Text as published on gao.gov, https://www.gao.gov/products/b-149372, archived 2025-02-11. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-149372, Jan 28, 1975, 54 Comp Gen 624

Number: B-149372

Date: 1975-01-28

B-149372, JAN 28, 1975, 54 COMP GEN 624

TREASURY DEPARTMENT - SECRET SERVICE AGENTS - PROTECTION FOR SECRETARY OF TREASURY - REIMBURSABLE BASIS WHERE IT IS ADMINISTRATIVELY DETERMINED THAT THE RISK TO A GOVERNMENT OFFICIAL WOULD IMPAIR HIS ABILITY TO CARRY OUT HIS DUTIES AND HENCE AFFECT ADVERSELY THE EFFICIENT FUNCTIONING OF HIS AGENCY, THEN AGENCY FUNDS IF NOT OTHERWISE RESTRICTED ARE AVAILABLE TO PROTECT HIM. HOWEVER, WITHOUT SPECIFIC LEGISLATIVE AUTHORITY IN 18 U.S.C. 3056(A) (1970) OR ELSEWHERE, FUNDS APPROPRIATED TO THE SECRET SERVICE ARE NOT AVAILABLE FOR SUCH PROTECTION. SECRET SERVICE PROTECTION MAY BE PROVIDED TO THE SECRETARY OF THE TREASURY OR OTHERS FOR WHOM IT IS NOT SPECIFICALLY AUTHORIZED ONLY ON A REIMBURSABLE BASIS PURSUANT TO 31 U.S.C. 686(A) (1970).

IN THE MATTER OF SECRET SERVICE PROTECTION FOR THE SECRETARY OF THE TREASURY, JANUARY 28, 1975:

WE HAVE CONSIDERED THE QUESTION OF WHETHER THE PROTECTIVE SERVICES BEING PROVIDED BY THE SECRET SERVICE FOR THE SECRETARY OF THE TREASURY AT HIS DIRECTION ARE AUTHORIZED BY LAW. WE HAVE CONCLUDED THAT THEY ARE AUTHORIZED BUT THAT FUNDS APPROPRIATED TO THE SECRET SERVICE ARE NOT AVAILABLE FOR THE PURPOSE OF PROVIDING SUCH PROTECTION.

WE HAVE CAREFULLY CONSIDERED THE APPLICABLE LEGISLATION AND ITS HISTORY, AND THE CONTENTIONS OF THE GENERAL COUNSEL OF THE TREASURY DEPARTMENT CONCERNING THIS MATTER, AS SET FORTH IN HIS MEMORANDUM TO THE SECRETARY OF MARCH 19, 1974. THE STATUTE AUTHORIZING SECRET SERVICE PROTECTION IS 18 U.S.C. SEC. 3056(A) (1970). IT PROVIDES IN THIS RESPECT AS FOLLOWS:

SUBJECT TO THE DIRECTION OF THE SECRETARY OF THE TREASURY, THE UNITED STATES SECRET SERVICE, TREASURY DEPARTMENT, IS AUTHORIZED TO PROTECT THE PERSON OF THE PRESIDENT OF THE UNITED STATES, THE MEMBERS OF HIS IMMEDIATE FAMILY, THE PRESIDENT-ELECT, THE VICE PRESIDENT OR OTHER OFFICER NEXT IN THE ORDER OF SUCCESSION TO THE OFFICE OF PRESIDENT, AND THE VICE PRESIDENT -ELECT; PROTECT THE PERSON OF A FORMER PRESIDENT AND HIS WIFE DURING HIS LIFETIME, THE PERSON OF THE WIDOW OF A FORMER PRESIDENT UNTIL HER DEATH OR REMARRIAGE, AND MINOR CHILDREN OF A FORMER PRESIDENT UNTIL THEY REACH SIXTEEN YEARS OF AGE, UNLESS SUCH PROTECTION IS DECLINED; PROTECT THE PERSON OF A VISITING HEAD OF A FOREIGN STATE OR FOREIGN GOVERNMENT AND, AT THE DIRECTION OF THE PRESIDENT, OTHER DISTINGUISHED FOREIGN VISITORS TO THE UNITED STATES AND OFFICIAL REPRESENTATIVES OF THE UNITED STATES PERFORMING SPECIAL MISSIONS ABROAD; *** AND PERFORM SUCH OTHER FUNCTIONS AND DUTIES AS ARE AUTHORIZED BY LAW ***.

SEE ALSO PUBLIC LAW 90-331, SET OUT AS A NOTE TO 18 U.S.C. SEC. 3056, PROVIDING

FOR PROTECTION OF "MAJOR PRESIDENTIAL OR VICE PRESIDENTIAL CANDIDATES WHO SHOULD RECEIVE SUCH PROTECTION."

AS THE OPINION OF THE GENERAL COUNSEL IN EFFECT ACKNOWLEDGES, THE SECRETARY OF THE TREASURY IS NOT AMONG THOSE CLASSES OF PEOPLE WHICH THE SECRET SERVICE IS AUTHORIZED BY 18 U.S.C. SEC. 3056(A) TO PROTECT. RECOGNIZING THIS, THE GENERAL COUNSEL TAKES THE POSITION THAT THE STATUTORY ENUMERATION, IN 18 U.S.C. SEC. 3056(A), OF THOSE CATEGORIES OF PEOPLE FOR WHOM PROTECTION IS SPECIFICALLY AUTHORIZED TO BE PROVIDED BY THE SECRET SERVICE -

*** DOES NOT PRECLUDE THE SECRET SERVICE FROM AFFORDING PROTECTION TO INDIVIDUALS WHO DO NOT FALL WITHIN THE SPECIFIC CATEGORIES *** IF THERE ARE CIRCUMSTANCES PRESENT WHICH MAKE SUCH PROTECTION REASONABLE AS A MATTER OF BOTH LAW AND PUBLIC POLICY. BECAUSE OF THE NATURE OF WHAT IS IN ISSUE, I.E., THE PROTECTION OF PEOPLE WHOSE LIVES ARE CONSIDERED TO BE IN DANGER, (THE DEPARTMENT OF THE TREASURY HAS) NOT REGARDED CONGRESS' ENUMERATION OF SPECIFIC CLASSES OF PERSONS TO BE PROTECTED AS INTENDED TO PRECLUDE PROTECTION WHICH IS IN THE PUBLIC INTEREST WHEN ORDERED BY THE PRESIDENT ON A TEMPORARY BASIS OR PROTECTION FOR WHICH THERE IS OTHER AUTHORITY ***.

THE OPINION BY THE GENERAL COUNSEL DISCUSSES FIRST THE CONTENTION THAT THE PRESIDENT CAN ORDER PROTECTION ON A TEMPORARY BASIS OF CATEGORIES OF PERSONS NOT INCLUDED WITHIN 18 U.S.C. SEC. 3056(A). WE NEED NOT CONSIDER THAT ARGUMENT, HOWEVER, SINCE THE PROTECTION OF THE SECRETARY WAS NOT ORDERED BY THE PRESIDENT BUT BY THE SECRETARY HIMSELF. THE OPINION GOES ON TO SAY, CONCERNING THE PROTECTION OF THE SECRETARY, THAT -

THE DEPLOYMENT OF SECURITY PERSONNEL IS AN EXECUTIVE FUNCTION ESSENTIAL TO THE MANAGEMENT OF A DEPARTMENT AND THE PERFORMANCE OF ITS BUSINESS. THUS, IT IS REASONABLE THAT IF CONSIDERED NECESSARY IN VIEW OF DEMONSTRABLE EVIDENCE OF RISK, THE SECRETARY *** BE ASSIGNED AN APPROPRIATE NUMBER OF PROFESSIONALLY TRAINED SECRET SERVICE AGENTS. SECTION 301 OF 5 U.S.C. PROVIDES, IN PART, THAT "THE HEAD OF AN EXECUTIVE DEPARTMENT OR MILITARY DEPARTMENT MAY PRESCRIBE REGULATIONS FOR THE GOVERNMENT OF HIS DEPARTMENT, THE CONDUCT OF ITS EMPLOYEES, THE DISTRIBUTION AND PERFORMANCE OF ITS BUSINESS. ..." REORGANIZATION PLAN 26 OF 1950 (5 U.S.C. APP., P. 544) TRANSFERRED ALL DUTIES AND FUNCTIONS OF EMPLOYEES OF THE DEPARTMENT OF THE TREASURY, INCLUDING THOSE OF THE SECRET SERVICE, TO THE SECRETARY. ACCORDINGLY, THE SECRETARY IS EMPOWERED BY LAW TO SUPERVISE AND DIRECT THE ACTIVITIES OF SECRET SERVICE OFFICERS. SUCH OFFICERS, LIKE ALL TREASURY PERSONNEL, COULD BE ASSIGNED TO RENDER HIM DIRECT ASSISTANCE TO CARRY OUT ANY TREASURY RESPONSIBILITIES. IN THE PAST, IN RESPONSE TO A WHITE HOUSE REQUEST, THE SECRETARY HAS DEPLOYED SECRET SERVICE OFFICERS AS SKY MARSHALS TO PROTECT COMMERCIAL AIRCRAFT FROM HIJACKING. THE SECRET SERVICE HAS TRAINED SECURITY PERSONNEL FROM OTHER DEPARTMENTS SO THEY COULD PROTECT THEIR OWN DEPARTMENT HEADS. THE SECRET SERVICE ALSO AT TIMES CONDUCTS INVESTIGATIONS FOR TREASURY BUREAUS WHICH DO NOT HAVE THEIR OWN INVESTIGATIVE CAPABILITIES. NONE OF THESE FUNCTIONS ARE SPECIFICALLY SET OUT IN 18 U.S.C. 3056(A). EACH ACTIVITY HAS BEEN DISCUSSED IN APPROPRIATION HEARINGS BEFORE CONGRESS AND NONE HAS BEEN CRITIZED AS BEYOND THE SERVICE'S AUTHORITY AS SET FORTH IN 18 U.S.C. 3056(A).

DURING WORLD WARR II SECRETARY MORGENTHAU WAS SUPPLIED A SECRET SERVICE DETAIL TO INSURE HIS PERSONAL SAFETY. GIVEN THE PRESENT NATIONAL ENVIRONMENT AND EVIDENCE OF SPECIFIC RISKS, IT SEEMS REASONABLE TO THE TREASURY THAT THE SECRETARY *** ALSO BE ASSIGNED SECRET SERVICE AGENTS WHO HAVE BEEN TRAINED TO PROVIDE PERSONAL PROTECTION.

FOR THE REASONS STATED ABOVE, THE TREASURY BELIEVES THAT THE BASIC PROTECTIVE STATUTE IS NOT EXCLUSIVE AND THAT ADDITIONAL SECRET SERVICE PROTECTION MAY BE DIRECTED IN CASES NOT SPECIFICALLY COVERED BY THE STATUTE WHERE THE RISK OF HARM AND THE PUBLIC INTEREST JUSTIFY SUCH PROTECTION ***. (FOOTNOTES OMITTED.)

SECTION 301 OF TITLE 5, U.S. CODE, CITED BY THE GENERAL COUNSEL, APPEARS TO BE OF NO PARTICULAR RELEVANCE TO THE ISSUE BEFORE US, I.E., WHETHER THE SECRET SERVICE HAS LEGAL AUTHORITY TO PROTECT THE SECRETARY OF THE TREASURY ON HIS ORDER. THE AUTHORITY CONFERRED ON DEPARTMENT HEADS BY 5 U.S.C. SEC. 301 IS ADMINISTRATIVE ONLY. U.S. V. GEORGE, 228 U.S. 14 (1913). (SECTION 301 IS THE ENACTMENT INTO POSITIVE LAW, WITHOUT SUBSTANTIVE CHANGE, OF FORMER 5 U.S.C. SEC. 22, WHICH IN TURN WAS IN PERTINENT PART IDENTICAL TO R.S. SEC. 161. ACCORDINGLY, THE CONSTRUCTION IN U.S. V. GEORGE OF R.S. SEC. 161 IS DIRECTLY APPLICABLE TO 5 U.S.C. 301.) THE QUESTION THEREFORE REMAINS FIRST WHETHER AUTHORITY EXISTS IN LAW FOR PROTECTION OF THE SECRETARY, AND IF IT DOES, WHETHER FUNDS OF THE SECRET SERVICE ARE AVAILABLE TO PROVIDE IT.

THE GENERAL COUNSEL CITES VARIOUS PRECEDENTS IN SUPPORT OF HIS CONTENTION THAT AUTHORITY EXISTS FOR THE SECRETARY TO DIRECT SECRET SERVICE PROTECTION IN CASES NOT SPECIFICALLY PROVIDED FOR BY THE STATUTE. ONE SUCH PRECEDENT RELIED UPON IS THE PROTECTION OF SECRETARY OF THE TREASURY MORGENTHAU DURING WORLD WAR II.

WE ARE NOT AWARE OF THE CIRCUMSTANCES OF THAT PROTECTION. IN ANY EVENT, IT OCCURRED BEFORE THE ENACTMENT OF 18 U.S.C. SEC. 3056(A), THE FIRST PERMANENT LEGISLATION PRESCRIBING THE PROTECTIVE RESPONSIBILITIES OF THE SECRET SERVICE. PRIOR TO THE ENACTMENT OF THE ACT OF JULY 16, 1951, CH. 226, 65 STAT. 122, WHICH, AS AMENDED, IS CODIFIED AT 18 U.S.C. SEC. 3056(A), THE PROTECTIVE RESPONSIBILITY OF THE SECRET SERVICE WAS PRESCRIBED IN ANNUAL APPROPRIATION ACTS FOR THE TREASURY DEPARTMENT. THEREFORE DO NOT CONSIDER THE PROTECTION OF SECRETARY MORGENTHAU AS A SIGNIFICANT PRECEDENT IN INTERPRETING THE PRESENT AUTHORITY OF THE SECRET SERVICE UNDER THE 1951 ACT, AS AMENDED.

THE GENERAL COUNSEL ALSO CITES THE TRAINING BY THE SECRET SERVICE OF SECURITY PERSONNEL FROM OTHER DEPARTMENTS IN SUPPORT OF THE CONTENTION THAT THE SECRET SERVICE HAS AUTHORITY BEYOND THAT SET FORTH IN 18 U.S.C. SEC. 3056(A). SPECIFICALLY, HE REFERS TO THE FOLLOWING DISCUSSION DURING HEARINGS ON THE TREASURY, POSTAL SERVICE AND GENERAL GOVERNMENT APPROPRIATION, 1974:

MR. MYERS. BEFORE WE GO OFF THE RECORD I ONLY HAVE ONE MORE GENERAL AREA AND THAT IS YOUR AREA OF PROVIDING PROTECTION ON A ROUTINE BASIS.

IN THE PAST YEAR OR SO A NUMBER OF CABINET OFFICERS HAVE MADE REMARKS ABOUT WHAT THE SECRET SERVICE TOLD THEM TO DO AND WHAT THEY COULDN'T DO. I DIDN'T REALIZE THAT THE SECRET SERVICE WAS PROVIDING PROTECTION TO CABINET OFFICERS.

MR. ROWLEY (DIRECTOR OF THE SECRET SERVICE). NO, SIR. EACH CABINET OFFICER TODAY MAY HAVE, IN ADDITION TO DEFENSE AND THE STATE DEPARTMENT AND THE ATTORNEY GENERAL, TO NAME A FEW, HAVE THEIR OWN SECURITY OFFICERS.

WHAT THEY ARE TALKING ABOUT IS WE TRAIN THEM IN THE BASICS OF PROTECTION. WE DON'T ADVISE THEM ONE WAY OR ANOTHER EXCEPT THAT IF THEY WANT TO SELECT A CERTAIN NUMBER OF THEIR PERSONNEL FOR TRAINING WE ACCEPT THEM AND WE TRAIN THEM ON THE BASICS OF PERSONAL PROTECTION, BUT WE ARE NOT INVOLVED IN PROTECTING CABINET OFFICERS.

MR. MORGAN (THEN ASSISTANT SECRETARY OF THE TREASURY FOR ENFORCEMENT, TARIFF AND TRADE AFFAIRS, AND OPERATIONS). AND AS FAR AS STATE, DEFENSE, AND THE ATTORNEY GENERAL, WE ARE TALKING ABOUT SECURITY OF THE FBI IN THOSE CASES. THE SECRET SERVICE DOESN'T PROTECT THE CABINET OFFICERS WITH THE EXCEPTION OF THE SECRETARY OF THE TREASURY.

MR. MYERS. THEN THE AREAS OF RESPONSIBILITY HAVE NOT CHANGED. YOU STILL HAVE NOT GOTTEN THE AUTHORIZATION.

MR. ROWLEY. NO, SIR.

HEARINGS BEFORE THE HOUSE SUBCOMMITTEE ON THE TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS, 93D CONG., 1ST SESS., PART 1, 392 (1973).

SPECIFIC STATUTORY AUTHORITY EXISTS FOR AGENCIES OF THE GOVERNMENT TO ESTABLISH TRAINING PROGRAMS. 5 U.S.C. SEC. 4103 (1970). MOREOVER, THAT AUTHORITY HAS BEEN IMPLEMENTED BY AN EXECUTIVE ORDER WHICH PROVIDES THAT THE HEAD OF EACH AGENCY SHALL "EXTEND AGENCY TRAINING PROGRAMS TO EMPLOYEES OF OTHER AGENCIES ***." EXECUTIVE ORDER 11348, SEC. 302(D), 3 C.F.R. 188, 190 (1974), 5 U.S.C. SEC. 4103 (1970). SEE ALSO 31 U.S.C. SEC. 686 (1970). THUS, AUTHORITY EXISTS, INDEPENDENT OF 18 U.S.C. SEC. 3056(A), FOR THE SECRET SERVICE TO PROVIDE SUCH TRAINING. ACCORDINGLY, THE FACT THAT THE SECRET SERVICE TRAINS EMPLOYEES OF OTHER AGENCIES TO PROTECT OFFICIALS OF THOSE AGENCIES DOES NOT SUPPORT THE ARGUMENT THAT 18 U.S.C. SEC. 3056(A) AUTHORIZES PROTECTION BY THE SECRET SERVICE OF CATEGORIES OF PERSONS NOT LISTED THEREIN.

NOR DO WE CONSIDER IT TO BE PARTICULARLY SIGNIFICANT THAT, ACCORDING TO THE GENERAL COUNSEL OF THE TREASURY, THE SECRET SERVICE HAS, AT THE DIRECTION OF THE SECRETARY OF THE TREASURY, CONDUCTED PERSONNEL INVESTIGATIONS FOR OTHER DIVISIONS WITHIN THE TREASURY DEPARTMENT WHICH DO NOT HAVE THEIR OWN INVESTIGATORS. HEARINGS ON THE TREASURY DEPARTMENT APPROPRIATION FOR 1958 BEFORE THE HOUSE SUBCOMMITTEE ON TREASURY-POST OFFICE DEPARTMENTS APPROPRIATIONS, 85TH CONG., 1ST SESS. 533-34 (1957). THE NATURE OF THESE INVESTIGATIONS IS NOT ENTIRELY CLEAR FROM THE CITED TESTIMONY. WHILE THE HEARINGS INDICATE THAT THE OTHER DIVISIONS WERE NOT CHARGED WITH THE COSTS OF THE INVESTIGATIONS, IT IS NOT SHOWN WHETHER OR NOT FUNDS WERE REQUESTED BY OR APPROPRIATED TO THE SECRET SERVICE FOR SUCH PURPOSE.

THE USE OF SECRET SERVICE AGENTS AS "SKY MARSHALS," ALSO CITED BY THE GENERAL COUNSEL OF THE TREASURY DEPARTMENT, DOES NOT APPEAR TO BE PERTINENT INASMUCH AS SUCH SERVICES WERE PERFORMED ON A REIMBURSABLE BASIS, WHEREBY THE SECRET SERVICE WAS COMPENSATED BY THE DEPARTMENT OF TRANSPORTATION. HEARINGS ON TREASURY, POST OFFICE AND GENERAL GOVERNMENT APPROPRIATIONS, 1972, BEFORE THE HOUSE SUBCOMMITTEE ON TREASURY, POST OFFICE AND GENERAL GOVERNMENT APPROPRIATIONS, 92D CONG., 1ST SESS., PART 1, 262-63 (1971). FEDERAL AGENCIES ARE AUTHORIZED BY 31 U.S.C. SEC. 686 TO PROVIDE SERVICES FOR ONE ANOTHER ON A REIMBURSABLE BASIS, AS WILL BE DISCUSSED FURTHER BELOW.

THE FOREGOING PRECEDENTS CITED BY THE GENERAL COUNSEL OF THE DEPARTMENT IN SUPPORT OF ITS ACTIONS ARE THUS NOT TOO PERSUASIVE.

ASIDE FROM THESE PRECEDENTS, THE DEPARTMENT ARGUES THAT "THE DEPLOYMENT OF SECURITY PERSONNEL IS AN EXECUTIVE FUNCTION ESSENTIAL TO THE MANAGEMENT OF A DEPARTMENT AND THE PERFORMANCE OF ITS BUSINESS." WHILE WE DO NOT CONCEDE THAT EITHER THE PRECEDENTS CITED OR THE LAW ESTABLISHES THE EXISTENCE OF THE BROAD

SECRETARIAL DISCRETION TO ORDER PROTECTION IN CASES NOT SPECIFICALLY PROVIDED FOR BY 18 U.S.C. SEC. 3056 WHICH THE GENERAL COUNSEL ARGUES FOR, WE WOULD AGREE THAT, IN GENERAL, IF A GOVERNMENT OFFICIAL WERE THREATENED OR THERE WERE OTHER INDICATIONS THAT HE WAS IN DANGER, AND IF IT WERE ADMINISTRATIVELY DETERMINED THAT THE RISK WERE SUCH AS TO IMPAIR HIS ABILITY TO CARRY OUT HIS DUTIES, AND HENCE TO AFFECT ADVERSELY THE EFFICIENT FUNCTIONING OF THE AGENCY, THEN FUNDS OF HIS AGENCY, THE USE OF WHICH WAS NOT OTHERWISE RESTRICTED, MIGHT BE AVAILABLE TO PROTECT HIM, WITHOUT SPECIFIC STATUTORY AUTHORITY. THIS FOLLOWS FROM THE PREMISE THAT APPROPRIATIONS ARE GENERALLY AVAILABLE FOR NECESSARY EXPENSES TO CARRY OUT THEIR PURPOSES. FOR EXAMPLE, ALTHOUGH THE STATE DEPARTMENT NOW HAS SPECIFIC LEGISLATIVE AUTHORITY TO PROTECT THE SECRETARY OF STATE USING ITS OWN OFFICERS AND EMPLOYEES (22 U.S.C. SEC. 2666 (1970)), THE DEPARTMENT CONSIDERED THAT IT HAD SUCH AUTHORITY EVEN IN THE ABSENCE OF LEGISLATION, AND FOR MANY YEARS PRIOR TO THE ENACTMENT OF 22 U.S.C. SEC. 2666 ASSIGNED ITS EMPLOYEES TO PROTECT THE SECRETARY. REPORT NO. 552, 84TH CONG., 1ST SESS. 2 (1954). THE BILL WHICH BECAME 22 U.S.C. SEC. 2666 WAS PROPOSED BY THE SECRETARY OF STATE, NOT IN ORDER TO AUTHORIZE SUCH PROTECTION, BUT TO ALLOW STATE DEPARTMENT SECURITY OFFICERS TO CARRY FIREARMS FOR THE PROTECTIVE PURPOSES SET FORTH THEREIN. ID. SIMILARLY, WE WOULD GENERALLY NOT OBJECT IN LIKE CIRCUMSTANCES - I.E., WHERE THERE IS LEGITIMATE CONCERN OVER THE SAFETY OF AN OFFICIAL AND WHERE THE AGENCY'S FUNCTIONING MAY BE IMPAIRED BY THE DANGER TO THAT OFFICIAL - TO AN AGENCY, INCLUDING THE DEPARTMENT OF THE TREASURY, PROTECTING SUCH AN OFFICIAL USING ITS OWN APPROPRIATED FUNDS. HOWEVER, THE SECRET SERVICE, ALTHOUGH SUBJECT TO THE DIRECTION OF THE SECRETARY OF THE TREASURY, DERIVES ITS OPERATING AUTHORITY WITH RESPECT TO PROVIDING PROTECTION GENERALLY FROM 18 U.S.C. SEC. 3056(A), AND ITS FUNDS ARE THEREFORE NOT AVAILABLE, WITHOUT SPECIFIC AUTHORIZATION, TO PERFORM PROTECTIVE DUTIES NOT AUTHORIZED BY THAT STATUTE.

AS ALREADY NOTED, WE BELIEVE THERE IS NO AUTHORITY FOR THE SECRETARY OF THE TREASURY TO ENLARGE BY ADMINISTRATIVE ACTION THE SCOPE OF THE PROTECTION WHICH THE SECRET SERVICE IS AUTHORIZED BY 18 U.S.C. SEC. 3056(A) TO PROVIDE. THAT STATUTE IS VERY SPECIFIC IN IDENTIFYING THE CATEGORIES OF PERSONS FOR WHOM PROTECTION MAY BE PROVIDED. WHEN IT HAS BEEN CONSIDERED NECESSARY TO EXTEND SECRET SERVICE PROTECTION TO CATEGORIES OF PERSONS NOT PREVIOUSLY IDENTIFIED IN SECTION 3056(A), THE CONGRESS HAS TYPICALLY DONE SO BY ENACTING SPECIFIC AUTHORIZING LEGISLATION, EITHER BY AMENDMENT TO SECTION 3056(A) (E.G., THE ACT OF JANUARY 5, 1971, PUBLIC LAW 91-651, 84 STAT. 1941, 18 U.S.C. 713, AUTHORIZING PROTECTION OF THE PERSON OF A VISITING HEAD OF STATE AND, AT THE DIRECTION OF THE PRESIDENT, OTHER DISTINGUISHED FOREIGN VISITORS) OR BY SEPARATE AUTHORIZING LEGISLATION (E.G., PUBLIC LAW NO. 90-331, 82 STAT. 170 (JUNE 6, 1968) (18 U.S.C. 3056 NOTE), AUTHORIZING PROTECTION OF MAJOR PRESIDENTIAL OR VICE PRESIDENTIAL CANDIDATES; AND THE TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATION ACT, 1975, PUBLIC LAW NO. 93 -381, 88 STAT. 613 (AUGUST 21, 1974), AUTHORIZING PROTECTION OF THE IMMEDIATE FAMILY OF THE VICE PRESIDENT). SINCE THE SECRETARY OF THE TREASURY IS NOT AMONG THOSE CATEGORIES OF INDIVIDUALS ENTITLED TO PROTECTION UNDER 18 U.S.C. SEC. 3056(A), AND SINCE, IN OUR VIEW, NO OTHER LEGISLATIVE AUTHORITY TO PROTECT HIM EXISTS, HE CANNOT ORDER THE SECRET SERVICE, USING FUNDS APPROPRIATED TO IT, TO PROTECT HIM, ANY MORE THAN HE COULD ORDER IT TO USE ITS FUNDS TO PROTECT ANY OTHER OFFICIAL NOT WITHIN THE PURVIEW OF SECTION 3056(A).

THE VIEW OF THE GENERAL COUNSEL OF THE TREASURY DEPARTMENT APPEARS TO BE THAT ONLY OFFICIALS OF THAT DEPARTMENT ARE ENTITLED TO SECRET SERVICE PROTECTION WITH THE COST THEREOF CHARGED TO THE APPROPRIATION FOR OPERATING EXPENSES OF THE SECRET SERVICE; OFFICIALS OF OTHER AGENCIES WHO MIGHT BE EQUALLY IN NEED OF

PROTECTION MUST PROVIDE IT EITHER THROUGH USE OF THEIR OWN AGENCY PERSONNEL OR, UNDER 31 U.S.C. SEC. 686(A)(1970), THROUGH REIMBURSEMENT OF THE SECRET SERVICE WITH FUNDS OF THEIR OWN AGENCIES. WE DO NOT BELIEVE THAT IT WAS INTENDED, BY VIRTURE OF THE SECRET SERVICE BEING A COMPONENT OF THE TREASURY DEPARTMENT, THAT DEPARTMENT OFFICIALS COULD ENJOY PROTECTION BY THE SECRET SERVICE WITHOUT ANY BURDEN ON THE APPROPRIATIONS FOR THEIR PARTICULAR OFFICES AND NOTWITHSTANDING THE SPECIFIC LIMITATIONS IN 18 U.S.C. SEC. 3056(A), WHILE OFFICIALS OF OTHER AGENCIES COULD NOT.

ON THE CONTRARY, WE SEE NO REASON WHY THE SECRETARY OF THE TREASURY (AND OTHER TREASURY DEPARTMENT OFFICIALS) SHOULD NOT BE IN PRECISELY THE SAME POSITION WITH RESPECT TO SECRET SERVICE PROTECTION AS ANY OTHER OFFICIAL OF THE GOVERNMENT NOT LISTED IN 18 U.S.C. SEC. 3056(A). THAT IS, THE SECRETARY - IN A PROPER CASE - MAY ARRANGE FOR HIS PROTECTION BY PERSONNEL OF THE DEPARTMENT OF THE TREASURY OR BY THE SECRET SERVICE, BUT IN THE LATTER CASE ONLY ON A REIMBURSABLE BASIS PURSUANT TO 31 U.S.C. SEC. 686(A) (1970), WHICH PROVIDES EXPRESSLY FOR INTRA-AGENCY PURCHASES OF SERVICES. REIMBURSEMENT OF THE SECRET SERVICE HAS BEEN, AS NOTED IN THE GENERAL COUNSEL'S MEMORANDUM, THE PROCEDURE FOLLOWED WITH RESPECT TO PROTECTION OF THE SECRETARY OF STATE (ON AN INTERAGENCY BASIS IN THAT INSTANCE). AS TO THE SOURCE OF REIMBURSEMENT FOR PROTECTION OF THE SECRETARY OF THE TREASURY, IT MAY APPROPRIATELY BE MADE FROM THE APPROPRIATION FOR THE OFFICE OF THE SECRETARY, SALARIES AND EXPENSES.

WE NOTE THAT, WITHIN THE SECRET SERVICE, THERE IS A UNIFORMED COMPONENT KNOWN AS THE TREASURY SECURITY FORCE. THIS FORCE, ACCORDING TO THE SECRET SERVICE BUDGET JUSTIFICATION FOR FISCAL YEAR 1974, IS CHARGED WITH THE RESPONSIBILITY OF PROTECTING LIFE AND PROPERTY IN THE MAIN TREASURY BUILDING AND THE TREASURY ANNEX. MOREOVER, THE FORCE "PROVIDES SECURITY FOR THE SECRETARY'S PRESS CONFERENCES ***," AMONG OTHER FUNCTIONS. HEARINGS ON THE TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 1974 BEFORE THE HOUSE SUBCOMMITTEE ON THE TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS, 93D CONG., 1ST SESS., PART I, 346 (1973). WE DO NOT INTEND TO SUGGEST HEREIN THAT FUNDS ARE NOT AVAILABLE FOR THOSE AUTHORIZED ACTIVITIES OF THE TREASURY SECURITY FORCE, AS DESCRIBED IN THE BUDGET JUSTIFICATION, WHICH MAY INVOLVE PROTECTION OF THE SECRETARY.

FINALLY, WE NOTE THAT ON SEVERAL RECENT OCCASIONS, THE QUESTION BEFORE US HAS BEEN THE SUBJECT OF TESTIMONY BY TREASURY DEPARTMENT OFFICIALS BEFORE CONGRESSIONAL COMMITTEES. ON FEBRUARY 27, 1974, THEN SECRETARY OF THE TREASURY SHULTZ APPEARED BEFORE THE SENATE COMMITTEE ON APPROPRIATIONS TO TESTIFY ON THE BUDGET FOR FISCAL YEAR 1975. SENATOR CHILES QUESTIONED SECRETARY SHULTZ CONCERNING THE SECRET SERVICE PROTECTION BEING PROVIDED BOTH FOR SECRETARY KISSINGER AND FOR MR. SIMON, THEN DEPUTY SECRETARY OF THE TREASURY. AFTER SOME DISCUSSION, IT WAS AGREED THAT THE DEPARTMENT WOULD SUBMIT, FOR THE RECORD, THE LEGAL JUSTIFICATION FOR THESE ACTIONS. HEARINGS BEFORE THE SENATE COMMITTEE ON APPROPRIATIONS ON THE BUDGET OF THE UNITED STATES FOR FISCAL YEAR 1975, 93D CONG., 2D. SESS., 62-64 (1974). THE OPINION OF THE TREASURY DEPARTMENT GENERAL COUNSEL WHICH WAS PROVIDED TO US WAS PREPARED AS A CONSEQUENCE OF THE QUESTIONS RAISED AT THAT HEARING.

THE SECRET SERVICE, AT THE REQUEST OF SENATOR MONTOYA IN A HEARING ON MARCH 20, 1974, BEFORE THE SENATE SUBCOMMITTEE ON TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT ON THE SECOND SUPPLEMENTAL APPROPRIATIONS FOR FISCAL YEAR 1974, PROVIDED A LIST OF INDIVIDUALS NOT SPECIFICALLY MENTIONED IN AUTHORIZING LEGISLATION WHO WERE THEN BEING AFFORDED PROTECTION ON A TEMPORARY BASIS, THE

DURATION OF SUCH PROTECTION, AND THE COST THEREOF. ON PAGE 796 OF THOSE HEARINGS THE LIST SHOWS: DEPUTY SECRETARY SIMON (FEBRUARY 11 - MARCH 20, 1974) AT A COST OF $16,781; SECRETARY SHULTZ (JULY 1, 1973 - MARCH 20, 1974) AT A COST OF $260,790; AND SECRETARY KISSINGER (SEPTEMBER 21, 1973 - MARCH 20, 1974) AT A COST OF $744,220, UNDER A REIMBURSABLE AGREEMENT WITH THE DEPARTMENT OF STATE PURSUANT TO 31 U.S.C. SEC. 686.

NO FURTHER DISCUSSION TOOK PLACE AT THAT TIME, BUT ON MAY 22, 1974, DURING HEARINGS ON THE SECRET SERVICE'S BUDGET REQUEST FOR FISCAL YEAR 1975, SENATOR MONTOYA, REFERRING TO HIS REQUEST ON MARCH 20 FOR THE LIST, ASKED ABOUT THE CURRENT STATUS OF, AND JUSTIFICATION FOR, THE PROTECTION GIVEN THE INDIVIDUALS LISTED. HEARINGS BEFORE THE SENATE SUBCOMMITTEE ON TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 1975, 610-612 (1974). IN THE ENSUING COLLOQUY THE ASSISTANT SECRETARY FOR ENFORCEMENT, OPERATIONS, AND TARIFF AFFAIRS ACKNOWLEDGED THAT MR. SIMON, BY THEN HAVING BECOME SECRETARY OF THE TREASURY, WAS STILL RECEIVING PROTECTION. SENATOR MONTOYA ASKED ASSISTANT SECRETARY MACDONALD IF IT IS CUSTOMARY TO PROVIDE PROTECTION TO THE SECRETARY:

MR. MACDONALD. IT WAS ORIGINALLY PROVIDED TO SECRETARY MORGENTHAU.

SENATOR MONTOYA. THAT WAS DURING THE BIG WAR.

MR. MACDONALD. YES. THAT WAS STARTED DURING THE ADMINISTRATION OF PRESIDENT ROOSEVELT, AND HAS BEEN PROVIDED, I BELIEVE - AM I CORRECT TO EVERY SECRETARY OF THE TREASURY SINCE?

MR. BOGGS (DEPUTY DIRECTOR OF THE SECRET SERVICE). YES.

THE REMAINING DISCUSSION WAS DEVOTED TO THE PROTECTION OF SECRETARY KISSINGER UNDER THE AUTHORITY OF 22 U.S.C. SEC. 2666 (1970) AND 31 U.S.C. SEC. 686.

NOTHING IN THE CITED HEARINGS, OR IN THE LEGISLATION TO WHICH THEY PERTAINED, CAUSES US TO CHANGE OUR CONCLUSION IN THIS MATTER. ALL THAT CAN BE CONCLUDED FROM THIS MATERIAL IS THAT THE SENATE COMMITTEE ON APPROPRIATIONS WAS AWARE THAT PROTECTION WAS BEING PROVIDED FOR MR. SIMON BY THE SECRET SERVICE. THE COMMITTEE DID NOT INDICATE ITS APPROVAL OF SUCH PROTECTION, HOWEVER. IN FACT, THE DEPARTMENT OF THE TREASURY WAS, AS NOTED, ASKED TO PROVIDE ITS LEGAL JUSTIFICATION FOR THIS ACTION.

AS TO THE TESTIMONY ON MAY 22 THAT EVERY SECRETARY SINCE MR. MORGENTHAU HAS BEEN PROTECTED, WE HAVE ALREADY POINTED OUT THAT PRECEDENTS PRIOR TO THE ENACTMENT IN 1951 OF THE ORIGINAL VERSION OF 18 U.S.C. SEC. 3056(A) ARE OF DOUBTFUL RELEVANCE. MOREOVER, THE OPINION OF THE GENERAL COUNSEL OF THE TREASURY, IN REVIEWING THE PRECEDENTS FOR PROTECTION OF THE SECRETARY, MENTIONS THE PROTECTION OF MR. MORGENTHAU BUT DOES NOT MENTION, AS THE ASSISTANT SECRETARY AND THE DEPUTY DIRECTOR OF THE SECRET SERVICE DID IN THEIR TESTIMONY, THAT EVERY SECRETARY SINCE THEN HAS RECEIVED PROTECTION. THE REFERENCE IN THE TESTIMONY MAY BE TO THE ACTIVITIES OF THE TREASURY SECURITY FORCE WHICH PROTECTS THE SECRETARY AS PART OF ITS DUTY TO PROTECT LIFE AND PROPERTY AT DEPARTMENT BUILDINGS, AN ACTIVITY WHICH, AS ALREADY NOTED, IS NOT AT ISSUE HEREIN. IN ANY EVENT, THERE IS NO INDICATION THAT PROTECTION OF PREVIOUS SECRETARIES (OTHER THAN MR. MORGENTHAU AND MR. SHULTZ), IF IT DID TAKE PLACE OTHER THAN BY THE TREASURY SECURITY FORCE, WAS EVER DISCLOSED TO THE CONGRESS PRIOR TO MAY 22, 1974.

FINALLY, IN THIS CONNECTION, WHILE THE TESTIMONY WAS GIVEN DURING HEARINGS ON

THE APPROPRIATION FOR THE SECRET SERVICE FOR FISCAL YEAR 1975, NEITHER THE SENATE REPORT BASED ON THE CITED HEARINGS (S. REPORT NO. 93- 1028 (1974)) NOR THE RESULTING LEGISLATION (TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATION ACT, 1975, PUBLIC LAW NO. 93-381 (AUGUST 21, 1974)) SHOWS ANY INTENTION THAT SECRET SERVICE FUNDS BEAR THE COST IN FISCAL YEAR 1975 FOR PROTECTION OF THE SECRETARY OF THE TREASURY. ACCORDINGLY, WE CANNOT CONCLUDE THAT THE CONGRESS INTENDED TO SANCTION EXPENDITURE IN FISCAL YEAR 1975 OF SECRET SERVICE FUNDS (WITHOUT REIMBURSEMENT) FOR PROTECTION OF THE SECRETARY OF THE TREASURY, OR TO APPROVE SUCH EXPENDITURES MADE IN PRIOR FISCAL YEARS.

WE MUST ADVISE, IN LIGHT OF THE FOREGOING, THAT APPROPRIATIONS FOR THE OPERATIONS OF THE SECRET SERVICE ARE NOT AVAILABLE, WITHOUT REIMBURSEMENT, TO PAY THE COSTS OF FURNISHING THE SECRETARY OF THE TREASURY WITH SECRET SERVICE PROTECTION. ANY SUCH PROTECTION PROVIDED HEREAFTER SHOULD BE ON A REIMBURSABLE BASIS PURSUANT TO 31 U.S.C. SEC. 686(A). FUNDS APPROPRIATED FOR SALARIES AND EXPENSES FOR THE OFFICE OF THE SECRETARY OF THE TREASURY SHOULD BE USED FOR SUCH REIMBURSEMENT.