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U.S. Department of Justice

Office of Legal Counsel

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Office of the
Assistant Attorney General

Washington, D.C. 20530

June 1, 1990

MEMORANDUM FOR CUYLER WALKER
Assistant to the Attorney General

Re: Lease of a Defense Department Airplane
Under 31 U.S.C. § 1535

You have asked us to consider whether the Department of Justice may lease an airplane from the Department of Defense under 31 U.S.C. § 1535, in order to provide the Attorney General with secure transportation and secure communication facilities during his upcoming European trip.

Section 1535 provides in part:

(a) The head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if --

(1) amounts are available;

(2) the head of the ordering agency or unit decides the order is in the best interest of the United States Government;

(3) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services; and

(4) the head of the agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

You have informed us that amounts are available for this lease; that the Assistant Attorney General for Administration has decided the lease is in the best interest of the United States Government; and that the Department of Defense is able to fulfill the lease. Accordingly, if the Attorney General decides that the services to be provided by lease "cannot be provided . . . as conveniently or cheaply by a commercial enterprise," the statutory requirements will be met.

With respect to that decision, we note that non-commercial air travel for the Attorney General serves essential government interests, including minimizing security risks to the Attorney General, and ensuring that instantaneous, secure communications can be maintained at all times. See, e.g., Memorandum for Dick Thornburgh, Attorney General, from William P. Barr, Assistant Attorney General, Office of Legal Counsel, June 1, 1989, Re: Use of Government Aircraft by the Attorney General, at 1-2. We do not believe that either of those interests may be served "as conveniently or cheaply by a commercial enterprise" in this instance. As recited in the OLC opinion, the FBI has informed the Department of its positions that use of commercial airlines poses significant security risks to the Attorney General, and that commercial airlines cannot provide the requisite communication capabilities.

Accordingly, we believe it would be well within the Attorney General's discretion to make the determination required under Section 1535(a)(4). If he does so, it is clear that the proposed lease will satisfy 31 U.S.C. § 1535.

Please let us know if we can be of further assistance.

J. Michael Luttig

J. Michael Luttig
Acting Assistant Attorney General
Office of Legal Counsel