

Transcript, day 30

Monday, March 13, 2000, Court 73, Royal Courts of Justice

The parties discuss the form and timing of their closing arguments, including the written submissions and the order of oral argument.

The parties prepare their closing arguments

L0001 **Mr Justice Gray** Yes, Mr Irving?

L0002 **Mr Irving** May it please the court, may I just first begin, as this is our last informal session, so to speak, before we come to more formal matters, just by expressing words of my appreciation for the work put in by the defending firms of solicitors. They have had an extra burden put upon them by the fact that I am a litigant in person and I deeply appreciate their efficiency in this matter. I appreciate their help in this matter.

L0003 **Mr Justice Gray** That is very fair of you to say that.

L0004 **Mr Irving** It is proper I should say that as a matter of record. My Lord, I have two or three matters to deal with today. If I can propose the agenda for this morning? It would be to deal with these two or three matters of mine first which include my points on the video films, then subsequently to take up the matter of your Lordship's list of issues, unless your Lordship wishes to put it the other way round?

L0005 **Mr Justice Gray** That sounds to me perfectly sensible. Mr Rampton, you do not object to that, do you?

L0006 **Mr Rampton** What I would suggest we do is Mr Irving makes his points -- I had thought there was only the one individual video in question actually which was the Halle video -- if he makes on that, then Mr Julius, if your Lordship will, will reply on that because he knows the story, I do not, and if it goes through me, I am likely to get it wrong. Then, when we have done that and your Lordship has made whatever ruling or decision is necessary, then we should go on to the list. I also want to say something about the closing speeches which, looking at the transcript of Thursday evening, it ended up in a bit of a muddle. I do not really know what it is that I am supposed to do, but I would like to go back to that and revisit that, if I may?

L0007 **Mr Justice Gray** Sure. So, Mr Irving, let us start off with the ----

- L0008 **Mr Irving** My Lord, I have put a small bundle, or two or three small bundles, in front of your Lordship. The one marked "A" in the top right-hand corner, as your Lordship will remember, there was a question as to whether the diary entry July 24th on a certain day was complete, and I have now disclosed voluntarily the entire diary entries for that week, effectively, which shows there was one sentence redacted. There was a suspicion, my Lord, that there might have been some reference to the National Alliance in that opening sentence and ----
- L0009 **Mr Justice Gray** And there is not.
- L0010 **Mr Irving** There is not. If the Defendants wish to send somebody to inspect the actual computer disk on which that entry is recorded, just to make sure it has not been amended in some way, then I would be quite happy to ----
- L0011 **Mr Justice Gray** I doubt whether they will want to.
- L0012 **Mr Irving** --- to establish. My Lord, little bundle B ----
- L0013 **Mr Justice Gray** I am sorry, I am going to just put these documents where they belong. I will not do it now but can somebody give me the ----
- L0014 **Mr Rampton** RWE 1. I cannot tell you -- tab 2.
- L0015 **Mr Justice Gray** Good.
- L0016 **Mr Irving** Little bundle B. Your Lordship wished to have a note on the BBC gas chamber propaganda, if I can put it like that. I have put together a two-page summary of a broadcast made by one broadcaster, Thomas Mann, the famous German novelist, in November, January and June 1942 which I think are the material dates, before the Rigner letter from Geneva, and attached to that are photocopies from the published version of his broadcasts, and the footnotes are the references from his diaries which fix the actual dates when the broadcasts were made.
- L0017 **Mr Justice Gray** Did he talk about----
- L0018 **Mr Irving** He did talk about gas chambers.
- L0019 **Mr Justice Gray** --- gas chambers?
- L0020 **Mr Irving** My Lord, he talked about mass gassings at line 2 of the second page. He talked in the second item, which is dated January 1942, of 400 Young Dutch Jews being sent as test objects for poisons gas. He corrected that on June 26th 1942 to say it was 800 who had been to Mauthausen where they were gassed.
- L0021 **Mr Justice Gray** Yes. Again where is that?
- L0022 **Mr Irving** My Lord, you have already had something like that similar, but not in that neater form.
- L0023 **Mr Justice Gray** Unfortunately, I have not, I think, now got all the...
- L0024 **Mr Irving** I will certainly refer to that in my closing address with all that detail, and so you might wish just to throw those away.

- L0025 **Miss Heather Rogers** For ease, if you put in J2, tab 19, which is the next empty tab, we will provide an index to Mr Irving of everything that is in J2 and ----
- L0026 **Mr Justice Gray** You have done that almost up-to-date already, I think.
- L0027 **Mr Irving** My Lord, the next matter is the Halle video or videos. If your Lordship will turn to bundle C, which is somewhat thicker, but I am not going to take you through all the documents on that, it was a bundle put together for the actual action in a lower court before Master Trench. It is bundle C. I have inserted just behind the index a photograph of the three original videos which fell into my hands. They look rather tatty and I attach importance to that.
- L0028 **Mr Justice Gray** When you say they fell into your hands, you got these from this week, did you?
- L0029 **Mr Irving** Let me first of all set out ----
- L0030 **Mr Rampton** I thought bundle C was the witness bundle, but it is obviously something different.
- L0031 **Mr Irving** There should be three or four bundle Cs over there.
- L0032 **Mr Justice Gray** It has "Halle" in the top right-hand corner under the "C".
- L0033 **Mr Irving** "Halle" in the top right-hand corner and also ----
- L0034 **Mr Rampton** I do not think I have got that.
- L0035 **Mr Irving** I am sorry, could his Lordship possibly have a slightly better picture?
- L0036 **Mr Justice Gray** Thank you very much.
- L0037 **Mr Irving** My Lord, first of all, let me say that this is a matter which goes to the issue of evidence, the admissibility. It also goes to the question of the conduct of the case which has a bearing on damages and costs. So, I would ask your Lordship to bear those three matters in mind.
- L0038 **Mr Justice Gray** Well, I think I only really need to trouble you about admissibility.
- L0039 **Mr Irving** At this stage.
- L0040 **Mr Justice Gray** If you want to say anything about damages, then do that in your final speech. I understand the point you are making, but we are only really concerned with admissibility now.
- L0041 **Mr Irving** Well, in that case that makes this session this morning much briefer because I was about to take your Lordship through the rather sorry history of how this evidence was withheld from me.
- L0042 **Mr Justice Gray** I do not think now is the right time to do that. What you are, presumably, going to say (and I express no view about it) is that the way in which they have dealt with this material is an illustration of the high handed way the Defendants have behaved and the offensive way in which they have conducted their case generally, is that the kind of point you are making?

L0043 **Mr Irving** I would have used different adjectives, but that is certainly my case, my Lord, that they have used muscle, they have used wealth, they have used power, they have used experience -- they are one of the most experienced firms of solicitors in this country, and I make no criticism of that fact -- against myself as a litigant to try to conceal evidence from me, although the Second Defendant had sworn an affidavit, they then referred me to the affidavit to prevent me from making further enquiries saying, "You can go behind that when the time comes to cross-examine", which, of course, has been denied me, that opportunity; and they have had these three versions of the Halle video in their hands, the Thames Television version as broadcast, the Dispatches version and then also the heavily edited version and then there is the raw version which I have looked at two or three times, particularly relating to the episode where I am standing making the speech in Halle. That too has been cut by the cameraman.

If they are proposing to attach any weight to this, then I would wish to make objections which your Lordship can well apprehend what those objections would be as to the admissibility. It is edited material, as a document, a video is a document within the terms of the rules of evidence and the Rules of the Supreme Court. That is why I made the original application under rule 24 I think 13 or 16 to have that material struck out because of the withholding of the evidence from me. We had quite an intensive session and Master Trench, because the solicitors in that case broke an undertaking to bring the originals to the High Court for the hearing before Master Trench, I was unable to establish that it was originals and, therefore, not privileged material. But that is, of course, the other matter. That goes to the conduct of the case.

L0044 **Mr Justice Gray** Yes. Just concentrate on admissibility. As I understand it, you do not dispute that what was shown in court the other day is from a tape, but you say that it has been so heavily edited as to give a false impression of what actually happened?

L0045 **Mr Irving** It does not give ----

L0046 **Mr Justice Gray** Is that the way you put it?

- L0047 **Mr Irving** It does not give a complete record of my speech, my Lord. It omits major parts which, in fact, as your Lordship would see from the bundle of the letters I wrote before I even was aware the tape existed when I was applying to all the television companies for the content of the speech, if your Lordship were to look at the letters that I wrote in April 1993 to all the television companies frantically trying to find anyone who had a copy of the original film, those are round about page 19, those are typical letters. Then I swore affidavits in Australia in 1994, that is long before this action was initiated, the present action, saying what was in it; the fact that I reprimanded the people for making these stupid slogans, and the fact that in the part of the speech that is cut out I said to the audience, "You people are all young. I am now old. It is the other way round. It used to be the old people sitting in front of me and me, the young person, talking to me, but now you, people, are young, I am old. I am talking to you. You are Germany's future. The world's eyes are upon you, you have to start behaving". That material, unfortunately, is part of the material that has been cut out of the video tape.
- L0048 **Mr Justice Gray** Yes, so, I mean, what you are really saying is that even in its unedited form, that is to say, before the Defendants, as it were, got their hands on it, if indeed they did, it gives a false impression because the original team -- was it an Australian team -- did not actually video, or This Week or whoever it was, the whole of what you said?
- L0049 **Mr Irving** The particular one which we have is the This Week raw footage and it stops and starts, if I can put it like that?
- L0050 **Mr Justice Gray** No, I appreciate that.
- L0051 **Mr Irving** Therefore, it is an incomplete record of my speech. It may be a complete record or give a good image, and I admit this, of the kind of atmosphere and the flag waving, and this kind of thing, and I possibly even say that against myself, but as far as the content of my speech is concerned, it is a dodgy record.
- L0052 **Mr Justice Gray** Yes. It seems to me what you are telling me now really does not amount to an objection as to the admissibility of the tape, but is rather a submission you want to make that it is so heavily edited that it does not give a fair impression of what actually happened. It seems to me, perhaps, to follow that the way to deal with the problem is not to rule the tape inadmissible, but to let you, if you have not already done so, indicate what it is that has not been taped which would give a completely different impression of what you said at that meeting.

- L0053 **Mr Irving** Not only that, my Lord, but also the implication, the false implication, that may be given that because certain people are visible on the video, therefore, I knew them which, of course, easily obtained by cross-cutting and by cutting out large chunks. I would have preferred your Lordship to make a simple ruling that the tape may be used as evidence for the atmosphere at that meeting, the kind of people who were there possibly even, but not as evidence for Mr Irving's contact with them.
- L0054 **Mr Justice Gray** Well, I do not wholly disagree with that. I think the only thing I would add is there were some people there, and I am afraid the names are not actually at the front of my mind at the moment.
- L0055 **Mr Irving** Christian Worch.
- L0056 **Mr Justice Gray** Althans was one, was he not?
- L0057 **Mr Irving** Althans was not there. I think the relevant names, as far as Halle are concerned -- I am sure Mr Rampton or Miss Rogers will correct me -- Christian Worch, who was the organizer. I saw the video again last night.
- L0058 **Mr Justice Gray** There is no issue about you knew he was there and indeed you had some ----
- L0059 **Mr Irving** I knew he was there -- well, I found him there, put it like that. I travelled down there with his wife Uschi. She was there.
- L0060 **Mr Justice Gray** Who was the other one who did the speech at the beginning with the slightly sort of receding hair?
- L0061 **Mr Irving** I think the allegation is that Thomas Dienel was there, a man called Thomas Dienel.
- L0062 **Mr Justice Gray** Well, he was there, I think you accept that, and I would be inclined to conclude from the video that it was pretty obvious you realized he was there because he made the opening and closing speech. You may deny that, but I mean that would seem to me to be the natural inference.
- L0063 **Mr Irving** I shall certainly deny it when the time comes, my Lord, because I have looked at the video again last night. We are not visible together on the video and I have no notion who this man is. There must have been a couple of thousand people there whose names I do not know.
- L0064 **Mr Justice Gray** Again, you see, one has to look at the totality of the evidence, including your diary entries, as to how long you were there. It is the sort of thing I have to make my mind up about, I think.

L0065 **Mr Irving** In that case, my Lord, if you look at the affidavits and things which are contained in the bundle which I just gave you, you will see that I state: "10 minutes, made the speech and left" which is as far as the demonstration was concerned. I went there, spoke for 10 minutes or five minutes, then got straight in my car and drove off. So whoever else is visible on the video for the remaining half an hour or three-quarters of an hour, it is neither here nor there. Those affidavits, of course, were sworn back in '94 or '93, long before this action was commenced.

Of course, in my closing statement I am going to resist most energetically the notion that I had any knowledge of who those particular people were. A number of the people, I am quite happy to acknowledge having known them, but I am certainly not going to admit knowing people like Thomas Dienel.

L0066 **Mr Justice Gray** I think you follow the way I am thinking at the moment, and say anything else you want to, which is that I do not think there really is a reason for not admitting the video, but there is certainly every reason to listen to what you say about why it is unrepresentative of what happened.

L0067 **Mr Irving** Can we be specific which video we are talking about? There were three videos, my Lord.

L0068 **Mr Justice Gray** The Halle video.

L0069 **Mr Irving** Yes, but the three videos which were pictured on the photograph I gave your Lordship this morning, there are three videos. There are two raw videos and one broadcast video as broadcast by Tames TV and another one. I think we ought to know which one we are talking about as being admissible.

L0070 **Mr Justice Gray** As I say, I only saw one and I think you told me (but I may be wrong about this) that this was an edited version of the edited This Week version.

L0071 **Mr Rampton** No.

L0072 **Mr Irving** No.

L0073 **Mr Justice Gray** Pause a moment.

L0074 **Mr Irving** I think the one that you were shown, my Lord, was the raw version.

L0075 **Mr Rampton** Yes. That is all there is.

L0076 **Mr Justice Gray** It is No. 223 in this little pile in your photograph? The top two are unedited material.

L0077 **Mr Irving** It was 226 or 227 you were shown, my Lord. It could have been either because I have checked both of them. They both contain the same footage whereas 223 is the version as broadcast.

L0078 **Mr Justice Gray** I see, right. What is the difference between 226 and 227 then?

L0079 **Mr Irving** I have had a look at them and they appear to contain much the same raw material.

L0080 **Mr Justice Gray** I see.

- L0081 **Mr Irving** I do not know whether they are dupes or what.
- L0082 **Mr Justice Gray** Yes, I think my comment still applies; it seems to me that is something that is legitimately available to the Defendants to use as evidence, subject to your entitlement to make the sort of comments that you have been making to me this morning.
- L0083 **Mr Irving** I certainly shall and I shall make my comments about the manner in which they withheld it from me, knowing that I have been looking for it for five years.
- L0084 **Mr Justice Gray** That I am not following at the moment, but that seems, perhaps, not to go to admissibility but to damages.
- L0085 **Mr Irving** It does, well, to conduct of the case ----
- L0086 **Mr Justice Gray** It comes to the same thing.
- L0087 **Mr Irving** --- which is a matter of cost as well.
- L0088 **Mr Justice Gray** Well, maybe. Do you want to say any more about it?
- L0089 **Mr Irving** Not on the Halle video, my Lord. The other bundle E only went to the conduct of the case, my Lord. That was the evidence that they had withheld the -- which now brings us to your Lordship's list.
- L0090 **Mr Justice Gray** Before we get on to that, shall I ----
- L0091 **Mr Rampton** I believe this hearing is in open court. Mr Irving has made some very grave allegations which, so far as I know, are completely illfounded against my solicitors.
- L0092 **Mr Justice Gray** I am not going to go into it at the moment.
- L0093 **Mr Rampton** No, I know, but I think, in fairness, they ought to have an opportunity to tell your Lordship briefly what did happen. I only say this, that what your Lordship has seen is not edited in the sense that somebody has sat in a cutting room cutting it. It is the film shot by the cameraman. One knows that it is entire because the timing thing, the little black oblong at the left-hand side, is continuous. So if it has been edited, it has been edited in that sense simply because the cameraman got bored and went and had a cup tea or whatever.
- L0094 **Mr Justice Gray** Well, that is not quite the way I would look at it. I suspect the cameraman, whoever he may have been, was looking for things that he thought would be good, juicy broadcasting material.
- L0095 **Mr Rampton** No, I was being slightly frivolous, but if there has been any editing, it is by the become cameraman's own selection.
- L0096 **Mr Justice Gray** Yes, I follow that point.
- L0097 **Mr Rampton** And not by us.
- L0098 **Mr Justice Gray** It is a question of what he chose and what he did not chose to include.

L0099 **Mr Irving** My Lord, the cameraman was, I think, Michael Schmidt who was this cameraman ----

L0100 **Mr Rampton** That is as may be. He is not my servant or agent and we have nothing to do with the way that film looks on the screen.

L0101 **Mr Irving** Well, it goes to his Lordship's comment that the cameraman would have picked what interested him.

L0102 **Mr Justice Gray** Mr Julius, do we really benefit by going into detail as to the history of these videos?

L0103 **Mr Anthony Julius** I do not think so, my Lord, and I am not proposing to do that. If I may, I will just make three points. The first point is nothing was withheld from Mr Irving. On the contrary, this is a tape on which we place some reliance. The suggestion that we would not want to show it to Mr Irving or to show it to the court is, of course, absurd.

The second point I make is that no undertaking was broken.

The third point I would make is the point that has just been made by Mr Rampton, and that is that the tape your Lordship saw was not edited in any way.

L0104 **Mr Justice Gray** No. I think I had misunderstood the position as to the editing, but can you just help me about this? I am not sure that I know what or, indeed, need to know at this stage what the argument was, but you, you the Defendants, had in your possession a copy of these videos from when, from day one, as it were, or?

L0105 **Mr Anthony Julius** No, my Lord. What happened was this. During the course of preparing the case for the trial, a huge amount of material, as your Lordship can imagine, was being generated. It was being generated within the firm, it was also coming in from third parties. Lists were being drawn up on a periodic basis to send the material over to Claimant. This came in, I understand, after the last list was produced and at the time the view that was taken of it was that it was material generated for the purposes of litigation and, therefore, on the face of it, privileged.

L0106 **Mr Justice Gray** Privileged? How could it possibly be privileged?

L0107 **Mr Anthony Julius** Well, this was the preliminary view that was taken. In the event, it is not privileged. In so far as privilege was ever claimed for it, the privilege was waived. It is plainly a video that is important to the case, relevant to the issues and disclosable to the Claimant. It was disclosed to him and he has had it for a year now. He was keen to have it, and it is slightly odd that he should now be keen to exclude it.

L0108 **Mr Justice Gray** Can I just ask one more question? For how long was the claim for privilege maintained, as it were?

L0109 **Mr Anthony Julius** I think two days, my Lord.

- L0110 **Mr Justice Gray** Right. Well, as is obvious from what I have already said, I am satisfied that it is admissible, this tape, but I leave it open to both parties to make whatever comments they think it necessary or appropriate to make about the use that has been made of it in the short period when it was not disclosed on the basis it was privileged, and so on. Mr Irving, is that reasonably clear?
- L0111 **Mr Irving** Very clear indeed, my Lord, yes.
- L0112 **Mr Justice Gray** What does that leave? You have some comments to make about the opening, the list of issues?
- L0113 **Mr Irving** I think both Mr Rampton and I have a few, I certainly have very few comments to make on your Lordship's list. I am going to use the list as a North Star by which I shall steer in my closing statement.
- L0114 **Mr Justice Gray** That is really what it was intended to do.
- L0115 **Mr Irving** Because, obviously, the onus is on the Defence to justify ----
- L0116 **Mr Justice Gray** Of course.
- L0117 **Mr Irving** --- and they have to justify seriatim, whereas I shall reserve to myself the right to pick out major points which I consider would justify my conduct.
- L0118 **Mr Justice Gray** Yes. One thing that I think is perhaps missing from this, and it is not missing because I did not have it in mind, it is just that it did not strike me as perhaps worth including a separate little heading for, but I mention it because you will want to place reliance on it, I have no doubt.
- L0119 **Mr Irving** I am sure.
- L0120 **Mr Justice Gray** That there are many assertions in ----
- L0121 **Mr Irving** Section 5.
- L0122 **Mr Justice Gray** --- Professor Lipstadt's book which have not sought to be substantiated.
- L0123 **Mr Irving** Section 5, my Lord, yes, the Hisbollah and Hammas ----
- L0124 **Mr Justice Gray** You say section 5. That is perhaps a slightly defensive way of looking at it, but that is something that also needs to be addressed as a topic.
- L0125 **Mr Irving** That was precisely the one point I was about to make, my Lord, that I was unaware whether this was a deliberate omission that you thought was unnecessary even to tell me that because ----
- L0126 **Mr Justice Gray** No, I think the reason for it, if there needs to be a reason, is that I was focusing entirely on the way the plea of justification is put. That does not, of course, mean that I do not have to have in mind what was published and what has not been sought to be justified.
- L0127 **Mr Irving** That was, in fact, the only detailed point that I wished to make about it, my Lord.

L0128 **Mr Justice Gray** I have one other observation which is probably sensible I should make whilst you are on your feet, and it relates to the, and it is my word, well, I think it is the Defendants' word but I picked it up in (ix) -- I do not know why it has become "P" but anyway -- the Claimant's honesty as an historian. I think that is a slightly unsatisfactory gloss to put on what I understand the Defendants' case to be, and I did not want you to be misled by the fact that I have used that label. It seems to me that it begs too many questions to be helpful. The allegation sought to be justified, and the meaning which it is accepted, I think, was borne by the words that Professor Lipstadt used, was that you were deliberating distorting the data, etc., etc., etc. ----

L0129 **Mr Irving** Precisely.

L0130 **Mr Justice Gray** --- because you have an agenda of your own. Well, I can see that that might in some ways be described as dishonest conduct on the part of an historian, but I just thought I ought to make clear that I am not very happy with that word "honesty" used without a clear explanation of what in the context of this case it actually means.

L0131 **Mr Irving** My Lord, I had clearly apprehend exactly what your Lordship intends with that word. It is a manipulation, deliberate false translation and distortion.

L0132 **Mr Justice Gray** I think I will avoid it because I think it begs too many questions, as I say. So that is all you have, is it, on the ----

L0133 **Mr Irving** No, my Lord, but I do know that Mr Rampton has a number of points that he wishes to make.

L0134 **Mr Justice Gray** Yes, I know he does and he has very helpfully, as you know, made some amendments to my list.

L0135 **Mr Irving** Which I wholeheartedly endorse.

L0136 **Mr Justice Gray** On the whole, I think I do too.

L0137 **Mr Rampton** I am grateful for that. If your Lordship wanted a one word substitution for "honesty", it might be "integrity", "integrity as an historian". No, I prefer a longer version.

L0138 **Mr Justice Gray** I think it is better and I am not saying this tendentiously in either way.

L0139 **Mr Rampton** No, I realise that. It was perhaps too narrow as it stood and perhaps "integrity" as well is too narrow for what we are talking about or we think we are talking about, but we know what comes in under this heading which already will have been dealt with as we have been through the historical distortions, if I can call them that.

My Lord, there is one typographical error in 5.1(e) in the bit which we added, "Hitler's views on the Jewish question during the war, including Goebbels' diaries entries", it should be the 22nd not the ----

- L0140 **Mr Justice Gray** I have the 21st actually. I have just spotted that that was not right. I suspect the reason is it is a diary entry for the following day, I do not know.
- L0141 **Mr Rampton** That is right. Something went wrong there. Yes, and I do have the German of that which goes in bundle N at pages 127 and 127B. The English is already there, thanks to Professor Evans. But the German somehow got missed out. The relevant passage ----
- L0142 **Mr Justice Gray** This is N?
- L0143 **Mr Rampton** Yes, that is N, N1. I do not think N has any children yet, has it?
- L0144 **Mr Justice Gray** Yes, it has. E is the most difficult one because ----
- L0145 **Mr Irving** It is very exclusive, is it not? It excludes a lot of the entries that I would have relied upon.
- L0146 **Mr Justice Gray** Well, yes, it is exclusive and at the same time it is inclusive. I had not realized it is spread as wide as this, at any rate in the context of the historiographical criticisms.
- L0147 **Mr Rampton** It does, and there are very, very grave criticisms to be made of Mr Irving in relation to each of those items in the bracket, and they all relate to the way in which, according to our case, he has tried to suppress, mollify or distort Hitler's expressions of his anti-Semitism during the war, particularly during the later part of 1941 and the early part of 1942.
- L0148 **Mr Justice Gray** Yes, I can see how they come in now.
- L0149 **Mr Rampton** Those are inclusive rather than exhaustive.
- L0150 **Mr Justice Gray** Yes. I mean the problem I have with them is that they come in elsewhere too.
- L0151 **Mr Rampton** I know they do. There is bound to be some repetition. That is inevitable.
- L0152 **Mr Justice Gray** I know. Can I ask you what the significance is, I think I do understand, of adding decrypts to whatever it is, 3B?
- L0153 **Mr Rampton** Yes, that is simply because Mr Irving relies on two pieces of evidence, if I can call it that, for the suggestion that the number killed or died at Auschwitz was really quite low. One is the death books which were released by Moscow sometime in recent years, and the other thing is the Hinsley decrypts do not make any reference gassings at Birkenhau.
- L0154 **Mr Justice Gray** Yes.
- L0155 **Mr Rampton** So they really go together, and our explanation for that is that really they are the same in both cases or similar anyway.
- L0156 **Mr Justice Gray** Yes. As I say, I am inclined to add, if we are making this as complete as it is becoming, two further topics at the end, which is the conclusion as to substantial truth and the availability, if required, of section 5, and then lastly damages, if any, injunction. If any.

- L0157 **Mr Rampton** Would your Lordship be wanting then to transfer some particularity out of 4 on the first page?
- L0158 **Mr Justice Gray** No, because that is conclusions as to the law that applies, is it not, rather than conclusions?
- L0159 **Mr Rampton** So 11 would be facts arising out of 4, would it not, or something like that?
- L0160 **Mr Justice Gray** Yes.
- L0161 **Mr Rampton** The facts governed by the principles in 4?
- L0162 **Mr Justice Gray** Yes. Good. If in the course of preparing final speeches either of you come across topics that should be there but still are not, perhaps you could let me know by fax?
- L0163 **Mr Rampton** We certainly will. That brings me to what to us is a matter of, to say some concern sounds over-dramatic, but it is this. I do not want and do not propose to ask your Lordship for permission to stand here for three days speaking. That would not be interesting for anybody and it would not be a good use of the court's time. However, this is a case of some peculiar importance, we would submit, and it has a legitimate interest for the public which runs far beyond the particular interests of the parties, and I do concede that it is the sort of case in which it would be appropriate, with your Lordship's permission, for both sides to be allowed to make a somewhat longer, but still not very long, longer closing statement than they made in opening. In my case, it would not necessarily follow the same structure as this, the long version, but it would certainly reflect the material within it.
- There are two next questions. First, when does your Lordship believe that that should happen, because again the public needs to know when it is going to happen? As a corollary of that, whether there is any possibility of accommodating rather more people in this court than are presently able to get in?
- L0164 **Mr Justice Gray** Taking all that in reverse order, and subject to Mr Irving and then you can comment if you wish, I see your point about letting more people in. This court I think in the end probably accommodates as many members of the public as any court does, but it is never enough in a case of this kind. But, yes, I think, subject to agreement with all those concerned, particularly the Usher who has done a rather excellent job of keeping things under control ----
- L0165 **Mr Rampton** Mr Irving has been sycophantic towards my solicitors, for which I genuinely and sincerely thank him, I do wish to say what a fantastic job the Usher has done.
- L0166 **Mr Justice Gray** I think she has done a jolly good job because it is not all that easy. But, yes, within reason I think we will try to accommodate that. I am just wondering about the desirability of you and, if Mr Irving wishes to, Mr Irving, making what you might call the sort of public comments that you wish to make, as it were, before we get on to the nitty-gritty of the closing speeches.

- L0167 **Mr Rampton** Your Lordship may well have rather, if I may say so without impertinence, a good point, because it does seem to me that when your Lordship has had a chance to look at the nitty-gritty, I am going to write the nitty-gritty first, and then what one might call the summary. I would suggest that it may be advantageous if your Lordship's mental process is the same, because when you have read the nitty-gritty, then you look at the summary and you say, oh, he cannot say that, it is not in the evidence or it is an exaggeration or whatever. One could get the long version to your Lordship, we will try to do it by Friday, but at any rate by Monday morning, take a day, because it will not take long to read as your Lordship is so familiar with the material, I can practically do it from memory now, and then look at the summary and then maybe read the summary on Tuesday, 14th.
- L0168 **Mr Justice Gray** Yes, at all events whenever it happens, and it does not really matter whether it happens before or after the detailed submissions, my idea is that we might have the two final public speeches, if you follow what I mean, along side one another.
- L0169 **Mr Rampton** Absolutely, on the same day.
- L0170 **Mr Justice Gray** And probably on Tuesday.
- L0171 **Mr Irving** Not along side each other.
- L0172 **Mr Justice Gray** Not simultaneously.
- L0173 **Mr Rampton** I do not think that would be music to anybody's ears I have to say, but certainly on the same day. It would have to be, I say "have to be", that is excessive, but it would be desirable to have a fixed day because there will be people coming from all over the world to attend to attend.
- L0174 **Mr Justice Gray** Shall we say Wednesday, because I suspect that will get us most of the way through the detailed submissions.
- L0175 **Mr Irving** My Lord, your Lordship expressed the desire I think to have the opportunity to ask questions on the basis ----
- L0176 **Mr Justice Gray** Yes.
- L0177 **Mr Rampton** Yes, absolutely.
- L0178 **Mr Irving** When do you wish to do this, after the verbal part?
- L0179 **Mr Justice Gray** No, what I am getting at is if we have two full days, Monday 13th and Tuesday 14th, I think we will be most of the way through closing speeches, I suspect, if you let me do a bit of reading beforehand. Then on Wednesday, there may be a little left over, but Wednesday would be a good opportunity I think to make these statements for public consumption, which in the context of this case is legitimate. I think in other cases it might not be.
- L0180 **Mr Irving** So, if I understood it correctly because there was some confusion on Thursday evening, by the weekend I and Mr Rampton would have submitted to your Lordship a paper version of what we intend to say?

- L0181 **Mr Justice Gray** If you can do that it would be helpful, that I think is what I said on Thursday.
- L0182 **Mr Irving** On the basis of which on Monday and Tuesday you will ask us questions, and on Wednesday we read out either in Mr Rampton's case his summary or in my case whatever I consider necessary of my speech in public.
- L0183 **Mr Justice Gray** Yes. When you say I will ask questions, do not put the ball wholly in my court. I am hoping you will submit something in writing, but will also make the points that you regard as most significant and then I can pick you up on them if needs be.
- L0184 **Mr Irving** My Lord, I am making further submissions, as your Lordship is aware, of which of course the Defence have not had a chance to answer, and it is only fair they should have a chance to answer and say, "This be struck out, that is not admissible, yes, this one is very powerful indeed".
- L0185 **Mr Rampton** I would propose this, that we, with Mr Irving, it does not need to involve the court, we make a date and a time for exchange of the long versions, and also the summaries if they are ready by then, then we see whether there is any water between us, and it may well be that there is, either side may be something the other side does not think they ought to be allowed to say, and your Lordship may also have some queries or questions of your own.
- L0186 **Mr Justice Gray** Yes. As to timing, if you could do it by close of business on Thursday, even if it is not the final -- you could not?
- L0187 **Mr Irving** No, not by Thursday.
- L0188 **Mr Rampton** I could not possibly do it by then. I will try to do by close of business on Friday. It will not take very long to read. One reads quite quickly when one knows a case well. I am told Friday logistically is optimistic. We will do the best we can. We will fix that with Mr Irving.
- L0189 **Mr Justice Gray** I will not say anything about it, except that I think we ought to have speeches on Monday 13th. I do not want a slip on that.
- L0190 **Mr Rampton** A discussion about speeches?
- L0191 **Mr Justice Gray** The detail of speeches will start on Monday 13th.
- L0192 **Mr Irving** But they will not be public at that time?
- L0193 **Mr Rampton** The public can be in court during the discussion.
- L0194 **Mr Justice Gray** Of course they can, but there is extra accommodation being laid on, as it were, for Wednesday.

- L0195 **Mr Rampton** The only other question is, and normally speaking in a case like this when one has written a long speech which the Judge has read, even if one is not going to read it in court, it will of course be accessible to anybody who wants a copy of it, whether they pay for it or whether they do not, and there ought to be perhaps an embargo on the release of the long version until the discussion about the long version has concluded.
- L0196 **Mr Justice Gray** Yes, without any doubt.
- L0197 **Mr Rampton** That leads me to mention one other thing. I am a bit of ahead of myself. It is this. When your Lordship comes to give judgment in the normal way the solicitors and counsel get a copy of the judgment a day before. Mr Irving does not have solicitors or counsel. (A) it is not fair if we get it a day before and he does not. (B) it is not fair if he gets a copy himself and my clients do not.
- L0198 **Mr Justice Gray** Oddly enough I did not think I have ever had it.
- L0199 **Mr Rampton** I have.
- L0200 **Mr Justice Gray** One has had cases with litigants in person, but I have never had this particular problem about how you deal with -- my instinct would be that Mr Irving does get it at the same time as your legal team get it, but that he is, as it were, strictly embargoed as to the use that he can make of it. That seem to me to be the fair-handed way of doing it.
- L0201 **Mr Rampton** That is all I am concerned about. What I do not want is him getting it into the public forum before we do, if I can put it crudely.
- L0202 **Mr Justice Gray** Can I mention some things that perhaps should be done before speeches. One is the Muller document.
- L0203 **Mr Rampton** Yes, it is in hand. It is being dealt with by Dr Longerich who is dealing directly with Munich and I think also with Ludwigsburg where it is thought there is another copy.
- L0204 **Mr Justice Gray** Bearing in mind how quick Munich was to respond on the other document, I would be hopeful that you would be able to let me have something this week.
- L0205 **Mr Rampton** Yes. This is more problematical because they have been given the wrong file reference.
- L0206 **Mr Justice Gray** I thought they had tracked down the right file?
- L0207 **Mr Rampton** No, they know that it is the wrong one. They think they have the document but they have got to find it.
- L0208 **Mr Irving** The problem with Munich is all that all that they have is a duplicated copy.

- L0209 **Mr Justice Gray** I know and that is why enquiries are being made of other archives, as I understand it. That is fine. Mr Rampton, the other thing, and it is the only thing that I think I need to ask you about is, I think you were going to give me a little bit help on what you might call the American Civil Evidence Act statements.
- L0210 **Mr Rampton** Yes. That is in charge of Miss Rogers. We are just down to the one now. The only one of the factual Civil Evidence Act witnesses we want to use is Rebecca Guttman about the National Alliance which I have already cross-examined on. Your Lordship can have this. It has file C, Rebecca Guttman, and the rest can be chucked away.
- L0211 **Mr Justice Gray** When you say the rest, can I be absolutely clear about what can be chucked away?
- L0212 **Mr Rampton** Everybody else in file C.
- L0213 **Mr Justice Gray** File C or C1?
- L0214 **Mr Rampton** I call mine C. It has 425 pages.
- L0215 **Mr Justice Gray** Right.
- L0216 **Mr Rampton** And it is called Defendants Witness statements I should think.
- L0217 **Mr Justice Gray** I now seem to have back the file I swore blind I never had.
- L0218 **Mr Rampton** That is the one with the National Alliance material behind it.
- L0219 **Mr Irving** When you say you are using Rebecca Guttman's statement, does that mean to say you are also using all the appendices to it, or relying on them?
- L0220 **Mr Rampton** Yes.
- L0221 **Mr Justice Gray** That is what I was going to ask.
- L0222 **Mr Rampton** Yes, I rely on the material that she picked up at a National Alliance meeting in 1998 at which Mr Irving gave a speech.
- L0223 **Mr Justice Gray** Thank you.
- L0224 **Mr Rampton** To put it as neutrally as possible.
- L0225 **Mr Justice Gray** Right. Is there anything else?
- L0226 **Mr Rampton** No.
- L0227 **Mr Justice Gray** Thank you. I think it was necessary to have this fairly short session.
- L0228 **Mr Rampton** Yes, it was.
- L0229 **Mr Justice Gray** So 10.30 on Monday 13th.