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SUMMARY

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SUBJECT: SANGLEY SHOOTING-SMITH CASE

JOINT STATE/DEFENSE MESSAGE

1. THE POSITION OUTLINED BELOW HAS BEEN DETERMINED AFTER CAREFUL STUDY OF THE SMITH CASE AT THE HIGHEST LEVELS IN STATE AND DEFENSE. ALL ADDRESSEES SHOULD HANDLE INFORMATION IN THIS MESSAGE ON A LINDIS NEED-TO-KNOW BASIS UNTIL AMBASSADOR HAS DISCUSSED CASE WITH PRESIDENT MARCOS.

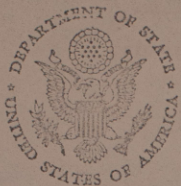
2. WE HAVE DECIDED THAT THE SMITH CASE IS ONE THAT MUST BE CONSIDERED AN OFFICIAL DUTY CASE OVER WHICH THE US HAS PRIMARY JURISDICTION. WE HAVE ALSO CONSIDERED THE POSSIBLE LINES WE MIGHT FOLLOW IN PRESENTING THE CASE TO PRESIDENT MARCOS.

DECLASSIFIED

Authority NLJ-001R-181-1-3

By ch, NARA, Date 3-21-14

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3. THE FOLLOWING COMBINED THREE-PART PACKAGE IS AUTHORIZED FOR USE BY AMBASSADOR WILLIAMS AS A TALKING PAPER IN HIS INITIAL DISCUSSION WITH PRESIDENT MARCOS AS TO WHAT THE US GOVERNMENT IS PREPARED TO DO. ALL THREE ELEMENTS ARE NECESSARY IF WE ARE TO MINIMIZE THE REPERCUSSIONS OF A DECISION TO CLAIM JURISDICTION:

A. EXPLANATION TO MARCOS OF US JURISDICTION-WE HAVE STUDIED THE SMITH CASE VERY CAREFULLY BOTH BECAUSE WE ARE GENUINELY CONCERNED THAT JUSTICE BE DONE TO THE INDIVIDUALS ON BOTH SIDES, AND BECAUSE WE RECOGNIZE THAT THE CASE CAN BE AN IMPORTANT PRECEDENT IN INTERPRETING THE DEFINITION OF OFFICIAL DUTY UNDER THE 1965 CRIMINAL JURISDICTION AGREEMENT. PRESIDENT MARCOS, AS A MILITARY MAN AND AN OFFICER, MAY BE EXPECTED TO UNDERSTAND THE DUTIES OF A SENTRY AND THE IMPORTANCE OF HIS POST. AFTER CAREFULLY CONSIDERING THE CIRCUMSTANCES OF THE SMITH CASE, WE HAVE COME TO THE CONCLUSION THAT SMITH WAS CARRYING OUT WHAT HE SINCERELY AND REASONABLY BELIEVED TO BE HIS OFFICIAL DUTY OR THE DIRECTIONS OF HIS SUPERIOR OFFICERS, AND WAS NOT ACTING MALICIOUSLY OR FRIVOLOUSLY. ALTHOUGH THE USE OF FORCE UNDER CERTAIN CIRCUMSTANCES CAN CONSTITUTE A "SUBSTANTIAL DEPARTURE" FROM DUTIES THE SENTRY IS AUTHORIZED OR REQUIRED TO PERFORM, WE DO NOT BELIEVE IT DID IN THIS CASE. WE CONCLUDE THAT THIS CASE IS ONE OF A POSSIBLE OFFENSE ARISING OUT OF ACTS DONE IN THE PERFORMANCE OF OFFICIAL DUTY, WITHIN THE MEANING OF THE AGREEMENT.

WE BELIEVE THAT SOME OF THE INSTRUCTIONS SMITH HAD BEEN GIVEN WERE SUBJECT TO MORE THAN ONE REASONABLE INTERPRETATION. THE INVESTIGATION SHOWED THAT THERE WERE SOME DIFFERENCES OF OPINION AMONG THE SENTRIES AS TO WHAT CONSTITUTED A SERIOUS CRIME, A SITUATION IN WHICH THEY WERE AUTHORIZED TO USE FIREARMS TO PREVENT THE ESCAPE OF THE CRIMINAL. THE FACT THAT SMITH HAD BEEN INSTRUCTED TO LET GONZALEZ ENTER THE BASE IN ORDER THAT HE BE APPREHENDED IN THE COURSE OF A PLANNED THEFT ALSO INDICATED THAT SMITH WAS ACTING UNDER ORDERS IN ATTEMPTING TO PREVENT GONZALEZ' ESCAPE. THE INSTRUCTIONS IN THE LIGHT OF THEIR CONNECTION IN THIS CASE WITH THE VERY SERIOUS PROBLEM OF LARGE SCALE AND APPARENTLY WELL-ORGANIZED THEFTS FROM THE BASE ALSO LED SMITH TO BELIEVE THAT THE APPREHENSION OF GONZALEZ WAS OF PARTICULAR IMPORTANCE TO HIS SUPERIORS.

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IN THIS CASE WE BELIEVE THAT THE SHOOTING WAS AN ACTION FOR WHICH SMITH SHOULD BE HELD ACCOUNTABLE TO HIS MILITARY SUPERIORS UNDER US MILITARY LAW. THE UNITED STATES GOVERNMENT HAS A RESPONSIBILITY TO THE PHILIPPINE GOVERNMENT. WE RECOGNIZE AND VERY MUCH REGRET THE INJURY THAT HAS BEEN DONE HERE, AND THE LOSS SUFFERED BY THE FAMILY OF GONZALEZ. WE HAVE AUTHORIZED PAYMENT IN FULL OF THE EX GRATIA COMPENSATION REQUESTED BY HIS MOTHER.

B. DISCUSSIONS OF POSSIBLE CHANGES IN BASE SECURITY ARRANGEMENTS- AMBASSADOR WILLIAMS, IN HIS CONVERSATION WITH PRESIDENT MARCOS, SHOULD MENTION THE FOLLOWING TOPICS AS POSSIBLE ELEMENTS IN A BROAD PROGRAM TO REVIEW BASE SECURITY ARRANGEMENTS:

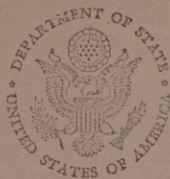
- 1) CHANGES IN EXISTING GUARD INSTRUCTIONS;
- 2) JOINT PHILIPPINE-AMERICAN SECURITY SYSTEM;
- 3) JOINT PHILIPPINE-AMERICAN STUDY OF AN INCENTIVE OR REWARD SYSTEM BASED ON THE APPREHENSION AND SUCCESSFUL PROSECUTION OF OFFENDERS SUBJECT TO PHILIPPINE JURISDICTION, AND REDUCTION OF OVERALL LOSSES AT BASES; AND
- 4) AVOIDANCE OF USE OF LETHAL WEAPONS WHEREVER POSSIBLE.

SOME ASPECTS OF THE ABOVE BROAD PROGRAM ARE ALREADY UNDER STUDY BY ADMIRAL KAUFFMAN FOR POSSIBLE IMPLEMENTATION. ADMIRAL KAUFFMAN HAS THE AUTHORITY TO TAKE SOME ACTIONS IN THIS AREA WITHOUT REFERENCE TO HIGHER AUTHORITY, AND THOSE OF HIS RECOMMENDATIONS WHICH ARE OF THIS KIND COULD BE IMPLEMENTED IN THE VERY NEAR FUTURE.

THE PHILIPPINE GOVERNMENT MAY ALSO BE STUDYING VARIOUS ADDITIONAL POSSIBILITIES. WE WOULD WELCOME BEING ADVISED OF THEIR VIEWS.

IN ADDITION, WE WOULD SUGGEST THE CREATION OF A JOINT AD HOC BOARD OR COMMITTEE TO CONSIDER MEANS OF IMPROVING BASE SECURITY ARRANGEMENTS AND MAKE RECOMMENDATIONS TO THE TWO GOVERNMENTS. THIS BOARD OR COMMITTEE WOULD INCLUDE SUCH REPRESENTATIVES OF THE ARMED SERVICES OR CIVILIAN AGENCIES AS MAY BE DETERMINED BY MUTUAL CONSULTATION BETWEEN THE TWO

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GOVERNMENTS.

FINALLY, THE UNITED STATES GOVERNMENT IS UNDERTAKING A COMPREHENSIVE REVIEW OF UNITED STATES GUARD AND SENTRY PROCEDURES WORLDWIDE, WITH THE OBJECTIVE OF CLARIFYING AND IMPROVING THEM.

PRESIDENT MARCOS MAY, OF COURSE, DRAW UPON THE FOREGOING AS HE DEEMS APPROPRIATE IN ANY PUBLIC STATEMENT.

C. READINESS TO DISCUSS INTERPRETATION OF THE CRIMINAL JURISDICTION AGREEMENT- IN EXPLAINING THE US POSITION IN THE SMITH CASE WITH PHILIPPINE OFFICIALS WE MUST BE PREPARED TO DISCUSS THE INTERPRETATION OF THE AGREED OFFICIAL MINUTE NO. 2 AND THE BLAIR LETTER

OF 10 AUGUST 1965 IN AN EFFORT TO REACH A MUTUAL UNDERSTANDING AND TO WARD OFF POSSIBLE DEMANDS FOR RENEGOTIATION. THE AMBASSADOR WILL BE AUTHORIZED TO DISCUSS ORALLY WITH PRESIDENT MARCOS CERTAIN CASES PROVIDED BY SERVICE JUDGE ADVOCATES GENERAL, ILLUSTRATING INSTANCES WHERE WE WOULD CONSIDER A SENTRY WAS NOT ACTING IN PERFORMANCE OF OFFICIAL DUTY. THE FIRST DISCUSSIONS OF INTERPRETATION WILL PROBABLY BE NECESSARY IN THE AMBASSADOR'S TALK WITH PRESIDENT MARCOS AND IN THE TALKS WITH SECRETARY OF JUSTICE TEEHANKEE. FURTHER DISCUSSION COULD BE CONTINUED BY THE CRIMINAL JURISDICTION IMPLEMENTATION COMMITTEE, WHICH IS PROVIDED FOR IN PARAGRAPH 4 OF THE AGREED IMPLEMENTING ARRANGEMENTS OF THE 1965 AGREEMENT. WE HAVE ALREADY PROPOSED TO THE PHILIPPINE GOVERNMENT INFORMALLY THAT THE CRIMINAL JURISDICTION IMPLEMENTATION COMMITTEE BE SET UP IN THE NEAR FUTURE, AND WE ARE NOW PREPARED TO MAKE SPECIFIC PROPOSALS FOR ITS MEMBERSHIP, ORGANIZATION, AND LEVEL OF OPERATION IN ACCORDANCE WITH PARAGRAPH 4 OF THE AGREED IMPLEMENTING ARRANGEMENTS OF THE 1965 AGREEMENT. THE COMPETENCE OF THE COMMITTEE WOULD EXTEND TO MUTUAL CONSULTATION IN THE IMPLEMENTATION OF CRIMINAL JURISDICTION ARRANGEMENTS, INCLUDING DISCUSSIONS OF CERTIFICATES OF OFFICIAL DUTY DESCRIBED IN THE SECOND PARAGRAPH OF AGREED MINUTE NO. 3, WITH RESPECT TO CASES REFERRED TO THE COMMITTEE BY THE AMBASSADOR AND THE APPROPRIATE PHILIPPINE AUTHORITY.

4. SEPTTEL FOLLOWS WITH CASES MENTIONED PARA 3 C FOR DISCUSSION WITH MARCOS.

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