judgment is reached that this communication capability can be maintained only by providing the National Security Adviser with home-to-work transportation in a Government vehicle, we would not be inclined to challenge that conclusion.

As you point out, the GAO is well aware that the present law is extremely restrictive and we have regularly advocated a legislative amendment which would relax the existing restrictions or expand the list of exemptions to them. We did indeed participate in the drafting of the proposed Administration bill and we have testified in general support of the legislation. Should the Administration bill become law, both the Chief of Staff and the National Security Adviser would be entitled permanently to have home-to-work transportation without the need for further justification.

Until the bill is enacted, however, both officials should justify continued use. The Chief of Staff should periodically reassess the currency of the security threats that the Secret Service now finds necessitate home-to-work transportation in Government cars. The National Security Adviser should establish adequately either an immediate security need or that the Government's essential communication needs cannot be provided in any other way. We cannot agree to a further moratorium on compliance with existing law in view of the length of time that has elapsed since June of 1983, when Chairman Brooks requested the Office of Management and Budget to submit the Administration's proposals for an amended law.

Sincerely yours,

A handwritten signature in cursive script, reading "Milton J. Fowler".

for Comptroller General
of the United States