



U. S. Department of Justice

Criminal Division

FAX SENT

Washington, D.C. 20530

Via Telefax

NOV - 3 1998

Rabbi Abraham Cooper
Associate Dean
Simon Wiesenthal Center
9760 West Pico Boulevard
Los Angeles, CA 90035-4792

Dear Abe:

Thank you for your letter of September 8, 1998, and congratulations once again on the Center's successful and historic August 16 international videoconference on World War II-era Japanese atrocities. By holding this conference and by preserving it on the Internet, the Center has made a significant contribution to the historical record regarding an important aspect of World War II that is still too little known.

In response to your specific questions about Unit 731, I can confirm that all former members of Unit 731 of the Japanese Imperial Army, as well as all Japanese military and civilian personnel who were involved in Axis-sponsored acts of persecution on the basis of race, religion, national origin or political opinion during the period of Japan's alliance with Nazi Germany, are ineligible to enter the United States under the provisions of the Holtzman Amendment, 8 U.S.C. 1182(a)(3)(E). These provisions also apply to individuals who participated in the atrocities at Nanjing (which occurred after Japan signed the Anti-Comintern Pact with Germany) and in the operation or utilization of so-called "comfort stations" where women and girls were routinely raped, brutalized, and sometimes murdered by Japanese military personnel.

As you know, in addition to investigating suspected Axis persecutors who have obtained U.S. citizenship or are residing in the United States, OSI is charged with responsibility for preventing the entry of such persons into the United States. OSI's intensive efforts to identify suspected Axis persecutors and have their names added to the U.S. Government's so-called "watchlist" of excludable aliens have resulted in the exclusion of nearly 150 such individuals at airports and other U.S. ports of entry since 1989 (when we began compiling statistics on this

aspect of our work). Last year alone, 23 suspected Axis persecutors (all of them European suspects) were blocked from entering. This year, as you will recall, we succeeded for the first time in stopping a Japanese perpetrator and preventing his entry into the United States.

OSI's addition of tens of thousands of names to the interagency border control watchlist is an outgrowth of this Office's unprecedented investigative effort, spanning nearly two decades, to identify and obtain birthdate information on suspected Axis persecutors. We have systematically checked the names of such individuals against U.S. immigration records. The names of those suspects who were not found to have immigrated to the United States (i.e., the overwhelming majority of these individuals) and who might still be alive have been added to the watchlist for exclusion from this country. In all, the names of more than 60,000 suspects have been added to the watchlist at OSI's behest.

Unfortunately, despite years of work by this Office, we have been able to identify fewer than a hundred suspected Japanese participants in World War II-era crimes against humanity (primarily individuals implicated in the "Unit 731" medical atrocities and in the so-called "Comfort Women" mass rapes). There are two reasons for this unfortunate situation. First, whereas most documents captured by American forces in Europe during and after the war were microfilmed prior to being returned to Germany and other countries in Europe, the Department of Defense decided in the 1960's to return to Japan, without microfilming, nearly all of the vast documentation captured from Imperial Japan. Second, despite U.S. Government entreaties over the years, the Government of Japan has failed, to date, to grant OSI meaningful access to these and related records. Access to European archives has been crucial to this office's success in identifying suspected Nazi persecutors who should be barred from the United States. In addition, the Japanese Government has not responded to this Office's longstanding request for birthdate information on individual Japanese suspects whom OSI has identified without assistance from Tokyo; the first such request was made in December 1996. Lacking this data, we remain unable to add these individuals' names to the watchlist and thus cannot prevent their entry into this country.

Members of my staff are currently preparing a detailed response to the historical questions posed in your letter of September 8. That response will be sent to you shortly under separate cover. Please do not hesitate to contact me should you have additional questions about this or any other aspect of the

Justice Department's efforts to identify persons implicated in the perpetration of Axis crimes and to remove and/or bar them from the United States.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Eli M. Rosenbaum', written over the typed name.

Eli M. Rosenbaum

Director

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DEC 17 1998

VIA TELEFAX: 310/553-8007

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Re: U.S. Non-Prosecution of Japanese War Criminals

Dear Abe:

In my letter of November 3, 1998, I wrote that my staff was preparing a detailed response to the historical question posed in your letter of September 8, i.e., did the United States give blanket immunity to Class A Japanese war criminals in return for the results of their research and experimentation? Set forth below is the analysis that I promised in that letter.

As we have discussed, this issue was raised at the video-conference arranged by the Wiesenthal Center and broadcast via satellite and the Internet on August 16, 1998. A participant in that conference reportedly stated that personnel of Unit 731 of the Japanese Imperial Army who, "under any definition," were "Class A" war criminals, were never tried by the International Military Tribunal - Far East [IMTFE] because the United States Government granted them immunity in return for their human experimentation research data. This participant further charged that the United States, by failing to prosecute Unit 731's members and by classifying records pertaining to it, had essentially assisted Japan in covering up the atrocities perpetrated by the unit.

This office has confirmed that the allegation regarding the

United States' treatment of Unit 731 personnel is accurate, with one exception: the term "Class A" war criminal was actually applied only to twenty-eight key leaders and policymakers who planned and executed Japan's war of aggression. These individuals were prosecuted before the IMTFE, nearly all were convicted, and several were executed. The members of Unit 731 did not qualify as Class A war criminals, and this office is unaware of any evidence that immunity was ever conferred on individuals who were given that designation.

In addition to Class A war criminals, however, the United States, Australia, China, France, the United Kingdom, the Netherlands and the Philippines tried 5,416 Japanese military and government personnel for war crimes and crimes against humanity, but no member of Unit 731 was ever included in such prosecutions, to our knowledge. Although allegations arose soon after the war that U.S. occupation authorities under General Douglas MacArthur had granted Unit 731 personnel immunity from prosecution in return for access to the results of their criminal biological and chemical warfare experiments, it was for many years impossible to ascertain the truth about those allegations because the United States classified its records pertaining to the unit. In 1981, after most of those records had been declassified, the Department of the Army initiated a records review to determine whether the allegations were true. Norman M. Covert, the former Chief of Public Affairs and current Command Historian for the Medical Research and Materiel Command at Fort Detrick, Maryland (the former site of the United States' early biological warfare research programs), reviewed the voluminous records at Fort Detrick as well as related Supreme Commander Allied Powers [SCAP] records at the National Records Center at Suitland, Maryland. He uncovered several documents, all now declassified and in the public domain, which describe in some detail the biological warfare data collected by the Japanese and the arrangement made between the United States and Lieutenant General Shiro Ishii, the commander of Unit 731. Covert's findings are outlined in several Army reports and information papers which, along with the underlying documentation, have been reviewed by this office. Two of these reports, dated November 17, 1981 and May 5, 1982, confirm that Ishii and his colleagues received immunity from prosecution and that, in exchange, they provided a great deal of information to U.S. authorities.

The section of the May 5, 1982 report pertaining to the grant of immunity from prosecution (which is quoted here with the permission of the Department of the Army) states as follows:

7. The Joint Chiefs of Staff decided to keep Top Secret any information about the Japanese Biological Warfare Program. The Joint State, War, Navy Coordinating Committee expressed its desire that the information be retained in US hands exclusively and certainly it

should be kept from the Soviet Union. The second driving force in the protection of LTG [Lieutenant General] Ishii and his associates was the precondition established by the War Crimes Tribunal in Japan that no prosecutions would be pursued unless a specific incident could be identified and a single person established as the responsible party. This could not be done in LTG Ishii's case. It could not be said that LTG Ishii personally ordered the death of prisoners through experimentation on a particular date using particular agents. This was the result of the US withdrawal from Manchuria and the lack of incriminating evidence from the wealth of material supplied on testing at the Unit. Immunity from prosecution was therefore granted to LTG Ishii and his associates and they in turn provided much information.

8. In the memorandum written by Dr. Edward Wetter and Mr. H.I. Stubblefield for the State, War, Navy Coordinating Committee for the Far East, the decision not to prosecute LTG Ishii was discussed. "An agreement with Ishii and his associates that information given by them on the Japanese BW program will be retained in intelligence channels is equivalent to an agreement that this government will not prosecute any of those involved in BW activities in which war crimes were committed."

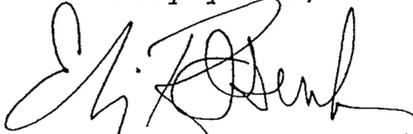
9. Scientists in the US program said the information was not of significant value, but it was the first data in which human subjects were described. It indicated the Japanese program reached a level of expertise in 1939 that was never advanced because of lack of resources. Any prosecution of LTG Ishii and his associates would have exposed the Japanese capability in addition to US expertise. It would have been difficult to retain such information in US-only hands in such a case. LTG Ishii was thus able to escape prosecution. The Joint Chiefs of Staff and SCAP agreed there would be little gained by such prosecution and deferred, offering LTG Ishii immunity in exchange for detailed information.

In a file memorandum dated June 27, 1995, Mr. Covert states that since 1982, "the Army and DoD [Department of Defense],

primarily through this office, have released all information known in [their] possession on the subject.... All of the material has previously been released to private citizens, news media representatives (U.S., Japanese, British and Canadian), authors, [and] other interested persons." Mr. Covert's research and the documentation he uncovered at both Fort Detrick and the National Records Center at Suitland are cited in Sheldon Harris' 1994 book, Factories of Death: Japanese Biological Warfare 1932-1945 and the American Cover-Up. Professor Harris visited Fort Detrick while conducting research for his book. He also cites Covert's May 5, 1982 report several times and quotes, at page 222, the first sentence in Paragraph #9 of that report.

I hope that this information satisfactorily responds to your question. Please do not hesitate to contact me should you have additional questions or require further clarification. You may also wish to contact Mr. Covert directly, as his office has been designated by the Department of the Army to handle public inquiries concerning U.S. knowledge of Japanese biological warfare programs, including questions dealing with the U.S. decision to decline prosecution. He can be reached at (301) 619-3326 (voice) or by telefax at (301) 619-3131.

Sincerely yours,



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