

Transcript, day 31

Tuesday, March 14, 2000, Court 73, Royal Courts of Justice

The parties settle the final arrangements for closing arguments and briefly revisit the Schlegelberger memorandum and Goebbels diaries.

Final arrangements for the closing arguments

- L0001 **Mr Justice Gray** Mr Irving?
- L0002 **Mr Irving** My Lord, I have provided your Lordship a copy of the fresh off the presses closing speech which I would propose to read tomorrow.
- L0003 **Mr Justice Gray** How does that ----
- L0004 **Mr Irving** It is 104 pages. It continues from where the version left off which I supplied your Lordship yesterday and I have also reversed the order what I would call sections 2 and 3 of it. If I can say simply it starts off with have an opening preamble. It continues, my Lord, with a look at some of the historical issues and then only after a while does it, after about 30 pages, then go on to what I call bundle E matters.
- L0005 **Mr Justice Gray** Just so I understand how the two relate to one another, I had yesterday from you 56 pages, I think it was.
- L0006 **Mr Irving** Yes.
- L0007 **Mr Justice Gray** Are they the first 56 pages?
- L0008 **Mr Irving** They are the first 56 pages, but they have been cosmetically worked over. I have ----
- L0009 **Mr Justice Gray** Have they?
- L0010 **Mr Irving** --- a gentleman who I refer to as my political correctness editor, he came over and worked over it for me.
- L0011 **Mr Justice Gray** Good. I have read and marked up slightly what you gave me yesterday.
- L0012 **Mr Irving** That is what I feared. The page numbers will make no sense to you now, my Lord, because of the bulk change I did. I switched, effectively, sections 2 and 3, although they are not numbered, purely to put them into a more optimistic up beat sequence.
- L0013 **Mr Justice Gray** Right. I will try to -- I see, yes, it is completely changed .
- L0014 **Mr Irving** When I get back, my Lord, I am sure it will help your Lordship if I produce a brief concordance and fax it through to your office which will give your Lordship an overview.
- L0015 **Mr Justice Gray** I can probably make my own way through it.
- L0016 **Mr Irving** I have put headings in ----

- L0017 **Mr Justice Gray** Thank you very much.
- L0018 **Mr Irving** --- which will assist your Lordship. I would also just like to say I had not at the time I wrote it had the opportunity of reading the Defendants' own statement. So it is written in vacuo, so to speak, not that it will alter matters, I am sure.
- L0019 **Mr Justice Gray** I think the theory was there was going to be an exchange so that is inevitable.
- L0020 **Mr Irving** Effectively, there has been an exchange, simultaneous change, because I am sure they have not read mine and I have not read theirs.
- L0021 **Mr Justice Gray** Good. Thank you very much.
- L0022 **Mr Rampton** Your Lordship has got I think now, I hope, a complete version of our written submission. All the sections are now, I hope, complete.
- L0023 **Mr Justice Gray** Yes.
- L0024 **Mr Rampton** It is right. I will not not say any more about that at the moment. It is over 200 pages of rather dense reading. I will tomorrow, as I have your Lordship's permission, I think, make a very much shorter summary submission orally. I have not written that yet. Your Lordship will not find any of the contents of it, having regard to this, in the least surprising, I am sure. I shall try to make sure that your Lordship gets it and Mr Irving in good time before the hearing starts tomorrow.
- L0025 **Mr Justice Gray** Yes.
- L0026 **Mr Rampton** But I will be surprised if I am on my feet for even more than a part of tomorrow morning.
- L0027 **Mr Justice Gray** Good. Mr Irving, you are proposing to do the same thing, as I understand it?
- L0028 **Mr Irving** I was hoping for some kind of guidance from your Lordship. If your Lordship would mark in bulk or inform me in bulk at some time which passages you felt were not proper to deal with orally or in detail. It is a detailed submission which I have made to your Lordship and your Lordship may feel that some of the matters are too detailed to be dealt with in a closing statement.
- L0029 **Mr Justice Gray** I think I will give you a bit of guidance because, having read yesterday's 56 pages, and I do not say this critically but it did appear to me that there was a great deal on the topic about which you obviously feel passionately, namely what you see as being a conspiracy to bring your career as an author to a premature end. Those are not your words, I appreciate.
- L0030 **Mr Irving** I astutely avoided that word.

- L0031 **Mr Justice Gray** No, but there is an awful lot on that topic. Much of it did not appear to me to have anything to do with the Defendants. You may take a different view, but I am not sure that the evidence suggests that the Defendants are as involved with all the things of which you are complaining as you suggest. I, therefore, rather doubt whether it would be appropriate for you to use this court as a platform for what one might call a general attack on the conspirators, as you regard them.
- L0032 **Mr Irving** That is precisely the view that I expected from your Lordship which I obviously anticipated in the letter that I attached to the document.
- L0033 **Mr Justice Gray** Yes.
- L0034 **Mr Irving** I will edit substantially with that in mind before I come to make the oral presentation.
- L0035 **Mr Justice Gray** Yes.
- L0036 **Mr Irving** It will remain a part of the submission that I make to the court, but it will not be put in the oral part of the submission, if I can put it like that.
- L0037 **Mr Justice Gray** Yes. I think that is sensible, but beyond that I do not think I can really give you much guidance. If you were able to hand in what you were proposing to say in time for me to look at it, then if there is anything I think that is for one reason or another objectionable, or indeed Mr Rampton does, then you can be told and you can make submissions if you want to why you should be allowed to say it.
- L0038 **Mr Irving** I think I have a very astute feel for the way the court is feeling in this matter and, having got it off my chest, if I can put it like that, I will limit what I actually say to the matters which I consider to be of relevance.
- L0039 **Mr Justice Gray** Yes. What is at the heart of it, obviously, are criticisms that are listed in section 5.
- L0040 **Mr Irving** Well...
- L0041 **Mr Justice Gray** 1 through, well, to the end.
- L0042 **Mr Irving** The problem that I had, of course, is that not having been able to cross-examine the Defendants in this matter which would have brought forward the links which I am sure are there, this was the material which was assembled with that in mind. They have avoided that difficulty by not presenting their witnesses for cross-examination.
- L0043 **Mr Justice Gray** Yes. I understand how you feel about that.
- L0044 **Mr Irving** And I wanted, nonetheless, to put it before your Lordship. I also put a certain amount of explanatory material in the footnotes which I was not proposing to read out, purely to point your Lordship to where the documents are so as far as I know they are in the bundles or were they are in the daily transcripts.
- L0045 **Mr Justice Gray** Yes, good. Well, then that is ...

- L0046 **Mr Rampton** There is only one other thing I need to do, I am sorry, it is to hand in a list of corrections -- they are mostly typographical errors and missing references -- for our long submission, if I may do that.
- L0047 **Mr Justice Gray** Yes. It is for you to make such oral submissions as you wish.
- L0048 **Mr Rampton** I am sorry?
- L0049 **Mr Justice Gray** Are you going to make any oral submissions?
- L0050 **Mr Rampton** I am, tomorrow, yes.
- L0051 **Mr Justice Gray** Tomorrow, right.
- L0052 **Mr Irving** I do not know whether this is the right point to your Lordship's attention to the fact that I am challenging now the Muller document, purely on the basis that it has not been provided to me in the way that your Lordship ordered the August 1st 1941 document, and this might be the place with which to deal with that. I have dealt with it in the submission that I handed in this morning.
- L0053 **Mr Justice Gray** Well, you will have to direct me to where it comes because, obviously, I have not read it.
- L0054 **Mr Irving** I have not got it with me, my Lord, but, basically, the document was supplied to me on the weekend. It does not advance our knowledge as to the original document or the original file. There are no surrounding documents provided with it. I have not been able to make any more detailed researches into the nature of the document. So I have made a submission in the document I have handed your Lordship, both on the admissibility of that letter and, if your Lordship is minded to admit the letter in evidence, nonetheless, also on the content of the letter.
- L0055 **Mr Justice Gray** Well, this is all a bit opaque to me. Are you able to point to where you deal with this in your revised closing statement? I simply do not know my way around it all because I have only seen it within the last couple of minutes.
- L0056 **Mr Irving** It was finished at 5 o'clock this morning.
- L0057 **Mr Justice Gray** I can understand that. Even so, if I am going to make sense of what you are telling me about the Muller document, I need to have the references, do I not?
- L0058 **Mr Irving** I shall have to hold that over then, my Lord, until tomorrow.

L0059 **Mr Rampton** My Lord, I simply do not understand this. I have never understood, apart from the fact that he does not like its contents, what Mr Irving's problem with this document has been. We have many documents in the file which are original Nazi documents headed "Abschrift" by the person who made the copy because that is what they are. They are copies of original documents that have disappeared, but they are contemporaneous copies.

We now have have three copies of this document, one from Moscow which is where the original copy is held in the archive. That is the one that looks like that. It has a front cover that looks like that. Your Lordship has had all these, I think?

L0060 **Mr Justice Gray** I do not remember that front cover. Can you give me the reference? I am bound to say I have found it in trying to prepare my judgment, extraordinarily difficult because of the way in which the documents have been got together, but if you can give me the reference to it?

L0061 **Mr Rampton** It is in N1. I have not got N1 here, unfortunately, but its date is 1st August so I can very quickly find it.

L0062 **Mr Justice Gray** Page 49?

L0063 **Mr Rampton** Yes. Page 49. I do not have it here, I am afraid, but the 49, the actual copy of which we now have three copies is at page 51.

L0064 **Mr Justice Gray** Yes. I am just reminding myself of what the points were that Mr Irving took and he will tell me if there are any others. Firstly, it is an Abschrift; secondly, it has a rather security classification given its contents, just "Geheim".

L0065 **Mr Rampton** There are plenty of those.

L0066 **Mr Justice Gray** And also Mr Irving, I think, said that he had been told by the German Federal archives that the document is not to be found in the file from which it purports to come.

L0067 **Mr Rampton** Well, the explanation for that, I know not. As I said, my speculation is that it is just a reference to the wrong file. What I do now know, and Mr Irving knows and your Lordship knows, is that the original document, the original Abschrift, is held in Moscow. A copy of that has been sent to us from Moscow, sent to Dr Longerich. There is another copy at the prosecution centre at Ludwigburg, that we also have. There is another copy in the archive in Munich, that we also have.

L0068 **Mr Irving** My Lord, the problem I have with the document is it is very analogous to the Schlegelberger document. The Defendants were able, in my view, unsuccessfully to attack the Schlegelberger document on the basis of the other documents in the same file. We have been shown just this one document. I am not able to attack it on the basis of other documents in the same file because, firstly, I was given the wrong file number and the Bundesarchiv told me, "This is the wrong file number".

Secondly, we have once again only been shown exactly the same copy which appears to be a copy which has been recopied for various other archives inside Germany. We have not been told what else is in that file which may give it a completely innocent meaning. I submit that the content of the document is relatively innocent anyway, but, in view of the fact that the Defendants have had two months to provide me with sufficient identifying material which would enable me to identify the file so that I could rummage around in the rest of the file, in the same way as the Defendants were able to do with the Schlegelberger document, I submit that your Lordship should say this is one document that should not be added to Mr Irving's burden.

L0069 **Mr Justice Gray** Well, there was a stage in the trial when I think it was proposed that the Defendants should write to I think the archive in Munich to try to find out what documents, therefore, in whichever archive this did come from. I do not know whether that happened.

L0070 **Mr Rampton** I do not know whether it happened or not.

L0071 **Mr Justice Gray** I am right in thinking that was proposed?

L0072 **Mr Rampton** I cannot even remember that, but I am sure your Lordship is. I really have no recollection of it. The short point surely is this, I would submit. This is on its face an original document. It does on its face say what we say it says.

L0073 **Mr Justice Gray** I am sorry to interrupt, but it is not actually an original document is it, because it is an Abschrift?

L0074 **Mr Irving** My Lord, it does actually have SS runes in the last line.

L0075 **Mr Rampton** It is an original Abschrift, that is the point. It was an Abschrift made by some SS person at this time, August 1941. There cannot be any doubting that. If Mr Irving wanted, as it were, to skew or displace the document's obvious significance, then it was up to him to do so. The document has been in the file since goodness knows when. It is no part of our burden to stand up a document which is on its face quite evidently authentic.

L0076 **Mr Justice Gray** That is not to prevent Mr Irving saying "I challenge the authenticity of the document".

L0077 **Mr Rampton** That is right.

L0078 **Mr Justice Gray** I will then have to decide whether that is a historically valid challenge to mount to a document of this kind or whether it is not.

- L0079 **Mr Rampton** Of course, as he does with the document of June 43 about incineration. Of course he can.
- L0080 **Mr Irving** My Lord, the problem is I have not been able to go behind that document, if I can put it like that, because the wrong file was given to me. They have not provided me with the correct file number. They have provided me just repeatedly with the same Abschrift or copy, and all this has been done literally after the close of business on Friday, including sending me a document which they had received on January 28th, 42 days earlier, and they had only just forwarded to me, namely the copy they got from Munich, and this has made it impossible for me to go behind that particular document.
- L0081 **Mr Justice Gray** We are launching into the detail of this one document, and there is a lot of other ground to cover, but are you saying to me that you would like to be told and have disclosed to you by the Defendants such correspondence as has taken place between them and the Munich archive?
- L0082 **Mr Irving** That would be a very useful order for your Lordship to make. If it turns out that they did not make the enquiries that your Lordship directed, then I would submit your Lordship should properly say in that case, "I will not admit this document in evidence".
- L0083 **Mr Justice Gray** That is stage two as it were. Mr Rampton, why should I not make an order that Mr Irving sees whatever correspondence there has been?
- L0084 **Mr Rampton** Because there is not any correspondence. It was done orally by Dr Longerich so far as I am aware. If there is a letter back from the Munich archive which I do not know about, which Mr Irving ought to see, then of course I will disclose it, or if your Lordship would like to see it.
- L0085 **Mr Irving** Then of course we can see if there is any reference to the ----
- L0086 **Mr Rampton** So far as I know, there is no correspondence. Can I ask your Lordship to look at the fax cover? There are two fax covers.
- L0087 **Mr Irving** The analogy, my Lord, would be if I produced only the Schlegelberger document without the surrounding documents in that file.
- L0088 **Mr Rampton** That is as may be. I rather doubt it myself. I have no idea of the size of the file to which this document may belong. For all I know, it may contain thousands of documents. It is not as though Mr Irving is confined to Munich. There are two other archives in which this document resides. You will see this is not Munich, this is Ludwigsburg who has written to Dr Longerich.
- L0089 **Mr Justice Gray** What I think should happen, since we are on the authenticity of this document, and what I order shall happen, is that by close of business today, by 5.30 today, Mr Irving should have disclosed to him such correspondence as has come into existence as a result of the Defendants' efforts to track down either the original of this document, or the contents of any file in which the document may reside at whichever archive it is in.

- L0090 **Mr Rampton** Of course. I have no problem with that at all. My worry is that there will not be any documents of that nature because there were not any letters written by anybody.
- L0091 **Mr Justice Gray** Then Mr Irving may be able to make some submissions based on the failure to chase up.
- L0092 **Mr Rampton** Unless, on the contrary, what I do do, or what somebody does, it will not be me, is actually produce to Mr Irving and your Lordship what one might call a file note or memorandum about what Dr Longerich, if it is he who did it, what he actually did.
- L0093 **Mr Justice Gray** Yes.
- L0094 **Mr Rampton** He probably will not any longer remember the dates or the times of his telephone calls, but he will certainly have a recollection of the people he spoke to and of the efforts that were made, and I know somebody went to the archive in Moscow on his behalf, to find this document and, if it be the case, any surrounding documents of any relevance.
- L0095 **Mr Justice Gray** If you would do that, either disclose the documents or in the form of a memorandum from Dr Longerich or those instructing you, let Mr Irving know and me what attempts have been made to locate anything that will help on the authenticity of the Muller document.
- Mr Irving, it is for you to take your own course as regards any submissions you want to make, based on your written closing statement. Take your own course.
- L0096 **Mr Rampton** My Lord, before one leaves the question of this document, Mr Irving has, I fear not for the first time and I say that advisedly, actually not well represented what was said in court about this document. What he actually said, and this is on page 126 of Monday 28th February which is day 26, and we are talking about this Muller document: "I would like to see either a facsimile or to know reliably where the document is". Both those requests have been complied with. I will still do what your Lordship asked.
- L0097 **Mr Justice Gray** Do not let us spend too long on this but what I have noted for myself -- I may have got it wrong, I do not know -- during the course of the trial Mr Irving sought to enlist the assistance to verify the authenticity of the Muller document by obtaining copies of the other documents contained in the file of the Munich Institute of History where the Muller document was found. That is what I believe happened at some stage but I have no idea on which day.
- L0098 **Mr Irving** My Lord, it is not only the authenticity, it is also the purport of the document, if I can put it like that.
- L0099 **Mr Rampton** I believe your Lordship's note may not be precisely accurate.
- L0100 **Mr Justice Gray** Can somebody track it down?

- L0101 **Mr Rampton** I am told, I have not done it of course, that those around me, including Miss Rogers and my instructing solicitors, have searched transcripts for this last week. The bit I just read was the relevant bit, and Mr Irving said on page 128 of the same day: "I need to know the actual file number of course. I need to know the correct file number". Your Lordship said: "That is fair enough, Mr Rampton. When you have found out which file number or numbers it is in, will you pass that on to Mr Irving?" In fact, we did a good deal more than that, because we discovered the document, as I say, in three different archives, and he has had all three copies.
- L0102 **Mr Justice Gray** I think the passage you just read out pretty much bears out what I had in my note, if I may say so, but I think we are getting a little bit bogged down in the Muller document. Yes, Mr Irving.
- L0103 **Mr Irving** My Lord, I have no further submissions to make, I do not think, unless your Lordship wishes to remind me of one which I ought to have made. I think that everything is contained in my closing statement, which I intended to submit in that way. I was going to submit to you the contents of bundle E, but I have now done that in my closing statement, and I shall now take out of that closing statement what your Lordship avers is of less relevance.
- L0104 **Mr Justice Gray** I hear what you say. My understanding was that, when we were discussing closing speeches, what was proposed was that there should be an exchange of written speeches, written notes of what was going to be said by way of speeches or closing submissions. That date slipped and I totally understand why it slipped, but I had thought that the plan was that you would spend today, and Mr Rampton would spend tomorrow, elaborating on what you provided in writing. If you do not want to, there is no reason why you should. That is what I recall as having been the plan. Mr Rampton, am I wrong about that?
- L0105 **Mr Rampton** I think that was what I might call stage one. I think that and again I am doing it only from memory, my recollection was on the last hearing day, which date I forget, what in fact emerged or evolved is on written submissions each side would make a shorter, much shorter, oral submission. I have to go first as Defendant, a strange procedure it is, but there it is, that is what happens. I have to go first and I was given the first half of tomorrow and Mr Irving, I think, the second half. That is how I had read the transcript.
- L0106 **Mr Irving** That is certainly how I understood it also, my Lord.
- L0107 **Mr Justice Gray** If you understood it that way. I am rather puzzled why we have all turned up today.

L0108 **Mr Rampton** I agree; we thought, like your Lordship, first, that Mr Irving might have something to say about our long written submission, but I expect he has not had time to read it. Second, and more particularly, there was going to be an oral submission about the admissibility of his file E, his global file. He now says that he has made that, in effect, in writing. I am quite content with that and probably I shall not even respond to it; Miss Rogers might write a note about the law.

L0109 **Mr Irving** I think the way I have done it in the closing statement is the proper way to do it, my Lord. That gives it the proper way and it avoids going through the very lengthy file of documents that we had.

L0110 **Mr Justice Gray** Just explain to me what you both thought was going to be discussed then.

L0111 **Mr Irving** I had thought, and I am sure Mr Rampton was of the same impression, that your Lordship was going put to us one or two questions concerning the documents that we have supplied to your Lordship over the weekend, namely the oral statements in their then existing state.

L0112 **Mr Justice Gray** How can I put questions to you in relation to a document which I received from you this morning?

L0113 **Mr Irving** You have certainly received the statement from Mr Rampton and I think both of us -- this is certainly the result of conversations I had with the instructing solicitors over the weekend -- this is what we anticipated would be happening today, that your Lordship would be clarifying final matters, dotting the remaining Is and Ts before we reassembled tomorrow for the oral submissions.

L0114 **Mr Justice Gray** Well, I will be measured in what I say, but I had expected to get a little bit of assistance really from both sides. But if you are both saying that you stand by what you submitted to me in writing and you make your public statements tomorrow, which I do not think will help me particularly in the task that I have, well, so be it, if that is what you are both telling me.

L0115 **Mr Rampton** That is my understanding of what was to happen. I had suggested to your Lordship, and I believe your Lordship agreed, that this was a peculiar case, and I do not mean that in any sinister way, but it is a case which has some peculiar public importance, legitimate public importance. Your Lordship took the view, and I believe rightly, that there should be, unusually for a case tried by judge alone, a degree of oral statement at the end of the case.

My recollection is -- somebody is trying to find the transcript of day 30 -- that one of the things that was raised when we returned to court on that day, which I think was probably a Monday, was this question of how those oral submissions should be structured. I think what happened was that your Lordship said either yesterday or today there should be any submissions made, if there were any, about the long written submissions which your Lordship already has.

L0116 **Mr Justice Gray** Yes.

L0117 **Mr Rampton** And that on Wednesday the day would be shared with the much shorter oral summaries.

L0118 **Mr Justice Gray** That bit I have no problem with. I took the view that was an appropriate course to take in the unusual circumstances of this case. I am really thinking more now about what I had got the impression was going to happen, either today or, indeed, yesterday or perhaps part of tomorrow, which is perhaps some assistance, oral assistance, in relation to the issues which I have got to decide, but I, obviously, had misunderstood what you both had in mind.

L0119 **Mr Irving** My Lord, I make such submissions in the opening paragraphs or opening pages of my closing statement, the kind of way that I believe your Lordship should think.

L0120 **Mr Justice Gray** Let me explain why I am a bit unhappy about this. Just to take an example at random, and this is at random, Goebbels diary entry for 22nd November 1941 -- Mr Irving, this is from your submissions -- well, you make your case in two paragraphs about that. Well, that is fine if that is where you want to leave it.

L0121 **Mr Irving** My Lord, your Lordship will ----

L0122 **Mr Justice Gray** I am just bit a surprised.

L0123 **Mr Irving** Your Lordship will find that on several of the issues that your Lordship included in your list I have made no submission whatever because I am confident to rest on what I stated in the witness stand. There has been enough paper generated by this case already, and I do not think your Lordship will pay overmuch attention to them.

L0124 **Mr Justice Gray** Well...

L0125 **Mr Irving** In that particular entry that your Lordship is referring to, I think I brought out the salient points.

L0126 **Mr Rampton** So far as we are concerned, my Lord, we delivered to your Lordship, I think, I hope reasonably early yesterday morning, 9/10ths of what we had written. It is although bulky for somebody who has a familiarity with the case such as your Lordship, it does not actually take very long to read.

L0127 **Mr Justice Gray** No, I have read it.

L0128 **Mr Rampton** Good. Now there are some few additional pages.

L0129 **Mr Justice Gray** Those I have not read because they only arrived this morning.

L0130 **Mr Rampton** What we have done is to follow as faithfully as possible the written scheme which your Lordship drafted and, as also your Lordship indicated we should, we have at the beginning of each section written an introductory passage in most cases.

I have no comment to make about what we have said, I hardly could since I am one of the principal authors of it. Unless it is unclear or wrong, I would not at this stage expect to have to say anything more about it. I had supposed that it was possible that either your Lordship or Mr Irving might have some questions or some objections to some part of it. If not, then I have nothing more to say about it. I have not anything at all to say about Mr Irving's submission (a) because we did not have the whole of it when it arrived, I do not know when, last night or early this morning, I do not know, and we did not have the whole of it, and (b) I have not read it in any way because I have not had time. We still have not got the whole of it, no.

L0131 **Mr Justice Gray** Well, let us not waste more time. Both sides are taking the position they do not want to add anything to what they have submitted in writing and they do not want to say anything about the other side's submission.

L0132 **Mr Rampton** All that I shall do tomorrow is summarize, in effect, and largely not for your Lordship, obviously, for the wider public the effect of this fat file because I do not suppose for a moment that everybody who might be interested is going to read that.

L0133 **Mr Irving** My Lord, I was going by past experience when I prepared this. In 1970, the action I was involved in then, Mr David Hurst made his learned submissions to the court in his closing speeches which lasted two or three hours then Mr Colin Duncan replied on my behalf.

L0134 **Mr Justice Gray** If I may say so, that was rather different. That was a jury action, as I remember, and nobody had to make a reasoned judgment at the end of it. Well, that concludes today's business and I do apologise to the members of public who came perhaps expecting they were going to listen to something today, but that is my expectation too and we were all wrong.

- L0135 **Mr Rampton** We had tried to deal with that. I think, in fact, Miss Rogers explained this to your Lordship's clerk, and I am not blaming him if it did not get through at all. We had realized that today might be a non-event which, largely speaking, it has proved to be, and we knew that, as one might say, the big event was going to be tomorrow, so what we did was we actually put out a press release, not only in this country, but in America, in the hope that people would be deterred from coming today and would know that tomorrow was the right day to attend.
- L0136 **Mr Justice Gray** I remember the problem about having to revise the date when you were going to make your, as it were, public statements, if I can call them that. The message that I am afraid I certainly had not received was that today was going to be a non-event because there were not going to be any final speeches on either side for my benefit as opposed for public consumption. I am really surprised, I am bound to say, but there we are.
- L0137 **Mr Rampton** I would have had something, might have had something, to say about Mr Irving's written submission had I had it in time and had I read it. I do not know. It may be that when we have read it, we may have something to say. I rather doubt it. Mr Irving has had the opportunity of going through what we have written. Apparently, he has nothing to say about it at this stage.
- L0138 **Mr Irving** I opened it here in the courtroom this morning. My Lord, can I ask one technical question? Would it assist your Lordship if I provided my closing statement on disk?
- L0139 **Mr Justice Gray** No, I think I am very happy with it in hard copy. Thank you very much.
- L0140 **Mr Irving** If the order of events was different, I would be quite happy to have started with my closing speech today, but the order of events is that the Defendant has the word, the penultimate word, and I do not think probably we should disturb that.
- L0141 **Mr Rampton** The only other thing which I can add, which might be helpful, is that Miss Rogers says, and she must be believed, that, if your Lordship has any difficulty finding any of the references, ours is, I think, now fully referenced and should not a problem, but one knows how it is. Documents do disappear, it is a fact of life. Or, more particularly perhaps, if a document is referred to in Mr Irving's closing submission, we will give every assistance to your Lordship in trying to find them during the course of today.
- L0142 **Mr Justice Gray** Yes. I do not know what you say in some of your sections, but one particular aspect which I think I did mention I thought was important and required thought, and I certainly had hoped to have some assistance in relation to it, was what I think in the end we called assessing Mr Irving as an historian. I do not what you say in that section, but I think I noticed there is not a section at all. You said nothing on that.

- L0143 **Mr Rampton** I cannot remember which section it is. In fact, section 9 is, I think, about eleven pages long.
- L0144 **Mr Justice Gray** I do not seem to have got it. I may well have put it in the wrong place.
- L0145 **Mr Rampton** It is eleven pages of single spaced typescript.
- L0146 **Mr Justice Gray** No, I do not have it.
- L0147 **Mr Rampton** Here is another copy.
- L0148 **Mr Justice Gray** It was not handed in this morning.
- L0149 **Mr Rampton** Again, it follows the scheme of the relevant paragraph in the written skeleton.
- L0150 **Mr Justice Gray** I cannot really claim to make sense of that, just seeing it now.
- L0151 **Mr Rampton** No, of course not. It is a late section in the submission, and it needs to be read in the light of everything that has gone before, particularly section 1 of paragraph 5, the historiography section, but also, of course, the Auschwitz section.
- L0152 **Mr Justice Gray** Yes.
- L0153 **Mr Irving** One other point I am unclear about is precisely which matters the Defendants are now claiming protection of section 5 over.
- L0154 **Mr Justice Gray** As to that, again, if we are not having oral argument, it is only right that you should know how I was intending to approach it. This would normally be ventilated in the course of submissions. Effectively, it is really for me to decide and evaluate the seriousness of the various imputations against you.
- L0155 **Mr Irving** Whether section 5 applies?
- L0156 **Mr Justice Gray** Yes. I think you understand the way section 5 works, and to the extent that there may be unproven some relatively minor imputation against you, then it may be that I would invoke section 5 and say, the fact that that particular imputation has not been proved by the Defendants is not going to mean that their defence of justification as a whole fails.
- L0157 **Mr Irving** But some matters appear to have been left in limbo like, for example, the question of whether there was a breach of agreement over the Goebbels diaries in Moscow.
- L0158 **Mr Rampton** No, it is not in limbo at all. It is treated fully in the Moscow section. Our conclusion about section 5 is that it is no application in this case because everything that Professor Lipstadt wrote is true in substance.
- L0159 **Mr Justice Gray** Quite, but one has to cater for the possibility. I think we either do have closing submissions or we do not. I think just having odd thoughts being canvassed is just not the way to go about it. I am making every allowance, Mr Irving, for the fact that you are a litigant in person.

- L0160 **Mr Irving** Totally ignorant of the law, yes.
- L0161 **Mr Justice Gray** You have the opportunity to address me on whatever you wish to address me on. I do not know whether you have had the chance to absorb what the Defendants have said in their closing submissions. If you want to do it, I think now is the opportunity to do it.
- L0162 **Mr Irving** Mr Rampton says that he is not pleading section 5 on any of the issues in their pleadings of course, in their defence, that is.
- L0163 **Mr Rampton** I do not say that. What I say is that we do not believe that it has any application, because everything we said is substantially true. That does not mean that, if your Lordship does not agree with that, section 5 may not need to be applied.
- L0164 **Mr Irving** They withdrew the Moscow witnesses and their expert reports and the documents that went with them. They have adduced no evidence whatsoever in justification of the allegation that I breached the agreement in the Moscow diaries therefore, and I cannot see therefore ----
- L0165 **Mr Justice Gray** I am in the difficulty that I have to admit that I have not got as far in the Defendants' submissions as the Moscow section, so I do not know, because I had expected that I was going to be taken through the submissions this morning or today.
- L0166 **Mr Irving** My Lord, I have dealt ----
- L0167 **Mr Justice Gray** So I cannot help you on that.
- L0168 **Mr Irving** I dealt, probably quite improperly then, with the matter in my closing submissions where I dealt with the allegations about the Hamas and Hisbollah and Farakan and Pramyat in three or four pages in fact of my closing statement and strongly suggested that section 5 should not apply.
- L0169 **Mr Justice Gray** Mr Rampton has not really addressed that point, but I am well aware there is a great deal in Professor Lipstadt's references to you in her book which have not been sought to be justified at all.
- L0170 **Mr Irving** Yes.
- L0171 **Mr Justice Gray** So it seems to me that section 5 has got to play some part, whether it avails the defendants is something that I will have decide.
- L0172 **Mr Irving** The allegation that I sit in my office beneath a portrait of Adolf Hitler and that kind of thing, for which again they have pleaded no justification, which will certainly go to my seriousness as a historian. I was hoping that we were going to obtain some definitive list from the Defendants of what they do intend to put in that particular sand bucket.
- L0173 **Mr Justice Gray** They are entitled to say, we say everything is true, full stop. As I understand Mr Rampton, that is the way it is put in the written submissions, but I think I have to approach it on the basis that section 5 is pleaded and it is there if the defendants need it.

- L0174 **Mr Rampton** Then, my Lord, it is up to the Plaintiff, the Claimant, to point to those -- I do not mean in any sense that it is a great deal -- few parts of what Professor Lipstadt wrote, specific parts, that the Defendants have not sought specifically to justify, and to say those parts are outside section 5 because they are so serious; what is more, I am entitled to damages for them because they are distinct and severable allegations and not part of a common sting.
- L0175 **Mr Justice Gray** I think, to be fair, from what I have read of Mr Irving's closing statement, he makes very clear what he says has not been proven by the Defendants.
- L0176 **Mr Irving** Round about page 5 onwards.
- L0177 **Mr Justice Gray** He does not perhaps dot the I by saying, "and that is a severable allegation, which means that, it not having been justified, I am entitled to damages", but that is the thrust of the way he puts it, as I understand it.
- L0178 **Mr Irving** I did look at Gatley last night on the severable allegation aspect of it and I am not sure that that is relevant in this particular matter. I tried to work it in but I found that I could not.
- L0179 **Mr Justice Gray** Whether it is severable or not?
- L0180 **Mr Irving** Whether it is severable or not.
- L0181 **Mr Justice Gray** There may be something in that. I really do not, if I may say so, think that this is a satisfactory way of dealing with it.
- L0182 **Mr Irving** Not in my closing submissions?
- L0183 **Mr Justice Gray** If you want to make a closing speech and make whatever points you like, then of course please do so, Mr Irving, and then Mr Rampton can separately reply to those submissions, rather than having odd points batted around, because it is becoming unstructured and completely unhelpful.
- L0184 **Mr Irving** May I therefore now put to the court by way submission the pages of this relating to Pamyat and Hisbollah and those allegations?
- L0185 **Mr Rampton** I really find this very difficult. I have not had Mr Irving's submission long enough even to have had time to look at it. If I had had, I might have had something to say about it. It is as simple as that. I do not think at this stage in the case it is satisfactory. I am leaving aside entirely the inconvenience to your Lordship. It is not satisfactory to the other party that the Claimant should suddenly stand up and make a row of oral submissions.
- L0186 **Mr Irving** My Lord this submission is --
- L0187 **Mr Rampton** I am sorry, Mr Irving. If Mr Irving has serious submissions of fact and law to make about the defence and the way in which it is presented, then we should have them in writing and in time to respond to them. We have not had that opportunity.
- L0188 **Mr Justice Gray** Mr Rampton, I am sorry, I had expected that today you would be making your submissions, and you do not want to make them.

- L0189 **Mr Rampton** But they are all in here, both of law and of fact, in seriatim and in detail. I have nothing to add to what I wrote.
- L0190 **Mr Justice Gray** Very well. Subject to either of you, I think I will adjourn now and we will resume tomorrow, but I would like to be absolutely clear in my own mind, because there seems to have been some confusion about today, what it is that is proposed to be done tomorrow. Are we just having statements for public consumption? If so, how long is each side likely to take and is there going to be anything else dealt with tomorrow?
- L0191 **Mr Rampton** No. I have no present intention and, if I should be prompted to change that, of course, I will tell your Lordship. I have no present intention of making any submissions on the facts or the law that are not contained in this file. I therefore intend, with your Lordship's permission, to make a relatively short, maybe an hour and a half, two hour statement, setting out in summary what the Defendants' case is to show that what Professor Lipstadt wrote and Penguin published was in substance true in every single respect. That includes, for example, the Hitler portrait, which is a mere aspect of a wider allegation of Hitler partisanship. It includes the Stockholm meeting, which in its natural meaning is merely a particular example of a much wider picture, that is to say adherence to and association with right-wing, anti-Semitic principles and people.
- L0192 **Mr Irving** My Lord, I must then ask you to advise me whether tomorrow I should make a separate submission on section 5 matters, or whether I can leave it bound up in my closing statement as I do.
- L0193 **Mr Justice Gray** I would leave it bound up if I were you, but what are you proposing to do? Like Mr Rampton, speak for an hour and a half, two hours?
- L0194 **Mr Irving** Based upon a cut down version of this text, I will speak the same length as Mr Rampton.
- L0195 **Mr Justice Gray** Very well. 10.30 tomorrow.