

Transcript, day 32

Wednesday, March 15, 2000

Rampton and Irving deliver their closing arguments before the case is adjourned for judgment.

Reason for the previous adjournment and order of closing arguments

L0001 **Mr Justice Gray** Mr Irving, before you say what you want to say and before Mr Rampton starts, can I just say this. I certainly do not intend to have a sort of inquest about why yesterday was abortive. I was a bit surprised, as you may have gathered. I have looked at the transcript of day 30 and I can see how the misunderstanding arose. I think it was then contemplated we would have two days of closing submissions and it has not worked out like that. The reason I mention it is simply this. Having looked again at both sets of written closing submissions -- for which I am very grateful, a lot of work has gone into them obviously -- there are one or two points that I think I ought to put really to both sides. I will do that whenever it is convenient to you both. I will either do it before or during or after, whichever you find convenient -- probably after, I suspect.

L0002 **Mr Rampton** After, I would suggest.

L0003 **Mr Justice Gray** After your public statement, but I do not want to do it. That is what I am really telling you.

L0004 **Mr Rampton** I would also suggest, perhaps, because they are not things in which the majority of people in this room are going to be closely interested, we could also deal with these five points after.

L0005 **Mr Justice Gray** Which five?

L0006 **Mr Rampton** Mr Irving's five points.

L0007 **Mr Justice Gray** The Muller document standard of proof, section 5 etc.

L0008 **Mr Rampton** They are partly matters of law and partly matters of detail.

L0009 **Mr Justice Gray** Subject to Mr Irving, I entirely agree about that. Mr Irving, these are the nitty-gritty, are they not?

L0010 **Mr Irving** I did not want to be wrong-footed by leaving them out. I want to draw your Lordship's attention to the fact that there are these final loose ends that need to be tied up.

L0011 **Mr Justice Gray** I certainly agree. We ought to spend a few minutes on the Muller document.

- L0012 **Mr Irving** Except for the one point, my Lord, point 4 on that list. Having reconsidered the matter, I do consider I am entitled to make slightly broader use of the material which was in the bundle E matters on the basis that I have set out there, that they might go to aggravated damages and they certainly go to explaining my state of mind when I am alleged to have made certain remarks about the bodies or persons concerned.
- L0013 **Mr Justice Gray** What I will do -- I know the Defendants are not very happy about this but I think I am going to do it anyway unless Mr Rampton wants to try and dissuade me -- is to let you make your closing submissions along the lines of the written document. I am bound to say that I think a lot of it goes beyond what the evidence establishes, and also goes beyond what you are really entitled in any event to rely on by way of aggravated damages against the Defendants because, of course, you have to prove the Defendants' involvement in the conspiracy. But I am going to let you do it, unless Mr Rampton continue tries to dissuade me.
- L0014 **Mr Rampton** No, I have no objection.
- L0015 **Mr Justice Gray** I think it is the right thing to do in this particular case.
- L0016 **Mr Rampton** I agree. Miss Rogers has dealt with it very succinctly and, in my submission, very effectively on paper. It is in your Lordship's hands at the end of all this. If this were a Jury case, it would be entirely different, but it is not. We are confident that we can leave it happily to your Lordship. I would also add this. It does seem to me, and I will say this, that the more of that kind of speculative fantasy Mr Irving spins in a public court in this country, the more harm he does his own cause. I only say that at this stage.
- L0017 **Mr Justice Gray** That is as may be.
- L0018 **Mr Irving** Be that as may be, my Lord, of course, I would be perfectly entitled in my closing speech to put to the court the matters that I would have put to the Defendants had they had the courage to go into the witness box. That is the kind of material that I would have put to them.
- L0019 **Mr Justice Gray** Well, I am not sure that is actually right, as a matter of law, but I am taking a liberal approach. Say what you have indicated you intend to say in due course.
- L0020 **Mr Irving** I will certainly tighten it up. I shall not go to such lengths.

Rampton's closing argument (read from the prepared statement)

- L0021 **Mr Rampton** My Lord, I will then read, if I may, what your Lordship has in writing. I start by observing that your Lordship will notice, as I read it, that there are one or two stylistic changes that I have made overnight. They are merely stylistic. They do not touch the substance of what I have to say.
- L0022 **Mr Justice Gray** I will keep my mouth shut and I will not interrupt you, but there are the points that I want to raise with you at the end of your statement.

L0023 **Mr Rampton** If your Lordship would rather do it now?

L0024 **Mr Justice Gray** No, it is better at the end.

L0025 **Mr Rampton** My Lord, I start with this, that if one had read some of the media reports of this trial, which I realize that your Lordship probably has not, one might have supposed that Mr Irving had been dragged into this court to defend his freedom of expression as an historian.

In fact, of course, that is not so. The history of the matter is quite the reverse. Professor Deborah Lipstadt, an American academic, wrote a book called "Denying the Holocaust", which was first published in the United States in 1993. It was then republished by Penguin Books in this country in 1994. The book contained trenchant criticisms of Mr Irving's historiographical methods and his political views and associations. Mr Irving then issued legal proceedings claiming aggravated damages for libel and an injunction against Professor Lipstadt and Penguin. This trial has taken place only because they decided to defend their right to publish the truth.

The principal accusations made against Mr Irving by Professor Lipstadt in her book were, in summary: first, that Mr Irving deliberately falsified history in order to make it conform with his ideological leanings and political agenda, and, in particular, in order to exonerate Adolf Hitler of responsibility for the Nazi persecution of the Jews.

Second, that in order to achieve his objective, Mr Irving distorted historical evidence and manipulated historical documents.

Third, that Mr Irving had become one of the most dangerous spokespersons for Holocaust denial.

Last, that he himself held extremist views and allied himself, with other right-wing extremists, in particular Holocaust deniers and anti-Semites.

My Lord, those were undoubtedly serious charges and, had they been untrue, Mr Irving would clearly have been entitled to a large sum of money and an order of the court preventing the Defendants from repeating their accusations. But, as it turns out on the evidence before this court, the accusations are true, in every significant respect.

Mr Irving had in the past claimed that there was a chain or series of documents which showed that Hitler was innocent of the persecution of the Jews, and in particular their mass-murder during the War; indeed, that he was, in fact, "the best friend the Jews ever had in the Third Reich.

" The Defendants decided to put that claim to the test. They asked a professional historian, Professor Richard Evans of Cambridge University, to investigate it.

His findings were astonishing. Upon examination, virtually every single one of the links in Mr Irving's chain crumbled in his hands, revealing a falsification of history on massive scale. Equally revealing was the discovery that each of Mr Irving's falsifications led to the same end: the exculpation of Hitler.

In addition, in order to test Mr Irving's historiography by reference to his work on a topic other than Hitler -- in a sense, a control sample -- Professor Evans examined a number of successive editions of one of Mr Irving's most successful works, his book on the Allied bombing of Dresden in February 1945. Here again Professor Evans found deliberate falsification on a grand scale, all of it tending to the same result: a gross inflation of the numbers of German civilians killed in those raids.

The long written submission of the Defendants which is before your Lordship contains a detailed account of Professor Evans' findings and the evidence which supports them. By the Defendants' estimate, there are, in relation to Hitler alone, as many as 25 major falsifications of history, as well as numerous subsidiary inventions, suppressions, manipulations and mistranslations employed to support the major falsifications. If those relating to Auschwitz, Dresden and other matters are added in, the number goes well over thirty.

My Lord, in order to illustrate the extraordinary nature and extent of these falsifications, I will give but two examples.

On the evening of 9th November 1938, and through the night until the following morning, there was an orgy of violence and destruction against Jews and Jewish property throughout Germany. This was Reichskristallnacht.

It had been prompted by the assassination in Paris of a German diplomat by a young Polish Jew. The Nazi leadership in Berlin exploited it to the full. It was orchestrated by the SA and the SS, and the police were ordered, by Hitler, not to intervene.

Mr Irving has described this pogrom in various places, but most particularly in his book "Goebbels: Mastermind of Third Reich", which was published in 1996, where he devotes a whole chapter to it. In summary, his account of it is that the whole thing was initiated and orchestrated by Goebbels, without Hitler's knowledge or participation; and that when, in the early hours of 10th November 1938, Hitler found out what Goebbels had done, he was "livid with rage" and took immediate steps to put a stop to it. This account purports to be based partly on the postwar testimony of former Nazis, but principally on the contemporary documents. On examination of those documents, Mr Irving's account turns out to be completely bogus. His use of two of those documents will suffice to illustrate the point.

On page 276 of his Goebbels book, Mr Irving writes this:

"What of Himmler and Hitler? Both were totally unaware of what Goebbels had done until the synagogue next to Munich's Four Seasons Hotel was set on fire around 1 am. Heydrich, Himmler's national chief of police, was relaxing down in the hotel bar; he hurried up to Himmler's room, then telexed instructions to all police authorities to restore law and order; protect Jews, and Jewish property, and halt any ongoing incidents. I emphasise the last part of that sentence, to restore law and order, protect Jews, and Jewish property, and halt any ongoing incidents.

The reference given by Mr Irving in his book as his source for this is a telex sent by Heydrich at 1.20 am on 10th November 1938. In fact, so far from ordering "all police authorities to restore law and order, protect Jews and Jewish property, and halt any ongoing incidents", it read as follows:

"(a) Only such measures may be taken as do not involve any endangering of German life or property (e.g. synagogue fires only if there is no danger of the fire spreading to the surrounding buildings).

(b) The shops and dwellings of Jews may only be destroyed, not looted. The police are instructed to supervise the implementation of this order and to arrest looters.

(c) Care is to be taken that non-Jewish shops in shopping streets are unconditionally secured against damage.

(d) Foreign nationals may not be assaulted even if they are Jews."

That was what Heydrich stated at 1.20 a.m. on 10th November 1938.

Then, on page 277 of his book, after a colourful account of Hitler's supposedly furious intervention, Mr Irving writes this: "At 2.56 am Rudolf Hess's staff also began cabling, telephoning, and radioing instructions to gauleiters and police authorities around the nation to halt the madness", and I emphasise those words.

The source given by Mr Irving for this is a report made by the Nazi Party Court about the pogrom in February 1939. It records this order from Hess's office, made on Hitler's authority. This shows that, in truth, all that the order forbade was the continuing of arson attacks on Jewish shops. Synagogues, houses, apartments, cemeteries, and, in particular, Jewish people were left to the mercy of the continuing violence.

As your Lordship knows, there was an aftermath of Reichskristallnacht. Mr Irving describes one aspect on page 281 of Goebbels in these terms:

"Hess ... ordered the Gestapo and the party courts to delve into the origins of the night of violence and turn the culprits over to the public prosecutors".

Thus Mr Irving gives the impression that those who had perpetrated the violence were to be brought to justice and properly punished.

Nothing could be further from the truth. As the contemporary documents, and in particular the Party Court report of February 1939, which Mr Irving himself used as a principal source for his account of Reichskristallnacht, reveal:

First, the Ministry of Justice ruled, on 10th November 1938, that those who had "merely" caused damage to Jewish shops, synagogues and the like should not be prosecuted at all.

Second, other more serious offences, such as looting, rape, assault, murder and the destruction of Jewish homes for selfish motives were to be referred to the Party Court, which would first decide whether any of the offenders should be referred to the ordinary criminal courts or acquitted by order of the Fuhrer.

Third, in the event, as was no doubt intended, the proceedings of the Party Court were a farce. Of 16 cases dealt with in the report of February 1939, 14 were disposed of with little more than a rap on the knuckles for the culprits, including 13 cases of murder involving the deaths of 21 Jews. The two cases which were referred to the criminal courts were sexual offences against Jewish women - not because of their gravity, however, but because the offenders had been guilty of "racial defilement" (Rassenschande)!

Finally, the reason the Party Court gave for its leniency in the other 14 cases was that the criminals were in fact "only carrying out the unclearly expressed but properly recognized will of the leadership" - that is, Hitler.

Mr Irving knows all of this, but suppresses it entirely in his book.

The second striking example, amongst many, of Mr Irving's shocking falsification of history relates to 1943.

By the beginning of 1943, many of Europe's Jews had already been murdered. Hungarian Jews, however, of whom there were perhaps 600 to 700,000, had, so far, escaped the destruction. The reason was that the ruler of Hungary, Admiral Horthy, although Hitler's ally, had steadfastly refused to deliver up Hungary's Jews. There was much agitation about this in Berlin. Eventually, on 16th and 17th April 1943, Hitler and his Foreign Minister, Ribbentrop, summoned Admiral Horthy to Klessheim, near Salzburg, in order to put pressure on him to surrender the Hungarian Jews into Nazi hands. The notes of the meetings were taken by a man called Paul Schmidt and are agreed by Mr Irving, who used them for his own accounts of these meetings, to be very reliable.

According to Schmidt's notes at the first meeting on 16th April, Horthy protested at the Nazi leader's demands. "But they" (the Jews) "can hardly be murdered or otherwise eliminated", he said. Hitler's response was palliative: "There is no need for that", he said, and added that they could be sent to remote work camps or down the mines."

The next day, 17th April 1943, Hitler's and Ribbentrop's demands became a good deal cruder. Horthy again protested that he "surely couldn't beat the Jews to death". Ribbentrop replied that they "must either be annihilated or taken to concentration camps. There is no other way". Hitler then followed up with this:

"Where the Jews are were left to themselves, as for example in Poland, gruesome poverty and degeneracy had ruled. There were just pure parasites. One had fundamentally cleared up this state of affairs in Poland. If the Jews there didn't want to work, they were shot. If they couldn't work, they had to perish. They had to be treated like tuberculosis bacilli, from which a healthy body could be infected. That was not cruel", said Hitler, "if one remembered that even innocent natural creatures like hares and deer had to be killed so that no harm was caused. Why should one spare the beasts who wanted to bring us Bolshevism once more? Nations who did not rid themselves of Jews perished".

Mr Irving's account of this exchange in his 1977 edition of "Hitler's War" (at page 509) is extraordinary. First, as an invented pretext for Hitler's remarks, he introduces the Warsaw Ghetto uprising, which did not in fact begin until two days later. Then, immediately following Hitler's brutal assertion of the need to kill the Jewish "beasts", Mr Irving adds this:

"Horthy apologetically noted that he had done all he decently could against the Jews: 'But they can hardly be murdered or otherwise eliminated', he protested. Hitler reassured him: 'There is no need for that'. But just as in Slovakia, they ought to be isolated in remote camps where they could no longer affect the healthy body of the public; or they could be put to work in the mines, for example. He himself did not mind being temporarily excoriated for his Jewish policies, if they brought him tranquillity. Horthy left unconvinced."

As, my Lord, will immediately be apparent, this was a quite brazen piece of manipulation: as Mr Irving knew perfectly well, because he was familiar with Schmidt's notes, this exchange had, in fact, occurred on the previous day (16th April), not 17th. It is apparent, therefore, that Mr Irving quite deliberately transferred it to 17th April in order to mitigate the chilling impact of Hitler's stark observation about the need to kill the Jewish "beasts".

The account given in the 1991 edition of "Hitler's War" (at pages 541 to 542) is no better. True, the spurious reference to the Warsaw uprising has been removed. But so, too, has Hitler's repellant analogy between the need to kill animals which cause damage and the need to kill the Jewish "beasts". And the brazen transfer that Hitler's palliative remark on 16th April to this meeting on 17th is perpetuated.

My Lord, these two examples are but the tip of a large iceberg imposed of numbers of other equally egregious falsifications by Mr Irving in his written work and in his public utterances.

I conclude here, my Lord, with this, that the Defendants say, on this part of the case: "Case proved: Mr Irving is, as was proposed at the outset of this trial, a liar".

My Lord, it might be thought that that would be enough to dispose of Mr Irving's claim, given the emphasis he places on the damage to his reputation as an historian which he says was caused by Professor Lipstadt's book. But the evidence in the case has covered a lot of other topics as well, and I shall, therefore, briefly mention them too.

Until 1988, Mr Irving had accepted the historical reality of Holocaust, but denied that Hitler authorized it or, until late on in the War, knew anything much about it. This position, for an historian, was described by Sir John Keegan, the well-known military historian, who was called on subpoena to give evidence in this court by Mr Irving, it was described as "perverse" and as "defying reason." Dr Peter Longerich, a distinguished historian of the period, who gave expert evidence for the Defendants, called it "absolutely absurd".

And so it was, for reasons which can be stated quite shortly.

The Holocaust - that is the systematic mass murder of millions of Jews, gypsies and others - took place in stages.

The first stage, beginning in the autumn of 1941, after Hitler's invasion of the Soviet Union, consisted of mass shootings carried out specially-formed SS groups and their local allies. This continued through into 1942 and resulted in the deaths of up to 1.5 million Jews living in Russia and the Baltic states.

The second stage, which began in December 1941 and continued through into 1943 or later, consisted of the gassing of the Jews of the Warthegau and Poland. This resulted in the deaths of probably as many as 2.6 million Jews (300,000 in the Warthegau and 2.3 million in Poland).

The third stage, beginning with mass deportations to the East in the autumn of 1941, culminated in the deaths by gassing, mostly at Auschwitz, of Jews from Central, Western and Southern Europe. This stage lasted until late 1944. Reliable recent estimates of the numbers gassed at Auschwitz/Birkenhau give a figure of about 1.12 million.

Thus the total achievement of this horrendous exercise in systematic mass murder was probably somewhere between five and six million innocent lives.

The whole of this gigantic operation was orchestrated by Heinrich Himmler, the Reichsfuhrer SS, and his able subordinates, such as Heydrich, Globocnik and Eichmann.

As Dr Longerich explained in court, Hitler and Himmler were long-time intimate associates. Himmler had been with Hitler during the 1923 putsch and Hitler appointed him Reichsfuhrer SS in 1929. Throughout the War, and certainly while the Holocaust was underway, they met frequently, sometimes two or three times a week, often for hours at a time and often alone together. It is, therefore, wholly inconceivable that during the whole three and a half years for which the killing lasted, Himmler could, or indeed would, have concealed from Hitler the enormous, systematic operation that he was directing.

This becomes all the less credible when it is remembered, as the documents show, that Hitler was the mainspring and driving force of Nazi anti-Jewish policy from 1923 onwards and that his anti-Semitism became noticeably more radical, if that were possible, from the date that he declared war on America (11th December 1941).

Thus, leaving aside all the specific evidence to be found in the contemporary documents, including documents written by Himmler himself, which, fairly read by an open-minded, careful historian, plainly implicate Hitler, the overall picture is compelling: the Holocaust could not possibly have happened without Hitler's knowledge and authority. It takes only a moment's light reflection to realize that the contrary idea is both absurd and perverse: suppose, say, in July 1942, when Himmler went to Lublin and Auschwitz to review and advance the mass killing in Poland, and on his return had lunch with Hitler (as he did) that Hitler, previously in a state of complete ignorance, and in any case opposed to any Final Solution that

involved any more than deportation of the Jews to Siberia or Central Africa after the War, had suddenly found out what Himmler was doing. What, one wonders, would have happened to Himmler? Well, of course, it didn't, not then or at any time thereafter.

In 1988 Mr Irving's position changed dramatically. Not only did Hitler not know about the Holocaust, the Holocaust did not happen (which is why, of course, Hitler did not know about it).

The question is why? Why this change in Mr Irving's position? The one-word answer is: Leuchter. In April 1988, Mr Irving went to Canada, for reasons best known to himself, to give expert evidence at the trial in Toronto of a man called Ernst Zundel, a dedicated Holocaust denier, and since 1988, one of Mr Irving's staunchest allies and promoters. While he was in Toronto, he met a man called Fred Leuchter, also proffered by Zundel, but rejected by the Canadian court, as an expert witness. Leuchter was, it seems, some kind of consultant on execution facilities in the USA. He'd been to Auschwitz and Birkenau to seek "scientific" evidence of the existence of homicidal gas chambers. He made a report on his findings.

Mr Irving gave this report a cursory reading. His conversion was instantaneous. Even as he gave evidence to the Canadian court, the Holocaust had suddenly never happened.

In June 1989, Mr Irving gave a press conference in London, triumphantly announcing the English publication of the Leuchter Report, with a foreword written by himself. In his foreword, Mr Irving trumpeted the virtues of the Report, with particular emphasis on the chemical analysis of the samples which Leuchter had brought back from Auschwitz/Birkenau. "Forensic chemistry" proclaimed Mr Irving, "is an exact science".

And, my Lord, indeed so it is. Fred Leuchter had taken samples from the remains of the gas chambers and one sample from the delousing facility in the women's camp at Birkenau. The samples from the gas chambers showed small, but significant, traces of cyanide, the active element in the Zyklon-B pellets used for the gassings, the sample from the delousing facility, relatively high traces. Therefore, concluded Leuchter, the "gas chambers" could never have been gas chambers, because, according to Leuchter, the concentration of hydrogen cyanide needed to kill humans was higher than that needed to kill lice.

The Leuchter report (as Mr Irving has accepted during this trial) was riddled with numerous errors of various kinds, but this error was colossal. As the material contained in the Leuchter report itself showed, the concentration of hydrogen cyanide required to kill humans is, in fact, some 22 times lower than that required to kill lice. Thus, so far from disproving the existence of homicidal gas chambers at Auschwitz, the Leuchter Report actually succeeded in proving the opposite.

Despite this, Mr Irving continued to cling, and still clings, to Leuchter's "forensic chemistry" as the flagship of his Holocaust denial. In consequence, Mr Irving has, ever since 1988, used the Leuchter Report as the foundation not only for his denial of the existence of any homicidal gas chambers at Auschwitz, but also, quite illogically, for the existence of any gas chambers anywhere.

In the end, at the trial of this action, Mr Irving has been driven, in the face of overwhelming evidence presented by Professor Robert Jan van Pelt, Professor Christopher Browning and Dr Longerich, to concede that there were indeed mass murders on a huge scale by means of gassing at Chelmno in the Warthegau and at the Reinhardt camps of Belzec, Treblinka and Sobibor; and even that there were "some gassings" at Auschwitz.

His last remaining defence against the evidence showing that the crematoria at Birkenau were used to murder vast numbers of Jews by means of Zyklon B was to make the slippery concession that the gas chambers -- known as Leichenkeller I at crematoria II and III at Birkenau -- were, indeed, gas chambers, but for gassing only (I quote Mr Irving's words) "objects and cadavers".

This last proposition is ludicrous. If this were not such a serious matter, it would be hilarious. For the evidence, clearly explained by Professor van Pelt, is that the gas-tight doors in Leichenkeller I at both those crematoria were equipped with thick glass spyholes, protected by metal grilles. Why, it was asked of Mr Irving, should these be required for the observation of the gassing of lice-infested "objects" and corpses? Faced with this, Mr Irving retreated to the position that Leichenkeller I had been intended to serve an alternative purpose as an air-raid shelter. This last refuge will be dealt with shortly below. Meanwhile, Professor van Pelt also explained that when the plans of crematoria II and III were redesigned in late 1942 and early 1943, the corpse-slides or chutes appearing on the original plans were removed, and the entrance to the basement moved to the other side of the building. Thus, if the re-design was intended to facilitate the gassing of corpses, people who are already dead, it had only succeeded in compelling those who were carrying the corpses to negotiate a series of small rooms, narrow passages, and staircases to reach the gassing-space. Moreover, the plans were re-designed at that time so as to change the way in which the doors of the gassing-space opened from inwards to outwards, thus further impeding the carrying of corpses into the space.

Mr Irving's air-raid shelter proposal is equally absurd. It is obvious that the Leichenkellers could never have served as air-raid shelters for an inmate population of 100,000 or more, even if it thought likely that the SS should have wanted to protect the inmates against air-raids. Therefore, if the Leichenkellers were ever intended to be used as air-raid shelters, they must have been intended for the SS. In fact, crematoria II and III are about one and a half miles from the nearest SS barracks. The picture of SS personnel running from their barracks, round the perimeter wire, in full gear, one and a half miles to the crematoria, under a hail of bombs, is just plain daft.

Mr Irving's concession that Leichenkeller I was indeed a gas chamber is, of course, entirely inconsistent with his continued adherence to Leuchter's chemical analysis as being conclusive evidence that Leichenkeller I never was a gas chamber. It is also wholly inconsistent with his final line of defence, which is that Leichenkeller I could never have been a gas chamber because the remains of the roof that can be seen at Birkenau do not show the holes through which the gas pellets were thrown.

This last line of defence, which emerged at a very late stage in Mr Irving's Holocaust denial, is, in any case, easily demolished. In the first place, Professor van Pelt, who has subjected the remains of the roof of Leichenkeller I at crematorium II to careful examination (which Mr Irving has never done), told the court that the remains are so fragmentary that they do not allow any firm conclusions to be drawn as to the existence or non-existence of the holes. Second, if, as Mr Irving accepts, Leichenkeller I was a gas chamber (for whatever purpose) it would always have needed apertures for inserting the Zyklon-B, since it never had any windows and only one gas-tight door. Third, even if Mr Irving were right that it was used for gassing objects and corpses, the concentration of hydrogen cyanide required for this would have been comparatively high, with the consequence that the need for tight fitting apertures which could be opened and closed quickly and easily, would, for the protection of those throwing in the pellets, have been all the greater. Finally, leaving aside all the mass of eyewitness testimony, there is a coincidence between two pieces of independent evidence which demonstrates conclusively the existence of these holes or apertures. In 1945, a former inmate of Auschwitz, David Olere, an artist, drew the ground plan of Leichenkeller I in crematorium III. This drawing shows a zigzag alignment of the gassing columns in Leichenkeller I. These are the columns which would have ended in the apertures through which the gas pellets were inserted. It happens that that zigzag alignment is precisely matched by an aerial photograph taken by the Allies in 1944, which was not released to the world until 1979. There can, therefore, be no possibility of any cross-contamination between Olere's drawing and the aerial photograph. No doubt recognizing this, Mr Irving sought to suggest at this trial that the aerial photograph had been faked by the CIA. Professor van Pelt, however, explained to the court that he had had the photograph tested by Dr Nevin Bryant at NASA and that the result of those tests showed conclusively that the photograph was authentic.

In the light of Mr Irving's concession that Leichenkeller I was indeed a gas chamber and of the fact that it is clear that it was never intended for the gassing of corpses or other inanimate objects, or for use as an air-raid shelter, the stark conclusion can only be this: It must have been used for gassing people, live people.

One residual shred of this aspect of Mr Irving's Holocaust denial remains. He disputes the numbers of people murdered at Auschwitz/Birkenau. This last barricade of Mr Irving's is based on three distinctly unstable legs.

The first leg is the so-called "death books" released in recent years from the archive in Moscow. These are incomplete. They show a total of some 74,000 recorded deaths from various causes. They relate, however, and could only ever relate, to the deaths

of prisoners registered upon arrival at Auschwitz, that is to say, those destined to be accommodated in the camps at Auschwitz and, more particularly, Birkenau, as workers (for a time at least).

There was, however, a preliminary process at Auschwitz, which involved separating those deemed to be fit for work from the rest. This was called "selection". The vast majority, including the old, young children, and mothers with small children, were "the rest". They were gassed immediately without ever being registered; their deaths were never recorded.

There is a great deal of eyewitness evidence about this from both sides, perpetrators and surviving victims. This evidence is confirmed by photographs taken by the SS during the so-called "Hungarian action" in the course of which, over a matter of months, some 400,000 Hungarian Jews were gassed, in the summer of 1944. Thus, once again, eyewitness evidence is corroborated by contemporary documentary evidence.

In the result, the fact that the "death books" fail to record the deaths of perhaps 1 million people killed on arrival is unsurprising and inconsequential.

The second leg of Mr Irving's last barricade consists of German police radio messages decoded by the British during the war. Some of these came from Auschwitz, and of course none mentioned gassings. For exactly the same reasons as the death books make no reference to those murdered on arrival, it is not reasonable to expect that the radio messages from Auschwitz would: people who were not registered on arrival at Auschwitz because they were not destined for work in the camp but, instead, for immediate death in the gas chambers, would obviously not be mentioned in messages about recorded deaths.

The last leg in the barricade is Mr Irving's contention that Auschwitz did not have sufficient incineration capacity for all the corpses of those whom it is generally held by historians were killed there. As Professor van Pelt convincingly demonstrated, by reference to a letter of 28th June 1943, from Karl Bischoff, the head of the building programme at Auschwitz, to Berlin, the potential incineration capacity at Auschwitz/Birkenau at that time far exceeded any possible mortality rate amongst the registered inmates from "natural" causes, including the possibility of a repeat of the typhus epidemic which had struck the camp in 1942. This means that the incineration capacity must have been calculated and built, as it was in due course, to accommodate the mortal remains of the hundreds of thousands of people who were gassed on arrival.

Faced with this, Mr Irving's only possible response was (as ever) to challenge the authenticity of the Bischoff letter. This challenge, in the end, turned out to be based on nothing more than the fact that the administrative reference on the letter did not contain the year date. In fact, copies of this document have been retained in the archive at Moscow since 1945, when the Soviets liberated Auschwitz and acquired the documents which the SS had forgotten to destroy. Moreover, the document was used at the trial of the Auschwitz commandant, Rudolf Hoess, in 1948, and again at the trial of the Auschwitz architects, Dejaco and Ertl, in 1971. Not unnaturally,

Professor van Pelt saw no reason whatsoever to doubt the authenticity of the document. Amongst other reasons for rejecting Mr Irving's proposal that the document might be a postwar communist forgery, is the fact that the incineration capacity shown in the document -- that is 4,756 corpses per 24 hours -- is very significantly lower than that estimated by the Soviets and the Poles (both communist regimes) shortly after the War. It follows that if the document were a communist forgery, it would be a very strange one.

Mr Irving's last challenge to the incineration capacity was that the amount of coke delivered to Auschwitz at the relevant time would not, in the ordinary way, have been sufficient to meet the required rate of incineration. As Professor van Pelt demonstrated, this challenge is demolished by two considerations which Mr Irving had evidently ignored: first, the procedure for incineration at Auschwitz involved the simultaneous incineration of up to four or five corpses even in every muffle of the ovens; and, second, in consequence, the corpses themselves served as fuel for the ovens, the more particularly so if, as they generally did, they included the comparatively well fed corpses of people recently arrived on the trains and gassed on arrival.

Mr Irving's Holocaust denial is thus exposed as a fraud. It originated with a piece so-called scientific research which, on analysis, turns out, if it has any value at all, to support the overwhelming historical evidence that Auschwitz was indeed a gigantic death factory. Mr Irving's later adornments to his gas chamber denial also turn out to be fragile conjectures based on no significant research at all: it should be noted that Mr Irving has never himself been to Auschwitz to examine the archeological remains or the documentary evidence contained in the archive. It follows that some other reason must be sought to explain his devotion, over many years, and even in this court, though his case has changed and changed back again throughout the trial, to the bizarre idea that no significant numbers of people were murdered in the homicidal gas chambers at Auschwitz/Birkenau. The reasons are not far to seek.

As the evidence in this court has shown, Mr Irving is a right-wing extremist, a racist and, in particular, a rabid anti-Semite.

Two examples, again, amongst many, will suffice to illustrate this proposition.

In a speech which he made at Tampa, Florida, on 6th October 1995 to the National Alliance, a white supremacist and profoundly anti-Semitic group, Mr Irving said this about the Jews:

"You have been disliked for 3,000 years. You have been disliked so much that you have hounded from country to country, from pogrom to purge, from purge back to pogrom. And yet you never ask yourselves why you are disliked, that's the difference between you and me. It would never occur to you to look in the mirror and say "Why am I disliked, what is it the rest of humanity doesn't like about the Jewish people, to such an extent that they repeatedly put us through the grinder?" And he (a heckler whom Mr Irving said he had perceived to be Jewish) went berserk, said Mr Irving. He said (the heckler), "Are you trying to say that we are responsible for Auschwitz ourselves"? And I, that is Mr Irving, said, "Well, the short answer is yes". The short

answer I have to say is yes ... If you (the Jews) had behaved differently over the intervening 3,000 years, the Germans would have gone about their business and would not have found it necessary to go around doing whatever they did to you. Nor would the Russians, nor the Ukrainians, nor the Lithuanians, Estonians, Latvians, and all the other countries where you've had a rough time. So why have you never asked yourselves that question?" So much for the Jews.

As to the blacks (and homosexuals), Mr Irving, in an entry in his private diary on 10th November 1987, on the occasion of a visit to South Africa, recorded his own thoughts:

"God works in mysterious ways, but here (that is South Africa) we agree he appears to be working remorselessly towards a Final Solution which may cruelly wipe out not only blacks and homosexuals, but a large part of the drug addicts and sexually promiscuous and indiscriminate heterosexual population as well."

These examples, again the tip of, I am afraid, a very large iceberg, demonstrate, beyond doubt, that Mr Irving is a profound racist and a radical anti-Semite. But this is not the end of the story. For many years, Mr Irving has travelled about the world giving vent to his views at gatherings composed of, and organized by, others of similar opinion.

Until he was banned in 1993. Mr Irving's energies were particularly devoted to the propagation of his ideology in Germany, where pro-Nazi sentiment has not only persisted but alas, since reunification, undergone a significant revival, particularly in the East.

This is chilling exposed by a demonstration of neo-Nazi boot boys, waving Nazi flags and chanting racist slogans, which was addressed by Mr Irving at Halle in East Germany in November 1991. In his diary Mr Irving described his speech at this rally as "rabble rousing", no doubt for good reason. The speech was greeted with enthusiasm, not least, perhaps, because he predicted the recreation of a greater Germany, by the reconquest, through economic power, of the former Third Reich territories in the East. This speech was greeted with enthusiasm and, unsurprisingly, shouts of "Sieg Heil!".

Holocaust denial is forbidden in Germany (notwithstanding which Mr Irving has, from time to time, managed to slip in direct statements that there were never any gas chambers). Elsewhere, however, it has been a constant theme of Mr Irving's public utterances. He has expressed it, on numerous occasions, in terms which variously attribute the blame for the Holocaust on the Jews themselves, accuse Holocaust survivors of lying in order to extort money from the German Government, and pour scorn on the suffering of Holocaust victims, both alive and dead. These utterances are often greeted with warm applause and loud laughter by his audiences.

Given that Mr Irving has repeatedly falsified history in pursuit of his obsessive desire to exonerate Hitler of responsibility for the Nazi persecution of the Jews and, in particular, of responsibility for the Holocaust, and given that he has repeatedly denied the Holocaust, without any historical foundation, and in the face of

overwhelming evidence that the Holocaust took place on the scale and in the manner generally described by reputable historians, the question now arises why Mr Irving should have engaged so actively in the promotion of these historical falsehoods.

The answers suggested by the evidence are: Mr Irving is an anti-Semite; Holocaust denial, in the form in which it is purveyed by Mr Irving, is an obvious expression of anti-Semitism, and is music to the ears of the neo-Nazis and other right-wing extremists to whom he purveys it; Mr Irving is a Hitler partisan, who has falsified history on a staggering scale in order to "prove" Hitler's innocence; this, like Holocaust denial, is obviously very appealing to his fellow travellers -- after all, if the Holocaust were a "myth", then, obviously, Hitler could have no responsibility for it.

How far, if at all, Mr Irving's anti-Semitism is a cause of his Hitler apology, or vice versa, is quite unimportant. Whether they are taken together, or individually, it is clear that they have led him to prostitute his reputation as a serious historian (spurious though it can now be seen to have been) for the sake of a bogus rehabilitation of Hitler and the dissemination of virulent anti-Semitic propaganda.

L0026 **Mr Justice Gray** Mr Rampton, can I raise with you now the points I think I need to clarify?

L0027 **Mr Rampton** Yes.

L0028 **Mr Justice Gray** I do not think it will take very long. There is just one point that occurred to me as you were reading out the statement, and it relates to paragraph 41, where you are dealing with incineration capacity.

L0029 **Mr Rampton** Yes.

L0030 **Mr Justice Gray** The point you are making is that it is strange to suggest that the Bischoff document is a communist forgery, since it shows a rate of incineration lower than was estimated by the Soviets and the Poles. Am I right in thinking that the estimate you are there talking about by the Soviets and the Poles is the estimate of the total numbers killed, rather than of incineration capacity or rate of incineration?

L0031 **Mr Rampton** No, my Lord. Well, I think that is partly right, if I may say so. But also on page 207 of Professor van Pelt's report, there is rather a dense paragraph. I cannot remember now off the top of my head how the answers come out. There is rather dense paragraph from which one can certainly work out, and I know Professor van Pelt told me what the totals were by but I have forgotten them. One can certainly work out that the 4,756 corpses per 24 hours was significantly lower than the Russian and Polish estimates for incineration. I think the Russian figure was 50 per cent higher and the Polish figure about 30 per cent higher.

- L0032 **Mr Justice Gray** Thank you very much. I did not know that. You have given me the reference so that has dealt with that. The other questions are really all rather broader ones. Can I take them in what I hope is the sensible order? The first one relates to deportation, and I will ask Mr Irving the same question in due course. It is not really clear to me what, if any, is the issue between the parties as to that particular phase.
- L0033 **Mr Rampton** No. I have never understood that there was.
- L0034 **Mr Justice Gray** No.
- L0035 **Mr Rampton** Dr Longerich told your Lordship, and we accept, we have to, he knows a lot more about it than we do, that in the beginning the transportation of the German and other central European, French and Greek, Italian Jews was just to the East, where they were put into ghettos which had been vacated by the murder of the Polish Jews.
- L0036 **Mr Justice Gray** A sort of two phase deportation exercise?
- L0037 **Mr Rampton** Yes. Then eventually, probably sometime in 1942, they started killing the arrivals. There is a notable document your Lordship will remember from the Gestapo at Lodz, explaining how they cleared one lot and made room for the other lot.
- L0038 **Mr Justice Gray** Yes. Leaving aside the extermination, which is a separate issue and I understand what Mr Irving says about that, you do not understand there to be any argument or dispute between the Defendants and Mr Irving as to the fact that the deportation took place, and indeed also as to the fact that Hitler knew about it, because it is Mr Irving's case that that was all that was involved.
- L0039 **Mr Rampton** No question. Hitler gave the order for it. As your Lordship will have seen, in one of the passages in our long submission, we draw attention, I forget which book it is, to a statement by Mr Irving where he says Hitler was neither consulted nor knew anything about the deportations. Why he should say that, I have absolutely no idea, but the fact is that Hitler gave the order.
- L0040 **Mr Justice Gray** That was Hitler's preferred solution, as opposed to extermination, according to Mr Irving's argument.
- L0041 **Mr Rampton** In 1941 it may or may not be so, so far as the German Jews are concerned.
- L0042 **Mr Justice Gray** Yes.
- L0043 **Mr Rampton** So far as the rest, anyway.
- L0044 **Mr Justice Gray** I noticed something this morning which I had not noticed before, which is that -- have you got your more detailed written submissions?
- L0045 **Mr Rampton** Yes, I have.
- L0046 **Mr Justice Gray** Would you go to Tab 5 (i)?
- L0047 **Mr Rampton** Yes.

L0048 **Mr Justice Gray** There is at page 56, paragraph 4, which seems to continue over the page on page 57.

L0049 **Mr Rampton** Yes, it does.

L0050 **Mr Justice Gray** The next paragraph is 12. I see what I have done. Yes, there is an 11 somewhere lurking way back.

L0051 **Mr Rampton** Paragraph 11 is on page 53. It has a large number of subparagraphs.

L0052 **Mr Justice Gray** Yes. The next broad question is this. I am really asking for perhaps a bit of assistance on this. It is what we have called the genesis of the gassing programme, or the extermination programme.

L0053 **Mr Rampton** Yes.

L0054 **Mr Justice Gray** And what you have done, and this is your (ii), is very helpfully to set out what you say are gathered together from various files the various documentary references which demonstrate the setting up of the gassing in the Reinhardt camps and so on.

The slight problem I have with this way of dealing with it is that one has to try to confine the judgment within some sort reasonable bounds -- it is going to be horrifically long anyway -- and I do not think it is feasible to even begin to try to incorporate all those references. It would just overload it.

L0055 **Mr Rampton** No, we were not expecting that your Lordship would, of course not. It seemed to us, though, that now that one -- I mean, I am only a lawyer too -- had the chance to look at the thing with some considerable care, that that table led the eye through the stages really quite well; but if that is not so, then all I perhaps need to do is to refer your Lordship back to the little summary that I have given in this latest statement starting on page 10.

L0056 **Mr Justice Gray** Yes, but I think the problem is what I would really ideally want to aim at myself in order to give anyone reading the judgment a sufficient but not overextended view of what the documents show to have happened is something in between the two.

L0057 **Mr Rampton** I think what I am being asked ----

L0058 **Mr Justice Gray** You will think I am by very awkward.

L0059 **Mr Rampton** No, of course not. I do not know how much time I have, that is all. What I think I am being asked for and will willingly supply -- I might even get Dr Longerich to write it actually -- is really a chronological summary with a bit more detail than I have put in here and a bit less than I have put into the main submission.

L0060 **Mr Justice Gray** I think that is probably right. Really in a way it perhaps will highlight the most significant documents. I think it is right, I mean, as you realize, I have been trying to sort of keep a tag on what the evidence has revealed as it has gone on, so I think I have quite a lot of them, but I suspect I am missing some of the important ones and I would like to ----

- L0061 **Mr Rampton** Yes, I mean, I do not say I have covered everything either.
- L0062 **Mr Justice Gray** Can I invite you to do that? Not at enormous length, but I think it would be helpful.
- L0063 **Mr Rampton** We will do it in the course of the rest of this week.
- L0064 **Mr Justice Gray** And bearing in mind, if I may suggest it, the issues that arise on the genesis of the gassing as opposed to Auschwitz, which I will deal with separately, seem to me to be, firstly, on what scale the extermination took place, and that is not really much of an issue now, as I understand Mr Irving's case.
- L0065 **Mr Rampton** Not an issue at all.
- L0066 **Mr Justice Gray** But also Hitler's knowledge. So that is the thing to concentrate on, and I appreciate to some extent that may not any longer be as stark an issue as it was.
- L0067 **Mr Rampton** That is covered specifically, not only with what I said today in general terms, but there was an exercise that I did in re-examination with Professor Longerich which is referred back to in here, just that really the month of July and into August 1942, which demonstrates in Professor Longerich's view, which we obviously adopt, that it is inconceivable that while Himmler was supervising the mass extermination of goodness knows how many people in the General Government Hitler did not know about it.
- L0068 **Mr Justice Gray** Yes. One of the things I was going to ask Mr Irving is whether he accepts the concessions that you attribute to him at various stages of your submission.
- L0069 **Mr Rampton** I have given the reference to it somewhere in here.
- L0070 **Mr Justice Gray** You have, indeed, but I think it is right it should be put to him.
- L0071 **Mr Rampton** I mean, what he says now, his position has changed throughout the case, but really the concessions, if I may say this now, which we have listed in various places in this long submission are those which were first driven out of him by cross-examination, no cleverness on my part, but by the evidence which was presented to him, and it was not selective, in cross-examination. His first reaction, eventually in some case, sometimes quite quickly, was to say, "Yes, are you right, it did happen".
- L0072 **Mr Justice Gray** Yes, but I must find out what the up-to-date position is because I think it is fair to say that sometimes Mr Irving has fluctuated.
- L0073 **Mr Rampton** As I say, I do not attach much weight to what I might call back tracking.

L0074 **Mr Justice Gray** Right. If Professor Longerich can perform that exercise, but also focus, if he would, on the extent of Hitler's knowledge and the reason for saying that he knew about the gassing at Chelmno and all the rest.

The next question is a very short one and I think I know what your answer is, but I will ask it all the same: part of your case against Mr Irving is that he is a racist, leaving aside anti-Semitism, that he is a racist and you have a number of quotations from his speeches.

L0075 **Mr Rampton** Yes.

L0076 **Mr Justice Gray** How does that bear on (a) the words complained of, and (b) the meanings that you seek to justify?

L0077 **Mr Rampton** I suppose we seek to justify simply that he holds extremist views in the written bit. In the statement of case, I cannot remember. It says something ----

L0078 **Mr Justice Gray** There is a bit right at the back.

L0079 **Mr Rampton** --- rather more specific than that.

L0080 **Mr Justice Gray** Perhaps my question really is, there is nothing about racism, is there, in ----

L0081 **Mr Rampton** No.

L0082 **Mr Justice Gray** --- Professor Lipstadt's book?

L0083 **Mr Rampton** Perhaps I should ask her. There is some allusion to it, she says.

L0084 **Mr Justice Gray** I am not sure there is; if there is, I would like to know what it is.

L0085 **Mr Rampton** But, maybe your Lordship is right, there is this to be said, perhaps, if a man is and out and out racist which we would propose that it is obvious from his own private jottings, never mind what he says publicly, that Mr Irving is, and if anti-Semitism is a form of racism, which it plainly is, then it is a bit like a case where you accuse a man of grievous bodily harm and at trial succeed in proving that he is a murderer.

L0086 **Mr Justice Gray** Yes. I thought that would be your answer, that anti-Semitism is just one form of racism.

L0087 **Mr Rampton** Yes, indeed.

L0088 **Mr Justice Gray** And, therefore, it is relevant, you would say, by way of justification of an anti-Semitic allegation that there is a general streak of racism to be perceived in what Mr Irving has said and done.

L0089 **Mr Rampton** It is evidence of his general disposition to disparage and be hostile towards people of different colours, ethnic backgrounds and cultures.

L0090 **Mr Justice Gray** Yes. Now perhaps, for me, at any rate, the most important question is to be absolutely clear about what you are saying in the section which is section 9, I think, or (ix) towards the back of your written submission about assessing Mr Irving as an historian.

- L0091 **Mr Rampton** Yes.
- L0092 **Mr Justice Gray** Do you mind turning it up because I just want to be absolutely clear about it this because I think it is exceedingly important. You first refer back to your historiographical criticisms, and I am right in taking it, am I not, it is pretty obvious from what you there say by way of criticism of Mr Irving that a number of the criticisms are criticisms that he has deliberately falsified the record.
- L0093 **Mr Rampton** Every single one.
- L0094 **Mr Justice Gray** All right, every single one. Now, you do not expressly say so, but you may tell me it is implicit, that when you deal with his partisanship for Hitler which is (ii), you do not expressly say that that is all deliberate distortion and manipulation and so on.
- L0095 **Mr Rampton** No.
- L0096 **Mr Justice Gray** But that I understand to be your case, am I right?
- L0097 **Mr Rampton** No, what I say is that he has sought to exculpate Hitler; that he has done that by a massive falsification of the underlying historical record on a large number of occasions.
- L0098 **Mr Justice Gray** But going beyond what you have selected or Professor Evans has selected as the historical criticisms?
- L0099 **Mr Rampton** Then I say if one looks at the general evidence as an objective, open-minded, careful, dispassionate historian, that Hitler was, indeed, responsible, knew all about it, and authorized it, the conclusion is irresistible that he did. Mr Irving has shut that window, as it were, and has got on with the shut window behind him with the falsification of history so as to exculpate Hitler.
- L0100 **Mr Justice Gray** Yes, so this is again another instance of deliberate manipulation which kind of runs through ----
- L0101 **Mr Rampton** It is a kind of deliberate blindness to the evidence. What he does not like, he ignores.
- L0102 **Mr Justice Gray** Deliberate blindness?
- L0103 **Mr Rampton** Yes, it is deliberate blindness. He knows about, he has known for years, about report No. 51, for example.
- L0104 **Mr Justice Gray** So it is telescope to the wrong eye?
- L0105 **Mr Rampton** Yes, and for years, despite report No. 51, until we got him into this court, until he got us into this court, he did not accept that Hitler sanctioned the mass shootings in the East. It is that kind of phenomenon.
- L0106 **Mr Justice Gray** So that the partisanship. Then Auschwitz, well I think it is pretty clear what your case is about that.
- L0107 **Mr Rampton** Yes.

L0108 **Mr Justice Gray** You do not specifically rely on the denials of the Holocaust, but, presumably, you say in relation to those that they are denials which Mr Irving must have known were false when he made them.

L0109 **Mr Rampton** No, again this is a bit like the sort of general refusal to accept Hitler's knowledge. What I say about that is that his denials of the Holocaust have been made without any reference whatsoever to any reliable evidence. They started to be made on Leichter which is an obviously completely hopeless position for any kind of self-respecting historian or, indeed, anybody else for that matter. Then much later on down the road he adds in one or two other things like the death books and the decrypts. Finally, just before this trial or a year or so before this trial, he comes to the runes. He has never been to Auschwitz. He has never looked at any of the documents or the plans. Such evidence as he knows about he dismisses out of hand as being mere eyewitness testimony. When he comes to see an aerial photograph showing the holes in the roof, he says it is a forgery; the incineration capacity document is also a forgery, and so on and so forth. This means that his denial must have another agenda because it cannot be the product of genuine bona fide historical research and contemplation.

L0110 **Mr Justice Gray** So his state of mind which is -- and it is important that I am absolutely clear what it is that is being suggested in relation to the various issues that have arisen in the case -- this is an area where you put it as being deliberately perverse blindness and acting in pursuance of what is, effectively, a neoNazi agenda, is that right?

L0111 **Mr Rampton** Yes, I put it in two ways and I will say it as shortly as I can. I put it forward as evidence of somebody who cannot be regarded as a serious historian, because what he has done is to allow his historical apparatus to be distorted by something beyond -- extrinsic or ulterior. Looking at the way in which he expresses Holocaust denial and the audiences to whom he expresses that denial and the things that he says on those occasions, one is driven to the conclusion that the hidden agenda, the reason for the historical incompetence, if I can I call it that (though there is a much stronger word that I could think of) is that he is at root deeply anti-Semitic and a neo-Nazi, as your Lordship just said.

L0112 **Mr Justice Gray** Well, that raises the last question that I wanted to canvass with you, and it is anti-Semitism and, indeed, the racism and the extremism and all the rest of it. I find it a little, and I find it throughout the case, bit difficult to see how, if at all, those allegations against Mr Irving dovetail with the general allegation that he falsifies to an extent deliberately the historical record because it seems to me, and I just want to know how you put it, that if somebody is anti-Semitic, and leave aside racism, but anti-Semitic and extremist, he is perfectly capable of being, as it were, honestly anti-Semitic and honestly extremist in the sense that he is holding those views and expressing those views because they are, indeed, his views.

- L0113 **Mr Rampton** Yes.
- L0114 **Mr Justice Gray** Now, it seems to me that probably, if you come down to it, that the anti-Semitism is a completely separate allegation which really has precious little bearing on your broader and perhaps more important case that Mr Irving has manipulated the data and falsified the record, or do you say that they are corrected in some way and, if so, how?
- L0115 **Mr Rampton** I propose that they probably are connected. I do not have to do that, but I propose that they are connected, and that the link between them, I have no doubt at all he is genuinely anti-Semitic and all the more defamatory it is of him to say so, and it is true. I propose that certainly, that he is genuinely profoundly anti-Semitic. But the bridge between the Holocaust denial and the Hitler apology from anti-Semitism is a very easy one to build, because what more would an historian who is an anti-Semite want to do in exculpation of Hitler which he has been trying to do by telling lies about history for years, what more would he want to do than to deny the Holocaust?
- L0116 **Mr Justice Gray** Yes, but he might believe what he is saying. That is the point. That is why it is important.
- L0117 **Mr Rampton** Believe what he is saying about what?
- L0118 **Mr Justice Gray** About the Holocaust.
- L0119 **Mr Rampton** There is no way he could believe what he is saying about the Holocaust if it ----
- L0120 **Mr Justice Gray** I understand that, but that has nothing to do with his anti-Semitism. I am not sure I am making my point clear to you that ----
- L0121 **Mr Rampton** No, I take a profound anti-Semite, I see that he has denied the Holocaust without any historical justification whatsoever.
- L0122 **Mr Justice Gray** But I understand all of that.
- L0123 **Mr Rampton** Then I ask myself, what is his reason for denying the Holocaust because he has not got a good historical one, there must be another one? And the most obvious thing for a profound and genuine anti-Semite to do because it suits his book is to leap into Holocaust denial without any proper evidence at all, any evidence at all, and cart it around the world in front of him and to audiences at other anti-Semites and neofascists.
- L0124 **Mr Justice Gray** That is another agenda, you would say?
- L0125 **Mr Rampton** Yes, that is the other agenda; the promotion of anti-Semitism.
- L0126 **Mr Justice Gray** Yes.
- L0127 **Mr Rampton** And given that there is, as I say, absolutely no historical foundation, no proper historical foundation, for Holocaust denial, and given that there is evidence that Mr Irving is an anti-Semite, as I say, the bridge between the one and the other is very easy to build indeed.
- L0128 **Mr Justice Gray** Yes, thank you.

L0129 **Mr Rampton** And the same goes for Hitler exculpation.

L0130 **Mr Justice Gray** Thank you very much. Now, Mr Irving, it is your turn.

L0131 **Mr Irving** My Lord, it might be proper, perhaps, to have a five-minute adjournment as the Defendants have provided to me a list of objections they make to my closing statement and, indeed, I think it would be fair to them if I were just to review those objections and see if I ought to take them on board.

L0132 **Mr Justice Gray** I do not have any difficulty with that. Will five minutes be enough?

Irving's closing argument

L0133 **Mr Irving** Five minutes will be enough.

L0134 **Mr Justice Gray** Yes, Mr Irving?

L0135 **Mr Irving** My Lord, rather like going over the top in Gallipoli, but my father was in that battle so I know what it is like. I will be making omissions from the text that I gave your Lordship and I will indicate by saying that I am omitting a sentence or a paragraph so that your Lordship can follow.

L0136 **Mr Justice Gray** That is very kind.

L0137 **Mr Irving** May it please the court. The Defendants in this action, the publisher Penguin Books Limited and the American scholar Deborah Lipstadt, have sought to cast this trial as being about the reputation of the Holocaust. It is not.

The world's press have also reported it in this way. Again, it is not.

This trial is about my reputation as a human being, as an historian of integrity, and - thanks to the remarks made by Mr Rampton - as a father. The Defendants are saying, and have so convinced many people, that I am not entitled to continue to earn a living in the way that I have earned it for nearly 40 years. A judgment in my favour is no more than that judgment that disputed points which I have made about some aspect of the narrative are not so absurd, given the evidence, as to disqualify me from the ranks of historians. Under the laws of defamation as they exist in this country, it could not be anything else, and nor must the defence team, no matter how powerful, how moneyed, or eloquent, or numerous, be allowed by their tactics to skew it in any other way.

I may add that the points I have made do not necessarily lessen the horror or the burden of guilt. I have always accepted that Adolf Hitler, as Head of State and government in Germany, was responsible for the Holocaust. I said, in the Introduction to my flagship biography, *Hitler's War* (this is a reference to the 1991 edition):

If this biography were simply a history of the rise and fall of Hitler's Reich, it would be legitimate to conclude: "Hitler killed the Jews". But my years of investigations suggested that many others were responsible, that the chain of responsibility was not as clear cut as that. Nothing that I have heard in this Court since January 11th has persuaded me that I was wrong on this account.

These latter points lead to another consideration. Your Lordship will have heard of the - largely successful - effort to drive me out of business as an historian. This Court has seen the timidity, in my submission, with which historians have already been fraught once Holocaust is questioned, not denied, questioned. One notable historian, whose name has been mentioned this morning, ordered by summons by myself to attend, showed himself reluctant even to confirm what he had written in my favour, repeatedly, over the last 20 years.

A judgment rendered against me will make this paralysis in the writing of history definitive; from then on, no one will dare to discuss who exactly was involved in each stage of the Holocaust -- rather like in Germany now, you cannot do it any more -- or how extensive it was. From then on, discussion will revolve around "safe" subjects, like sacred texts in the Middle Ages, or Marx in the old Soviet Union, or the Koran in some fundamentalist state today. Every historian will know that his critique needs to stop sharply at the boundaries defined by certain authorities. He will have a choice; accept the official version, holus-bolus; or stop being an historian.

A judgment in my favour does not mean that the Holocaust never happened; it means only that in England today discussion is still permitted. My opponents would still be able to say, just as now, would still be able, just as now, to produce other documents if they can; to expound alternative interpretations. They would be as free as ever to declare that they think that I am wrong and all the other things that have been said about me today. They would be impeded in one way only: they would not be able to say in a loud and authoritative voice that I am not an historian, and that my books must be banned. As a result of my work (and of this case) the Holocaust, in fact, has been researched more, not less. Those who (rightly) believe that these crimes should never be forgotten (and I stress the word "rightly"), these crimes should never be forgotten, should ask whether their case is better served by a compulsory - and dead - text imposed by law and intimidation, or by a live and on-going discussion.

Our Common Law has at its kernel an "adversCourier" procedure whereby, it is believed, truth is best elicited by each side putting their case as strongly as possible. We have heard some pretty strong things said today. I agree with English Common Law.

I read in The Independent, a newspaper in this country, in a lengthy and deeply libellous article published only last week about me, these words: "But if he wins, it will open the door for revisionists to rewrite any event in history without the requirement to consider evidence that does not suit them and without fear that they will be publicly denounced for their distortion".

My Lord, in bygone days, I venture to submit, such an article, published while an action was literally sub judice, would have been a clear contempt. Your Lordship will have noticed that I wearied, after a few days, of drawing attention to the coverage of this trial in the media. Allow me, however, to introduce one cautionary statistic: not including the fuss about the Eichmann manuscript, the British press have published no fewer than 167 reports during the seven days that I was on the witness stand, that is 24 per day; but just 58 reports during the 20 days when the boot was on the other foot and I was cross-examining Mr Rampton's fine witnesses, that is roughly three per day. That is a disparity of about eight to one. I make no complaint about that. If your Lordship has noticed any of these items, you will perhaps have observed that the reporting in both cases is almost exclusively devoted to the defence statements, or their questions to me, and not to the product of the examination. That is the way things are in a free society. The Court, however, operates by different standards, and it will not allow public sentiment, I hope, to guide its verdict.

I believe it was Churchill who once said, "There is such thing as public opinion, there is only published opinion". Given such a baleful glare from the press gallery, my Lord, I am glad that her Majesty has such a resolute officer presiding over this case. The outcome is in your Lordship's hands and yours alone, and I am glad, I am confident that nothing that the press has written, or may yet write, will deflect your Lordship from arriving at a just conclusion.

The Defendants have sold around the world a book, "Denying the Holocaust". May I say here that I see Penguin Books among the Defendants to my sorrow, as they have published my own works in the past. They continuing even today, however, and I stress this fact, to sell this book for profit, in the knowledge that it contains very defamatory allegations and that those allegations are held to be untrue. It is a reckless, even foolhardy, gesture which I submit, my Lord, goes to the question of aggravated damages when the time comes.

Neither of these Defendants evidently bothered even to have the manuscript professionally read for libel. I say "evidently" because we do not know: they have not deigned to enter the witness box themselves, no executive of Penguin Books, not the author who has, I must say, sat in this room for the two months that the trial has continued, neither of them has deigned to enter the witness box to answer even that most straightforward and elementary of questions, was there a libel reading of this book? Nor have they answered this question when it was put to them in writing. Such a report, a libel report, is, in my submission, not privileged, and I would have been well prepared to argue the point; had they claimed that privilege, I would have asked, "On what grounds?" If a report was written, it should and no doubt would have been disclosed, and it was not disclosed. So we are entitled to assume that they did not bother to have the book read. It does not exist, the report.

Whatever other limited excuses - whether of sheer ignorance, or of innocent dissemination - that the publisher might have (quite wrongfully) deployed for publishing this malicious and deeply flawed work were destroyed from the moment when they received my writ in September 1996, and were thus informed, if they did not know in fact already, of the nature and scope of the libels it contains. And, as said, they have continued to sell it, hoping no doubt to cash in on, to profit from, the notoriety gained by these libel proceedings, which is a textbook case of *Rookes v. Barnard* if there ever was one, since the book they are selling still contains even the several libels which they have made no attempt here to justify. They have to justify their allegations -- I am referring, of course, my Lord, to the ----

L0138 **Mr Justice Gray** Yes.

L0139 **Mr Irving** --- matters they have pleaded section 5 on originally. They have made no attempt to justify their allegations or their defence fails -- I am sorry. They have to justify their allegations, or their defence fails; and as your Lordship is aware, where the defamations are particularly grave, a higher burden of proof falls upon them than the mere balance of probabilities that is normally acceptable. In both Defendants, moreover, there is clear evidence of malice, both in those few documents which the author of this work has disclosed -- I stress the word "few"; pitifully few documents have been placed in my hands -- and in the fact that the same firm of publishers had previously distributed a work, a book, in which I was variously caricatured as Adolf Hitler and wearing swastika eyeglasses.

The very worst of the libels are so blatant that neither Defendant has insulted the intelligence of this Court by offering any justification to them. They hope instead to divert the court's attention by reference to distant and notorious matters of history and by calling me a racist. In consequence, for 30 days or more of this Court's time, we have had to rake over the embers of what may be one of the greatest crimes known to Mankind: a harrowing, time-wasting, needless effort, which has yielded even now few answers to great questions and mysteries which even the world's finest academics have so far not managed to unravel.

I come now to one of the first of these unanswered and unjustified libels which will come as a surprise to many people in this courtroom because there is no reference to it in Mr Rampton's summary. On page 14 of the book, the Defendants published one of the gravest libels that can be imagined for a respectable English citizen who lives a very public life, namely that I consort with the extremist anti-Semitic Russian group Pamyat, with violent anti-Israeli murderers, with extremist terrorists, and with Louis Farrakhan, a Black Power agitator who is known to be acting in the pay of a foreign power, namely the Libyan dictator. This is not just the simple allegation of associating with "extremists", the kind of people who use fountain pens to deliver their extremism, about which they have made so much. The words on page 14 are as follows - and I make no apology, my Lord, for reminding the Court of them, the Second Defendant wrote:

"The confluence between anti-Israel, anti-Semitic, and Holocaust denial forces was exemplified by a world anti-Zionist conference scheduled for Sweden in November 1992. Though cancelled at the last minute by the Swedish government, scheduled speakers included black Muslim leader, Louis Farrakhan, Faurrison, Irving", that is me, "and Leuchter. Also scheduled to participate were representatives of a variety of anti-Semetic and anti-Israel organisations, including the Russian group Pamyat, the Iranian-backed Hizbollah and the fundamentalist Islamic organization Hamas".

Now, that whole statement was a reckless lie. It appears from their discovery to have been based on a press release issued by the Jewish Telegraph Agency in New York which neither that agency or the Defendants made any attempt

to verify. The Court will have noticed in one of my bundles the letter which I sent to every Scandinavian Embassy at the time, anxiously denying this allegation. I have pleaded, as your Lordship is aware, that the innuendo was that I was "thereby agreeing to appear in public in support of and alongside violent and extremist speakers, including representatives of the violent and extremist anti-Semitic Russian group Pamyat ... the Hizbollah ... the Hamas ... Farrakhan ... who is known as a Jew-baiting black agitator ... and he is known as an admirer of Hitler and who is in the pay of Colonel Gaddafi".

And "that the true or legal innuendo of the word 'Hizbollah' is that used to refer to and describe a known international terrorist organization ... in the Lebanon, also known as Hizbollah whose guerrillas kill Israel citizens and soldiers ... provoking retaliation, and which organization has been determined by President Clinton ... as being among the enemies of peace and, whose officials and armed activists are now being hunted down by the ... Israeli army".

As for the Hamas, much the same, I set out in paragraph 12 of my statement of claim that "the true or legal unnuendo of the words 'Hammas' is that of an Islamic fundamentalist terrorist organization similar in nature to the Hizbollah".

I submitted to your Lordship at the beginning of this trial a representative selection of news reports from reputable, reliable outlets, including the BBC, on the murderous nature of the organizations involved, concerned.

In my pleadings I also argued that by these allegations I had "been brought into hatred, ridicule, contempt, risk of personal injury and/or assassination". I know, my Lord, the law of defamation has no concern for people's personal safety, but it certainly has concern for their reputation; and the allegation that I was consorting with the violent extremist body who goes around with machine guns and bombs and bullets is substantially more serious, in my view, than the allegation that I consort with people who use their fountain pens to disseminate crack pot ideas.

In my pleadings -- the nature of the libel, and the damage that it caused, hardly needed arguing in detail here. Put in into domestic context, if the Defendants, if the Defendants, had equally untruthfully stated, for example, in a Channel 4 television documentary (and there is a reason why I say that) that I had consorted with Ulster loyalist death squads who were part of a conspiracy to murder Roman Catholic nationalists, itself a grave accusation which would also put me at risk of assassination, and if the Defendants made no attempt to justify that libel, then I respectfully submit that your Lordship would have no hesitation giving judgment in my favour. I submit there is no difference fundamentally between these examples.

Now, I was going to say that the Defendants have relied on section 5 of the Defamation Act, but I understand from what Mr Rampton said yesterday that they are not relying on that section 5 at all, my Lord.

L0140 **Mr Justice Gray** No, I do not think that is quite right. I think what he said was that they say they do not need section 5, that is their primary position, but that if they do need it, then, indeed, they rely on it. So do not assume that it has disappeared out of the picture because it has not.

- L0141 **Mr Irving** In that case, I will leave it as I originally wrote. I am aware that your Lordship is also capable, of course, of putting something in section 5 if you consider it to come under section 5.
- L0142 **Mr Justice Gray** I probably would be, but that I believe to Mr Rampton's position.
- L0143 **Mr Irving** This is not the place to make a submission, but my position is that there is no common sting between those allegations. They are totally different kinds of extremism.
- L0144 **Mr Justice Gray** Elaborate on that later.

L0145 **Mr Irving** In other words, they accuse a respectable Englishman of consorting with terrorists and murderers, and then plead the relative insignificance of the accusation when it turns out to be a reckless lie. And there are other incendiary lies which they have stuffed into that particular sand-bucket, section 5 of the Defamation Act, in the hope that they will sputter out: the Defendants repeated the story in that book - first published in Izvestia - that I placed a portrait of Adolf Hitler over my desk. For that lie -- I have had hundreds of journalists visiting me over the 30 years and never once has that picture occurred to any of them for there is no such picture. For that lie too they have offered no justification. I read incidentally recently in Literary Review that Lloyd George had signed photographs of both Hitler and Mussolini on display, and that was a British Prime Minister. The only signed paragraph in my apartment, as many journalists have observed, is one of Sir Winston Churchill.

So I submit that your Lordship should not accept the Defendants' contention, if they wish to stand by it, that these allegations should be disregarded on the basis of section 5. Even if they could sufficiently justify their claim that I deliberately bent history in favour of Hitler, and I do not believe they can, I submit that they have not, it would still "materially injure the plaintiff's reputation", which is the word of the Act, section 5, to say that I had a portrait of Hitler above my desk. The claims which they do seek to justify suggest that I am culpably careless and (perhaps unconsciously) sympathetic to Hitler; bad enough, bad enough, but having a portrait of that man -- I am sorry, having a portrait of that man above my desk implies a full-hearted 100 per cent conscious commitment to that man, which is very different.

I have provided your Lordship on an earlier occasion in one bundle a number of passages quoted from AJP Taylor's works, a very famous English historian and writer. Taylor himself accepted that they inevitably improved Hitler's image -- the words that Taylor had written -- maybe he did not originate the actual mass murders himself, wrote Taylor; maybe he did slip into war with Britain rather than planning it; maybe the Anschluss with Austria was more a stroke of good fortune, which he grasped, rather than long planned as a take-over; maybe the Nazis did not burn down the Reichstag building in 1933. These views of Taylor have been criticised as being wrong, even as being too sympathetic to Hitler. But everybody would accept that to suggest that Taylor had a portrait of Hitler "over his desk" would suggest something far worse. So it should be for me too.

Again, for the purpose of section 5, the allegation that I bend history in favour of Hitler because I am said to admire him, and that I consort with other people holding such views, is a very different kettle of fish from stating, as the Defendants do, that I consort with people who are widely regarded as violent and murderous terrorists.

I continue now from the bottom of the page:

My Lord, the Court will be aware from the very outset I argued that this hearing should not, effectively, leave the four walls of my study, where I wrote my books; and that what actually happened 50 or 60 years ago was of less moment to the issues as pleaded. The matter at issue, as pleaded by the Defendants, is not what happened, but what I knew of it, and what I made of it, at the time I put pen to paper. We had some argument on that matter, my Lord. To take crude example: neglecting to use the Eichmann memoirs, releases to us only a few days ago, had they contained startling revelations - which they did not - could not have been held against me because they were not available to me in the 1960s, 1970s or 1980s. But your Lordship took a different view and I respectfully submit that it was wrong.

L0146 **Mr Justice Gray** May I interrupt you again? I do not think that is right. I think everybody agrees that the Eichmann memoirs, because they have surfaced so late, really have no bearing on this trial at all.

L0147 **Mr Irving** I gave that as a particularly crude example of why what mattered was what happened in the walls of my study as I wrote, what was on my desk, so to speak, and not what actually happened.

L0148 **Mr Justice Gray** I see.

L0149 **Mr Irving** Your Lordship took a different view, and I respectfully submit that it was wrong. The Defendants have invested a sizeable fortune in reresearching the Holocaust, and possibly for that reason we have all been dragged through that vast and inhuman tragedy yet again, because of the money spent on it now, and again quite needlessly, in my submission. It would have sufficed for their purposes if they could have proved, on the basis of the total disclose of my files which I made to them and their experts, that I had indeed "distorted, misstated, misquoted and falsified", their words. Fearing or finding, however, that they were unable to prove wilful fraud, in effect, in my submission, they have fallen back on the alternative plea in the tort of negligence: that "Mr Irving ought to have known". I respectfully submit that this unsettle change of defence should not have been allowed to them, it should not have been available to them, as it was not pleaded at the outset. It has to be specifically pleaded, in my submission, my Lord, at the time.

If my submission on the law is, however, wrong, then your Lordship must ask what effort would have been reasonable on the part of an individual historian, acting without institutional support like that of Yad Vashem, and with the doors of the archives increasingly being slammed against him because of the activities of the bodies to which I shall shortly refer. What it would have been reasonable to expect me to do to find out what happened? These Defendants have reportedly spent some \$6 million, and 20 man-years or more, in researching this case: this blinding and expensive spotlight has been focused on the narrowest of issues, yet it has still generated more noise than illumination. I heard the expert witnesses who were paraded before us use phrases like the "consensus of expert opinion" as their source so often - in fact, I did a check, the word "consensus" occurs 40 times in the daily transcripts of this trial - that I began to wonder what the archives were for. I suggest that these experts were more expert in reporting each other's opinions and those of people who agree with them than in what the archives actually contain and what they do not contain which is equally important.

The phrase "Holocaust denier", which the Second Defendant boasts of having invented, is an Orwellian stigma. It is not a very helpful phrase. It does not diminish or extend thought or knowledge on this tragic subject. Its universal adoption within the space of a few years by media, academia government and even academics seems to indicate something of the international endeavour of which I shall shortly make brief mention. It is, in my submission, a key to the whole case. Perhaps this court should raise its gaze briefly from the red and blue files and bundles that are around the court room of documents for a brief moment, and re-read George Orwell's appendix to "1984", which seems very relevant to this case.

From the witness box, with its revelations of the "consensus of opinion", and "moral certainty", and the mass male voice choir of the "social sciences" that we heard about from Professor Funke, on which the Defendant's German expert, Professor Hajo Funke, relies for his certainty, his certainty, as to what

is right-wing extremism, we seem hear more than a vague echo of Orwellian Newspeak -- a language that moulds minds, and destroys reputations and livelihoods.

Orwell was wrong in one point: he thought it would take the forces of the State to impose Newspeak: Professor Lipstadt and her reckless publishers Penguin Books Limited -- I shall justify that adjective -- have sought to impose it through the machinery of the literary and media establishments. Only the Royal Courts of Justice here in London, independent and proud, can protect the rights of the individual from now on. And those rights include the right, as Lord Justice Sedley recently put it in another Court in this building, of any person to hold to, and to preach, unpopular views, perhaps even views that many might find repellent.

My Lord, I have not hesitated myself to stand here in the witness box and to answer questions. Mr Rampton rose to the occasion, and he, or indeed I, may yet regret it. Your Lordship will recall that, when I brought a somewhat reluctant and even curmudgeonly Professor Donald Watt, who is not the Professor I mentioned earlier incidentally, doyen of the diplomatic historians, into the witness box, he used these words:

"I must say, I hope that I am never subjected to the kind of examination that Mr Irving's books have been subjected to by the defence witnesses. I have a very strong feeling that there are other senior historical figures, including some to whom I owed a great deal of my own career, whose work would not stand up, or not all of whose work would stand up, to this kind of examination".

I am not throwing myself on the charity of this court, my Lord, but I am asking that the court should be reasonable in the standards that it sets. That effectively is a line that Professor Watt has supported me in. It is fair to say, of course, that I had to subpoena Donald Watt.

L0150 **Mr Justice Gray** Yes, I am aware.

L0151 **Mr Irving** When I invited him to mention some names, of course, he declined. What he was saying was that whatever mistakes or whatever unconventional interpretations of mine, the Defendants have revealed with their multi-million dollar research, and I am going to admit some mistakes that I have made, not many, this does not invalidate me as an historian, or my historical methods and conclusions.

Your Lordship will find that Professor Watt continued by suggesting that simply by facing the challenge of the views that I had put forward, "and basing them on historical research rather than ideological conviction," this had resulted in other historians devoting an "enormous burst of research" to the Nazi massacres of the Jews, an area which can now in consequence support journals and conferences. He said, "This, I think, is a direct result of the challenge which Mr Irving's work posed and the consistency and the effort which he has put into maintaining it in public". In other words, I forced the others to do their homework finally at last. In other words, Watt stated that, far from being a Holocaust denier, my work has directly increased historical research into, and the understanding of, the Holocaust.

The German Professor Eberhard Jaeckel made the same controversial -- and he is no friend of mine, of course -- point in his essay in the book published by the Us Holocaust Memorial Museum a year or two ago, namely that before my book Hitler's War was published in 1977, the first edition, there had been virtually no meaningful research into the tragedy at all. Professor Hans Mommsen, Professor Raul Hilberg, Professor Gordon C Craig, these and many others have more or less supported my claim to be regarded as a serious historian. I of course say things like that with the utmost personal distaste. I do not believe in blowing my own trumpet. The outcome of my research, my books, and my speaking is therefore that people in general are more, and not less, aware of the horrors of the Holocaust, and they are certainly better informed.

One of the most damaging accusations which Mr Rampton has repeated again this morning, is that I, the plaintiff, driven by my obsession with Hitler, distort, manipulate and falsify history in order to put Hitler in a more favourable light, thereby demonstrating a lack of the detachment, rationality and judgment necessary for an historian.

I submit that, in assessing whether I am an historian who "distorts, manipulates and falsifies" your Lordship should give most weight to my avowedly historical written works. Your Lordship will be thoroughly aware of why I am saying this. I suggested my speeches, very occasional lapses of taste in them, lapses of taste Mr Rampton has identified and mentioned repeatedly, I think three altogether, are relevant purely as background material. Of those written historical works, I submit that your Lordship give most weight to my flagship work Hitler's War. I ask that your Lordship read

(again, if your Lordship has already done so) the introduction to the 1991 edition. This was published well after the year when the Defendants (wrongly) assert that I "flipped over" to become what they call a Holocaust denier.

I have always differed from my colleagues in my profession in insisting on using original documents, including where possible the authors' drafts of books or memoirs rather than the heavily edited West German editions, later rewritings, or posthumous adaptations. I also make use of many more unpublished original documents than my historian colleagues, in my belief. In the 1960s and 1970s, I must add, of course, that was much more difficult than it is today.

I differ too from others, in making copies- and I am going to emphasise this quite a lot- of the original documents which I unearth freely available to others as soon as my own works are complete, and in fact often before that time, as the panne, the accident, the mishap which Professor Harold Deutsch's book showed. Your Lordship will remember that Harold Deutsch got there first and used it before me, and I was accused of plagiarising his book, because I gave him the materials before I used them. As page 14 of Hitler's War shows, I donate these records regularly to publicly accessible archives and I also make them available on microfilm. There are nearly 200 such microfilms in my records, nearly half a million pages. I also devote time to corresponding with and assisting other historians and researchers. If, therefore -- this is the important point -- some of my interpretations are controversial, I also do all that is possible to let other people judge for themselves. This speaks strongly against the accusation, levelled against me again today by Mr Rampton, that I distort, manipulate and falsify history.

On Hitler and the Holocaust I wrote these words, and this is in the 1991 edition, after the time when I supposedly became a denier obsessed with Hitler and with exonerating him.

Page 2: My conclusions ... startled even me. Hitler was a far less omnipotent Fuhrer than had been believed, his methods and tactics were profoundly opportunistic.

Page 4: ... the more hermetically Hitler locked himself away behind the barbed wire and mine fields of his remote military headquarters, the more his Germany became a Fuhrer Staat without a Fuhrer. Domestic policy was controlled by whoever was most powerful in each sector - by Goring, Lammers, Bormann, Himmler.

Page 17: If this biography were simply a history of the rise and fall of Hitler's Reich, it would be legitimate to conclude "Hitler killed the Jews". He had after all created the atmosphere of hatred with his speeches in the 1930s; he and Himmler had created the SS; his speeches, though never explicit, left the clear impression that "liquidate" what was he meant.

At pages 17 to 18: For a full length war biography, I wrote, I felt that a more analytical approach to the key questions of initiative, complicity and execution would be necessary. Remarkably, I found that Hitler's own role in the "Final Solution", whatever that was, had never been examined.

At page 38: Every document actually linking Hitler with the treatment of the Jews invariably takes the form of an embargo, and I maintain that position, despite everything we have heard for the last two months.

This is the famous "chain of documents", of course, notwithstanding everything we have heard in court, I still adhere to this position.

At page 19 it is plausible to impute to him, to Hitler, that not uncommon characteristic of heads of state, a conscious desire "not to know", what the Americans now call, I believe, plausible deniability. But the proof of this of course is beyond the powers of a historian.

At page 21 I write: ... dictatorships are fundamentally weak ... I concluded, the burden of guilt for the bloody and mindless massacres of the Jews rests on a large number of Germans (and non-Germans), many of them alive today and not just on one "mad dictator", whose order had to be obeyed without question.

The similarity with the thesis propagated by Dr Daniel Goldhagen of the University of Harvard in his worldwide best seller book, "Hitler's Willing Executioners", will surely strike everybody in this court. I am saying the burden falls on a large number of Germans and not just on that one madman's. Note the word "just". I do not say "not on the madman", I say not just on him.

Allow me to rub this point in: What I actually wrote and printed and published in my flagship study Hitler's War was that Hitler was clearly responsible for the Holocaust both by virtue of being head of state and by having done so much by his speeches and organisation to start it off.

Where I differed from many historians was in denying that there was any documentary proof of detailed direction and initiation of the mass murders by Hitler, and I am glad to say two months in that respect has not brought us any closer. The view was considered to be heretical at the time. But this lack of wartime documentary evidence for Hitler's involvement is now widely accepted. Indeed, on the narrower matter of the lack of wartime documentary evidence on the gas chambers, your Lordship was already good enough to grant as follows in an exchange between your Lordship and myself and Professor Evans.

I said: If his Lordship is led to believe by a careless statement of the witnesses that there is a vast body of wartime documents, namely about gas chambers, this would be unfair, would it not, because you, Professor Evans, are not referring to wartime documents, you are referring to postwar documents?

Professor Evans at this point replies: I am referring to all kinds of documents.

I insist, this is me: You are not referring to wartime documents?

Evans says: I am referring to documents including wartime documents, the totality of the written evidence for the Holocaust which you deny.

Irving then says: Are you saying there is a vast quantity of wartime documents?

You see, I am a bit persistent on this matter.

Evans says: What I am saying is that there is a vast quantity of documents and material for all aspects of the Holocaust.

At this point your Lordship was good enough to say: I expect you would accept, Professor Evans, just to move on, the number of overtly incriminating documents, wartime documents, as regarding gas chambers is actually pretty few and far between?

That is how it was left.

To summarise, in Hitler's War I differed from the other historians in suggesting that the actual mass murders were not all or mainly initiated by Hitler. I pointed out that my sources were consistent with another explanation: A conscious desire "not to know" (a kind of Richard Nixon kind of complex) to which I referred, I believe, on three occasions during the hearings here.

I submit that I have not distorted, manipulated and falsified. I have put all the cards on table; I made the documents available to all comers, on microfilm and in the archives, and I have pointed to various possible explanations.

I further submit that, while certainly "selling" my views, I have been much less manipulated than those historians, including some whom you heard in this court, my Lord, whose argument has an important part been simply this -- that I ought not to be heard, because my views are too outlandish or extreme. Disgracefully, these scholars cleared from the sidelines as I have outlawed, arrested harassed, and all but "vernichtet" destroyed as a professional historian; and they have put pressure on British publishers to destroy my works. This is a reference to MacMillan Limited, to which we will come later.

To assist your Lordship in deciding how outlandish and extreme these views of mine are, I allow myself to quote from AJP Taylor's *The War Lords*, published by Penguin -- the First Defendants in this action -- in London in 1978. Of Adolf Hitler Taylor wrote.

"... it was at this time that he became really a recluse, settling down in an underground bunker, running the war from the front. (at pages 55-57).

Precisely same kind of image I generated from my own sources.

"He was a solitary man, though he sometimes accepted, of course, advice from others, sometimes decisions [my emphasis]. [he accepted decisions from others] It is,

I think, true, for instance, that the terrible massacre of the Jews".

This is AJP Taylor who "was inspired more by Himmler than by Hitler, though Hitler took it up". (At pages 68-70).

These quotations are from the foreword of AJP Taylor's own flagship work, *The Origins of the Second World War*, published in 1963:

"Little can be discovered so long as we go on attributing everything that happened to Hitler. He supplied a powerful dynamic element, but it was fuel to an existing

machine... [later on he writes] He have counted for nothing without the support and co-operation of the German people. It seems to be believed nowadays that Hitler did everything himself, even driving the trains and filling the gas chambers unaided. This

was not so. Hitler was a sounding-board for the German nation. Thousands. Many hundred

thousand, Germans carried out his evil orders without qualm or question."

What I wrote, with less felicity of style than Professor Taylor, was a reasonable interpretation of the information available to me at the time. I might add that my words are often accepted, quoted, and echoed by other historians far more eminent than me. (including the government's Official Historians like Professor Frank Hinsley, in his volumes on British intelligence) who specifically footnotes and references my works. Some may regard my interpretations as not the most probable. But they are never perverse. For the Defendants to describe me as one who manipulates, distorts, and falsifies it would be necessary for them to satisfy your Lordship that I wilfully adopted perverse and ridiculous interpretations. But I have not and they have not satisfied your Lordship either, I submit.

The Defendants' historiographical criticisms

I now turn to some of the particular matters which exercised your Lordship, in the list of points at issue.

As a preamble I would say that I trust your Lordship will be bear in mind that the task facing an historian of my type -- what I refer to as a "shirtsleeve historian", a shirtsleeve historian working in the field, from original records -- is very different from the task facing the scholar or academic who sits in a book-lined study, plucking handy works of reference from his shelves, printed in large type, translated into English, provided with easy indices and often with nice illustrations too.

Your Lordship will recall that while researching the Goebbels Diaries in Moscow for the first week in June 1992 I had to read those wartime Nazi glass microfiches plates through a magnifier the size of a nailclipper, with a lens smaller than a pea. The Court will appreciate that reading even post-war microfilm of often poorly reproduced original documents on a mechanical reader is tedious, time consuming, and an unrewarding business. Your Lordship will be familiar with the reason why I saying this. There were certain matters which we dealt with. Notes have to be taken in handwriting when are you sitting at a reader. There are no "pages" to be xeroxed. In the 1960s xerox copies were nothing like as good as they are now, as your Lordship will have noticed from the blue-bound volumes brought in here from my own document archives. Mistakes undoubtedly occur: the mis-transcription of difficult German words pencilled in Gothic or Sutterlin-style handwriting, a script which most modern German scholars find unreadable anyway; mistakes of copying are made; mistakes of omission (i.e. a passage is not transcribed when you are

sitting at the screen because at the time it appears of no moment). These are innocent mistakes, and with a book the size of Hitler's War which currently runs to 393,000 words, they are not surprising.

Your Lordship may recall another exchange I had with Professor Evans: may I emphasise here that there is no personal animus from me towards Professor Evans at all. I thought he gave his evidence admirably.

IRVING: Professor Evans, when your researchers were researching in my files at the Institute of History in Munich, did they come across a file there which was about 1,000 pages long, consisting of the original annotated footnotes of Hitler's War which were referenced by a number to a every single sentence in that book?

ANSWER: No.

IRVING: It was not part of the original corpus, it was part of the original manuscript, but it was chopped out because of the length.

EVANS: No, we did not see that.

IRVING: Have you seen isolated pages of that in my diary (sic) in so far as it relates to episodes which were of interest, like the Reichskristallnacht?

EVANS: No, I do not to be honest, recall, but that does not mean to say that we have not seen them.

IRVING: You say my footnotes are opaque because they do not always give the page reference. Do you agree that, on a page which we are going to come across in the course of this morning, of your own expert report, you put a footnote in just saying "see Van Pelt's report", and that expert report is 769 pages long, is it not?

So from this exchange it is plain that I was not just a conjurer producing quotations in my books, producing quotations and documents out of a hat; I made my sources and references available in their totality to historians, even when they were not printed in the book.

The allegation that the mistakes are deliberate -- that they are manipulations, or distortions -- is a foul one to make, and easily disposed of by general considerations, which I ask your Lordship to pay particular attention to. If I intended deliberately to mistranscribe a handwritten word or text on which the defence places such reliance, I would hardly on the deliberate nature of the mistranscription, I would hardly have furnished copies of the original text to my critics, or published the text of the handwritten document as a facsimile in the same work (for example, the famous November 30th 1941 note, which is illustrated as a facsimile in all editions of Hitler's War); nor would I have placed the entire collection of such documents without restriction in archives commonly frequented by my criticism.

If I intended to mistranslate a document, would I have encouraged the publication of the resulting book, with the correct original quotation in the German language, where my perversion of the text would easily have been discovered? Yet like all my other works both, Hitler and Goebbels have appeared in German language editions with a full and correct transcription of the controversial texts. Is that the action of a deliberate mistranslator.

As for the general allegation that the errors of exaggeration or distortions that were made were "all" of a common alignment, designed to exonerate or exculpate Adolf Hitler, the test which I submit your Lordship must apply should surely be this: if the sentence that is complained of be removed from the surrounding paragraph or text (and in each book there are only one or two such sentences of which this wounding claim is made) does this in any way alter the book's general thrust, or the weight of the argument that is made?

An example of this test is the wrong weight which I gave to the contents of the 1.20 am telegram issued by SS-Gruppenfuhrer Reinhard Heydrich on Kristallnacht. I think Mr Rampton referred to that this morning. It is a famous telegram, printed in the Nuremberg volumes, five pages long or so. Would such an error have been committed wilfully by me, given the risk that it would inevitably be exposed? Is it not far more likely on the balance of probabilities that in the process of writing and rewriting, and of cutting and of cutting and condensing, the Goebbels manuscript, the author, that is me, gradually over the eight years lost sight of the full content and the thrust of the original document? Your Lordship should know, if not then I say so now, that that book witness through five successive drafts and retypes over eight years, filling eventually four archives boxes, a total of eight cubic feet of manuscript, all of which I disclosed to the Defendants by way of discovery. St Martin's Press, my American publishers, particularly asked that these early chapters of the book should be trimmed back in length.

These general considerations disposed of the defence arguments on the "Policeman Hoffman" evidence as rendered in the 1924 Hitler treason trial. For the limited purposes of writing a biography of -- my Lord, these are points you have asked me to address specifically in your list of issues. I say that because those who listen to Mr Rampton's speech will not have heard them referred to and may be puzzled as to why I am addressing them. For the limited purposes of writing a biography of Hermann Goring -- not of Hitler -- I relied on the thousands of typescript microfilmed pages of the transcript of this trial. So far as I know, nobody had ever used them before me at that time. Now the handy, printed, bound, indexed, cross-referenced edition, which Professor Evans drew upon had not appeared at that time. The printed edition appeared in 1988, two years ago. Eleven years after my Goring biography was published. In other words, even more years after I wrote it by Macmillan Limited. I extracted -- with difficulty -- from the microfilmed pages of the original transcript the material I needed relating to Hitler and Goring and I was not otherwise interested in that man Hofmann at all. I do not consider the printed volume on the trial which is now available shows that I made meaningful errors, if so, they certainly were not deliberate.

The Kristallnacht in November 1938 is a more difficult episode in every way. I do not mean in that sense, my Lord, that it is difficult for me personally. It is a difficult episode to reconstruct from the material available to us. As said, I clearly made an error over the content (and reference number) of the 1.20 a.m. telegram from Heydrich. It was an innocent error. It was a glitch of the kind that occurs in the process of redrafting a manuscript several times over the years. The Court must not

overlook that by the time was completed in 1994 and 1995 and as I described in the introduction to that book, Goebbels, the Mastermind of the Third Reich, by that time I had been forcefully severed from both my own collection of documents in German institutions and from the German Federal archives in Koblenz. On July 1st 1993, my Lord when I attended the latter archives in Koblenz explicitly for the purpose of tidying up loose ends on the Goebbels manuscript, I was formally banned from the building in the interests of the German people I was told, for ever on orders of the minister of the interior -- that is one of the gravest blows that has been struck at me in my submission by this international endeavour to which I shall shortly refer.

The allegation of the Defendants in connection with the Kristallnacht is that in order to "exonerate Hitler" I effectively concocted or invented, a false version of events on that night, namely that Adolf Hitler intervened between 1 and 2 a.m. in order to halt the madness. I think that is a fair summary of the charge against me. I submit that their refusal to accept this, my version, is ingrained in their own political attitudes. There is evidence both in the archives and in the reliable contemporary records like Ulrich von Hassell, the diaries of von Hassell, Alfred Rosenberg and Hellmuth Groscurth, and in the independent testimonies. By which I mean independent from each other, testimonies of those participants whom I myself carefully questioned, or whose private papers I obtained -- I mention here Nicolaus von Below, Hitler's adjutant. Another adjutant, Bruckner, Julius Schaub, Karl Wolff and others -- which the Court has seen, to justify the versions which I rendered. It therefore was not an invented story. It may well be that my critics were unfamiliar with the sources that I used before they made their criticisms. The dishonesty lies not with me, for printing the "inside" story of Hitler's actions that night, as far as we can reconstruct them using these and other sources; but with those scholars who have studiously ignored them, and in particular the Rudolf Hess "stop arson" telegram of 2.56 am, which was issued "on orders from the highest level", which the Defendants' scholars are agreed or testified is a reference to Hitler.

Your Lordship may well have marvelled to hear the Defendants' witnesses dismiss this message from Rudolf Hess -- like the Schlegelberger Document, referred to later -- as being of no consequence.

The Kristallnacht diaries of Dr Goebbels, which I obtained in Moscow in 1992, some years after I first drafted the episode for my biography, substantially bore out my version of events, in my submission, namely that he and not Hitler was the prime instigator, and that Hitler was largely unaware and displeased by what came about, or by the scale of what came about, would be a fairer way to put that. Your Lordship will recall that Professor Phillippe Burrin, a Swiss Holocaust historian for whom all the witnesses expressed respect when questioned by me, comes to the same conclusion independently of me. Now he (and I have given the quotation at the foot of page). Now, he is manifestly not a "Holocaust denier" either. The Court will also recall that the witness Professor Evans admitted that unlike myself he had not read all through the available Goebbels Diaries. It is a massive task. A mammoth task. He had not had the time, he said, and we must confess a certain sympathy with that position -- for an academic, time is certainly at a premium. But reading all of the

available Goebbels Diaries is however necessary, in order to establish and recognize the subterfuges which this Nazi minister used throughout his career as diarist, in order to conceal when he was creating what I call alibis for his own wayward and evil behaviour.

I drew attention to this historiographical conundrum several times in the book, my Goebbels biography, the fact that Goebbels Diaries were not trustworthy. I discussed both in my scientific annotated German language edition of the 1938 diaries and in my full Goebbels biography which your Lordship has read, a characteristic example from this same year, 1938, although the one episode which most deeply harrowed and unsettled him that year was his affair with the Czech actress, Lida Baarova, an affair which drove him to the brink of resignation, divorce, and even suicide, neither her name nor any of those events figures explicitly in the diary at all, unless the pages be read particularly closely, when certain clues can be seen. That is an example ...

The Goebbels diary is sometimes a very deceitful document; it must be recognized as such and treated very gingerly indeed. It is the diary of a liar, a propagandist. The fact that it was evidently written up not one, but two or even three days later, after the Kristallnacht episode, calls for additional caution in relying on it for chronology and content.

My Lord, your Lordship will notice that I have not dealt specifically with the number of the issues you put in your list. I hope your Lordship does not take umbrage with that, but I felt that I dealt with them adequately in my cross-examination.

L0152 **Mr Justice Gray** It is entirely a matter for you.

L0153 **Mr Irving** If this was wrong of me then all I can say is culpa mea (sic) but I now continue with the various narratives of the Nazi shooting of the Jews in the East.

There is little dispute between the parties on what actually happened in my view. This is the shootings of the Jews in the East by the Nazis and their collaborators. There is little dispute between the parties on what actually happened in my view, and your Lordship is aware that I have given these atrocities due and proper attention in the various biographies I have written; I however add the one caveat, that they are not intended to be reference works on the Holocaust, but just orthodox biographies.

I believe that I was the first historian anywhere in the world to discover and make use of the CSDIC reports relating further details to these killings, particularly the Bruns Report, and I made these reports available to many other historians. I should explain to the people who are not familiar with them that these CSDIC reports are eavesdropping reports on Nazi prisoners that we British made using hidden microphones. It took -- it takes many days to read them. There are thousands and thousands of pages in these files. Over the last twenty years I have read these horrifying narratives out repeatedly to public audiences, they describe the killings of the Jews in the most horrifying detail, including "right-wing" audiences. This fact alone entitles me to express my contempt at those who would describe me as a "Holocaust denier".

We have seen the Defendants scrabbling around at the end of the Bruns Report for its seizing on its third-hand reference by this SS murderer and braggart in Riga, Altemeyer, to an "order" that he claimed to have received to carry out such mass shootings more circumspectly in future. But we know from the late 1941 police decodes -- we British were reading the SS and police messages passing between Berlin and the front. We know from the late 1941 police decodes, which is a much firmer source-document in my view than a snatch of conversation remembered years later, in April 1945, we know precisely what orders had gone from Hitler's headquarters, radioed by Himmler himself to the SS mass murderer, SS Obergruppenfuhrer Friedrich Jeckeln, stating explicitly that these killings exceeded the authority that had been given by himself, Himmler, and by the Reichssicherheitshauptamt (the RSHA). We know that the killing of all German Jews stopped at once, for many months upon the receipt of that message. When I first translated the word "Judentransport" a word which I emphasise again can mean "transportation of the Jews", as "transports of Jews", in the plural, in the 1970s, being unaware of the surrounding context of data which helps now to narrow down the purport to the one Riga-bound trainload from Berlin. I was thus inadvertently coming closer to the truth, not further from it; because the liquidation of all the trainloads from Germany was halted next day, December 1st 1941, by the order radioed from Hitler's headquarters (whether initiated by Himmler or Hitler seems hair-splitting in this context).

As I stated under cross-examination, I did not see the Schulz-Dubois document when I wrote my books and I have not seen it since; having now read Professor Gerald Fleming tells us about it, I confess that I would be unlikely to attach the same importance as does learned counsel for the Defendants, to what the famously anti-Nazi Abwehr Chief Wilhelm Canaris allegedly told Lieutenant Schulz-Dubois of Hitler's reaction. The British decodes of the SS signals, to which I introduced the Court, and the subsequent events (the actual cessation for many months of the liquidation of German Jews) in my submission speak louder.

Your Lordship asked in your list of questions for my comments on the reference in Hitler's table talk of October 25th 1941. Well, your Lordship is familiar with the Defendants' argument and with mine. My extract from this document which I used was based originally on the original Weidenfeld translation, in fact, I used the original Weidenfeld translation into English, as is well known, in disagreement with the Defendants' experts I still maintain and others have followed me in this (notably Professor Phillippe Burrin, who translates Schrecken as "the ominous reputation") in that context, that the appropriate translation here for the word "schrecken" is indeed "rumour" and not "terror", a word which makes for a wooden and uncouth translation anyway.

Ladies and gentlemen, it will make no sense, unfortunately, this passage, unless you see the document. A relevant passage from the SS Event Report from activities in the rear of the eastern front, dated September 11, 1941 front (provided by the Defendants), shows that this is precisely what was meant: "The rumour that all Jews are being shot by the Germans had a salutary effect". The Jews were now fleeing before the Germans arrived. The rumour! To accuse me of wilful mistranslation and even worse distortion when (a) I used the original (sic) Weidenfeld translation, not at that time having received the original German from Switzerland, and (b) the word "rumour" gives precisely the nuance, the correct nuance that the surrounding history shows the word was meant to have, this accusation seems to me an excessively harsh judgment on my expertise.

The next in line is the Goebbels diary entry for November 22nd, 194: Again, I just pick out what seems to matter to me in that particular entry here, for the purposes of today's submissions.

This diary entry, my Lord, includes a fair example of how dishonest the reporting by Goebbels was when it comes to his meetings with Hitler. He records "the exceptional praise" of Hitler for the weekly newsreel produced by his ministry, the propaganda ministry; in fact Hitler was forever criticising this very product of the Goebbels ministry, as the diary of Rosenberg shows. Goebbels then continues, here is the quote: "With regard to the Jewish problem too the Fuhrer completely agrees with my views. He wants an energetic policy against the Jews, but one however that does not cause us needless difficulties." Goebbels diary entry continues: "The evacuation of the Jews is to be done city by city". So it is still not fixed when Berlin's turn comes; but when it does, "the evacuation should be carried out as fast as possible". In other words, he had not got his way. He had been agitating once again that the evacuation

should start but Hitler had not come into line. "Still not fixed when Berlin's time comes". Hitler then expressed the need for "a somewhat reserved approach" in question of mixed marriages -- that is marriages between Jews and non-Jews. What do you do with them? Are you going to keep them in Germany or deport them? Hitler's view was the marriages would die out anyway by and by, and they should not go grey worrying about it.

Now I have suggested that on the balance of probabilities Hitler was alluding to the public unrest when he said he wanted a policy that does not cause us needless difficulties. I have suggested on a balance of probabilities Hitler was alluding to the public unrest caused by the suicide a few days earlier of the popular actor Joachim Gottschalk and his family. Apart from "needless" becoming "endless", in an irritating typo which hardly amounts to manipulation, in other words, in the original German, the original translation started off as "causing us needless difficulties", which is correct, and somehow it became "endless difficulties" is an irritating typo which hardly amounts to "manipulation". This passage bears out what I have always said of Hitler. While Goebbels was the eternal agitator, as witness his anti-Semitic leading article published in Das Reich only a few days before, November 16th 1941, Hitler was (even by Goebbels own account) for a reserved approach towards the Jewish problems; and he was doing so, even as the trainloads of Jews were heading eastwards from Bremen and Berlin, for example to the conquered Russian territories and the Baltic states. Your Lordship will not need reminding of the curious British decodes, which revealed the provisioning of the deportation trains with tonnes of foods for the journey. These are messages which we British decoded, which reveal the provisioning of the deportation trainloads of Jews with tonnes of food for the journey, stocks of many weeks food for after they arrived and even deportees' appliances, "Gerat", appliances. So the evacuation at this time evidently meant just that to very many Reich officials, and no more.

My Lord ----

L0154 **Mr Justice Gray** Press on. Let us get as far as the Schlegelberger document, shall we, on the next page.

L0155 **Mr Irving** Jolly good, yes, good point.

Mr Rampton went to some effort and expense to suggest that I suppressed vital information from the newly discovered Goebbels diary, December 13th 1941. In this day's entry Goebbels reported on various things and he reported on Hitler's rhetoric to the Gauleiters, speaking on December 12th 1941 in Berlin, the Nazi governors. Anybody who is as familiar as I am with Hitler's speeches, and with Goebbels' diary entries relating to be them will effortlessly recognize this entire passage as being usual the Hitler gramophone record about his famous 1939 "prophecy". It was part of his stock repertoire when speaking to the Party old guard -- they had carried him into power, the Party old guard had carried him into power and they expected to hear from him that he had not abandoned the hallowed Party programme. I can understand the temptation for the younger generation of scholars, unfamiliar with Hitler's rhetoric, to fall greedily upon such freshly discovered morsels as though they were the answer to the great Holocaust mystery: None of the witnesses to whom this item was put by myself, or by counsel for the Defendants, was able to identify any part of this passage which was out of the ordinary for Hitler.

Even if I had read that far on that day's glass plate in the Moscow archives, and even if I had seen those lines of diary entries, some 20 pages after the page where I in fact stopped reading for that that day -- and I must emphasise again that I did not read that far on that day because that did not come within my remit, I doubt that I would have attached any significance to them other than adding this list to the occasions -- adding this entry to the list of occasions on which Hitler harked back, for whatever reason, to his famous "prophecy" of 1939.

I have read again the printed version of the meeting of the generalgouvernement, the Polish authorities, the German occupation authorities in Poland, Hans Frank, on December 16th 1941. It is significant to see the amount of space taken, even in this abridged published version, by the typhus epidemic sweeping through the region, the climax of which was expected to come in April 1942. Hans Frank states that he has begun negotiation with the purpose of deporting the Jews to the East, and he mentions the big Heydrich conference which is set down for January 1942 on this topic in Berlin. Then comes the sentence which pulls the rug out from beneath the Defendant's feet, in my submission: Hans Frank says: "For us the Jews are exceptionally damaging mouths to feed. We've got an estimated 2.5 million here in the Generalgouvernement, perhaps 3.5 million Jews now, what with all their kinfolk and hangers-on. We cannot shoot these 3.5 million Jews, we cannot poison them, but we will be able to do something with them which somehow or other will have the result of destroying them, in fact, in conjunction with the grander measures still to be discussed at Reich level". I think that is a fair translation of that passage.

L0156 **Mr Justice Gray** It is not complete, but it is fair.

- L0157 **Mr Irving** Ah, your Lordship says it is not complete. This is an extract taken from a seven or eight page printed volume.
- L0158 **Mr Justice Gray** Yes, it is what Frank says he was told in Berlin that I think perhaps is not there, but, anyway, press on.
- L0159 **Mr Irving** I would -- well, I will press on. The December 18th 1941 diary entry by Himmler reads, this is the diary entry made by Himmler, it is an agenda for his meeting with Hitler on December 18th 1941, Himmler jotted down the words "Judenfrage", Jewish question, and next to that in German the words "als partisanen auszurotten", Himmler had, as I pointed out to the Court, repeatedly referred in earlier documents to the phrase "Juden als Partisanen". This was nothing new or sensational therefore, and the words he was recording were, in my submission, not necessarily Hitler's but more probably his own stereotype phrase. The correct pedantic translation, is in any case "Jewish problem, to be wiped out as being partisans". Not "like partisans", which would have been "wie partisanen". There can be no equivocating about this translation of "als". Wie is a comparison, als is an equivalent.
- L0160 **Mr Justice Gray** I think that probably is a convenient moment. 2 o'clock.
- L0161 **Mr Justice Gray** Schlegelberger, Mr Irving.
- L0162 **Mr Irving** Before Schlegelberger, my Lord, on December 16th 1941, there was a meeting in Poland which Hans Frank referred to discussions he had in Berlin, in the course of which he said in Berlin the people asked us ----
- L0163 **Mr Justice Gray** Liquidate them yourselves, something like that, was it not?
- L0164 **Mr Irving** He said to the people in Berlin: "Imagine that we are housing these people in nice little housing estates here in the Baltic, in the Eastern territories. We tell them we cannot handle it here, liquidate them yourselves. My submission on that is that this is a reference to the Gauleiters from the Ostland whom he had met in Berlin, on whom the Jews being deported were going to be dumped, and they had made that remark to him, it is remiss of me not to have put that in this closing submission. I looked at that text again actually three or four days ago and my attention was drawn to the sentence before the remark about "liquidate them yourselves", in which it becomes quite plain he is referring to the Gauleiters of the Eastern territories by inference on whom these people are going to be dumped.
- L0165 **Mr Justice Gray** Yes, thank you very much.

L0166 **Mr Irving** I now come to the Schlegelberger document, which is another most difficult piece of historical paper for my opponents. It is a document -- I would explain for the benefit of those who do not know it -- which comes in a file of the German Ministry of Justice.

In late March or early April 1942, after seeing Germany's top civil servant who reported only to Hitler, Franz Schlegelberger, who was acting as Minister of Justice, dictated this famous memorandum, the Schlegelberger Document as we call it here in this courtroom, upon which all Holocaust historians, and the Defendants' experts witnesses in this case have hitherto turned enough blind eyes to have won several battles of Trafalgar. For many years after the war it vanished, this document, but that is another story. Asked about this specific document after a lecture in the German Institute, here in London in November 1998, Dr Longerich, who is now the Defendants' expert witness, who had the function of chairman, rose to inform the audience at that meeting that the speaker was not prepared to answer questions from David Irving. It is a genuine document, the one I was going to ask him about, the Schlegelberger Document, and he refers in one breath both to Hitler and the Solution of Jewish Problem. Confronted with it in the witness box, he, Longerich, and his fellow experts have argued either that it was totally unimportant, notwithstanding its content, or that it concerned only the Mischlinge, the mixed race Jews, and not the Final Solution in any broader sense. Ingeniously in fact, Dr Longerich even tried to suggest it may have originated in 1940 or 1941 and not in 1942 at all. The document has them, in other words, in a breathless panic.

The document's own contents, and this is the wording of the actual document, it is only very short, the document's own contents destroys their latter argument. In the first sentence, it says: "Mr Reich Minister Lammers informed me that the Fuhrer had repeatedly declared to him that he wants to hear that the Solution of the Jewish Problem has been adjourned (or postponed) until after the war". That that is the broader Final Solution is plain from the second sentence which follows. It shows, namely the Mischling question, the mixed race question, was something totally different: "Accordingly", the memorandum continues, "the current deliberations have in the opinion of Mr Lammers purely theoretical value". Those deliberations were, as my opponents themselves have argued, solely concerned with what to do with the Mischlinge and the like. The document is quite plain. It was dictated by a lawyer, so presumably he knew what he was writing. There is no room for argument. My opponents have pretended for years that the document effectively does not exist. So much for the Schlegelberger Document.

I have dealt at length in my statements in the witness box, my Lord, again, and while cross-examining the witnesses with the other contentious items or issues, namely the Goebbels Diary entries for March 27th and May 30th 1942, the Himmler minute of September 22, 1942 and this note, Himmler's note, for this meeting with Hitler on December 10th 1942.

My Lord, I have nothing to add to what I said in the witness box under cross-examination on that matter, and your Lordship may find it unsatisfactory that I do not specifically summarize it in a neat and handy index for your Lordship in my closing speech, and once again may I mea culpa . Also the meetings with Antonescu and with Horthy in April 1943, the deportation and murder of the Jews in Rome in October 1943, Himmler's speeches on October 4th and 6th, 1943, and May 15th and 24th, 1944, Hitler's speech on May 26th, 1944 and Ribbentrop's testimony and evidence from his cell in Nuremberg. I contend, in each case, that my use of these items is quite proper.

The only mistake which I do admit is that in the conference between Hitler and Horthy in April 1943, I transposed two dates from April 16th to April 17th, 1943. I do not agree that the Defendants are entitled to make the kind of capital out of that error which they have sought to do.

I must mention one document and that is the report, or Meldung, No. 51, which Mr Rampton has referred also to this morning, submitted by Himmler to Hitler through their respective adjutants, and dated December 29th, 1942. The Defendants, quite properly, have made great play with this document, claiming that it is clear proof that Hitler was apprised by Himmler, by virtue of this document, of the murder of over 300,000 Jews on a transparent pretext in Russia in the previous three months. The document was submitted to Hitler according to the notation on it. Your Lordship will remember that I established from the same files -- that is why the context of the document is so important to know what else is in the same files -- that Hitler's was apprised by, I am sorry, your Lordship will remember that I established that on the same day, December 1942, which was at the height of the Battle of Stalingrad, and in exactly the same manner as this document, a document of precisely the same general character, namely Meldung No. 49, had to be vorgelegt or submitted to Hitler not once but twice. In other words, there were two such notations on it, which is a clear indication he was not reading them on the first occasion, on that occasion at least, if at all. If I may draw an analogy, which I used before with which the Court may well be familiar, sometimes if a series of briefs put to a fashionable and expensive Counsel he is obliged to read them fully and properly, normally, and he draws a hefty fee for doing so; but in fact he does not read them.

L0167 **Mr Rampton** I never heard that.

L0168 **Mr Irving** In fact, in law, as in history, the fact that a document -- I am not referring, of course, to Mr Rampton, it is to somebody else -- in law, as in history, the fact that a document has been "put to" somebody does not mean that somebody has read it, unless there is a collateral evidence of feedback, and in this case there was no such evidence.

Another issue of interest to your Lordship is my references to Marie Valliant-Couturier. My references to her seem to have been quite justified -- I know that is not of issue -- from what we know of her and her full testimony in the Nuremberg tribunal in 1946. She had married the editor of l'Humanite, she and her father were bosom friends of Willi Munzenberg, author of the propaganda about the Reichstag Fire -- a founder member and of one the most accomplished progagandists of the Comintern. It is evident from the way, and this is what is relevant, it is evident from the way that the hard-pressed defence counsel Marx conducted this cross-examination of her at Nuremberg that he was implying to the tribunal that she had never even been at Auschwitz. Your Lordship will remember that she described to the tribunal a beating-machine used by the SS to administer corporal punishment. Her testimony is riddled with such absurdities.

L0169 **Mr Justice Gray** Can you just help me about this? You say that hard-pressed defence counsel conducted his cross-examination on her, implying she had not even been in Auschwitz. I have no recollection of seeing anything about that at all. Is that my memory playing me false?

L0170 **Mr Irving** Under cross-examination, I put this to a witness, well one of the witnesses, my Lord, I put this to the witness that Marx had asked her about her literary career, that she had been a journalist in a previous existence. He asked the questions in a certain way, that counsel do ask if they are asking, trying to elicit from her the fact that it was purely fantasy in that she had never been there, and this is in the transcripts, my Lord.

L0171 **Mr Justice Gray** Perhaps we could just dig out the reference, not you whilst you are on your feet; Miss Rogers may be willing to. Thank you very much.

L0172 **Mr Irving** Your Lordship will remember that she described to the IMT, to the tribunal, a beating-machine. I am sure you Lordship remembers that.

L0173 **Mr Justice Gray** Yes, I do remember that.

L0174 **Mr Irving** All of us who have been to public schools have fond recollections of beating-machines and beatings -- used by the SS to administer corporal punishment. Her testimony is riddled with such absurdities, and when the experienced American Judge Biddle jotted down his sceptical comment on this witness in his notes, which I used, even as she was still speaking, he meant it -- and I certainly took it that way -- to be a reference to all that he had heard (and largely disbelieved) up to that point. That is the way I took it.

Kurt Aumeier dossier: Kurt Aumeier was like Rudolf Hoess, a very high-ranking official at Auschwitz concentration camp. I found the Kurt Aumeier dossier by conducting a systematic, "shirtsleeve" examination of the Public Records office files in 1992. Any one of the scholars introduced by the Defendants as witnesses could have found it equally readily. At first I intended to transcribe and publish the document myself, as a bit of a scoop, properly annotated, like the 1938 Goebbels Diaries. Instead I drew the attention of several scholars to it, including, to the best my recollection, both Sir Martin Gilbert and Dr Gerald Fleming. I had often sent them both documents which I had found which I knew would interest them, documents relating to the Holocaust. When I abandoned the publication idea, I drew the attention of other scholars to it, including Professor Robert Van Pelt, the expert witness in this case, in a very lengthy letter written to him in May 1997. In his letter I identified to him numerous archival references of interest to his special subject, including the Aumeier dossier. Not receiving from Van Pelt a reply, I published that letter in full in a 1997 newsletter, and I posted it on my website. Numerous correspondents utilized an e-mail link to Professor Van Pelt on that page, and the Defendants' solicitors eventually asked me to "deactivate" the link. My long letter to him in May 1997 had been mailed to Professor Van Pelt from Chicago with proper postage, addressed to his correct postal address at the university, and it was never returned to me. Professor Van Pelt claimed here not to have received it, and he suggested in his report that I told people about it only when the Defendants' legal team of researchers found the file in the PRO quite recently. This is absurd. They found the Aumeier file not least because it was included in my Discovery (both in the general Judenfrage archive box, and as item No. 2066). I did not know until two years later that he was to be a witness in this case.

As for the Aumeier dossier's content, his manuscripts suggest, or confirm, the extent, or the existence rather, of limited-scale gassings at Auschwitz. The figures are unreliable, and many of the other details conflict with those provided by the equally flawed writings of the Auschwitz commandant Rudolf Hoess. This is, in my submission, the most likely reason why the Defendants have not relied heavily on either the source nature of the defence, because I would have cross-examined them on the flaws, my Lord, nor, for that matter, have they made any use of the loudly trumpeted Eichmann memoirs prised out of the Israeli Government archives. I submit that the reason that they have not made any use of it is because in the entire document, which of

course only recently came into our hands, although this former SS-Obersturmbannfuhrer is writing with brutal frankness, he describes the most appalling spectacles that he has seen, including one instance where a child's brains that have been blown out by a bullet are splattered on his coat, he does not refer even once to being shown a gas chamber during the official guided tours as executioner-in-chief, so to speak, of the Auschwitz and Birkenau camps. So the Eichmann's memoirs are interesting not so much for what they do say as to what is not in them.

I heard what Professor Evans and learned counsel had to state about General Kurt Daluge, the chief of police in Germany, as a source for the criminal statistics of 1932. The Defendants have been unable to locate the figures that I quoted in the Daluge lecture which I used as one source. Nor did they appear to notice that it was in fact a lecture to the recently formed Interpol. Professor Evans not to have looked in the other three sources listed for that one sentence in my book, which included two reputable works of history, and so his strictures are really quite meaningless. For reasons known to the court, since 1993 I have no longer had access to the German Institute from which those sources are housed. I do not invent statistics, and it is clear by inference at least that the data which I gave came from one of the other three sources and not from the lecture.

That is the best that I can say on that matter.

I now come to the thorny matter of Hitler's knowledge of the Final Solution. This became the most controversial issue, both in this courtroom and stretching far back into my writing career, and I wish, just because of this, that I picked upon a different biographical subject. It certainly was not of my choice that this controversy arose. Your Lordship will remember that, when I wrote my first book, the Air Ministry advised me in future to write about the Zulu wars, because of the controversies that would arise.

Because of the inescapable conclusion that Hitler had probably not ordered, or been aware of until relatively late, of the ultimate fate of the European Jews, the ones who had been deported, I forfeited, as my US agent predicted, in that book Hitler's War, perhaps half a million dollars, or more, of lucrative sublicensing deals with major corporations, the Reader's Digest, paperback houses, reprints, the Sunday Times in this country and so on.

After I completed -- and this is important -- a first draft of that book in about 1969 or 1970, I realized that there was this totally inexplicable and unexpected gap in the archives, namely no evidence showing Hitler's personal involvement. I hired a trusted friend, a historian, well known to this court, Dr Elke Frohlich of the Institute of History in Munich, to go through all the then available German archives again, with the specific task of looking for documents linking Hitler with the Final Solution. She did a conscientious and excellent job, working for me in the files of the Nuremberg State Archives, the Institut fur Zeitgeschichte, the Berlin Document Centre, the Bundesarchives and the military archives in Freiburg - in this connection I should have added, of course. Her resulting research materials, my

correspondence with her, the index cards and photocopies, form a part of my Discovery in this action. It was she, for example, who produced for me the then unpublished diary entry of the Governor-General Hans Frank, the one that I just dealt with, it was actually a meeting transcript of December 13th, 1941. It was currently being edited by her colleagues at the Institute and she provided me with a privileged copy of that.

I would incidentally, my Lord, rely on this episode, namely hiring a historian to prove that I had got it wrong at my own expense as one further instance of my integrity as an independent historian. Inherently dissatisfied with the results of my own research, I hired and paid out of my own pocket for this second opinion, acting as an *avocatus diaboli*, to trawl once more, and with a net of finer mesh, across the same fishing grounds for documents that might in fact destroy me, destroy my then still tentative hypothesis. In a similar step, which I think I took to appease the now worried American publishers, I wrote in December 1975 to four or five of the major international Jewish historical research institutions -- I remember writing to the Institute in New York, and to the Wiener library in this country and to the equivalent bodies -- appealing for "evidence proving Hitler's guilt in the extermination of Jews". That is from the actual letter I sent. All of these enquiries by me drew a blank, except for one. As I summarised in a letter to the Sunday Telegraph on June 19th 1977, "all offered their apologies except Professor Raul Hilberg, who is the author of the standard history on the subject, who honourably conceded that he too has come to the view that Hitler may not have known". This actual letter is my discovery and was available to the Defendants. This letter to me was December 12th, 1975.

The other institutions stated that that too had no such evidence, or that did not reply.

So I did what I could to establish the truth of that particular allegation.

My Lord, I now come to what I call the international endeavour to destroy my legitimacy as an historian, and the participation, in my submission, of the Defendants in that particular endeavour. I have abbreviated it and much of what I have put in the pages which I supplied to your Lordship I shall not read out. I shall say when I am not going to read out what follows, not because it is not true but because your Lordship has probably quite rightly questioned the strict relevance of it to the matter before the court.

L0175 Mr Justice Gray Yes, I think that is sensible, if I may say so.

L0176 **Mr Irving** If it does not appear to be immediately relevant, then it is because I shall rely on it in the other matters that I put, namely the aggravated damages aspect and the fact that, if I am accused of certain postures or uttering certain tasteless remarks, these momentary lapses are not justified, but explicable on the basis of what I had been through, if I can put it like that.

Before I proceed to the problems with the accepted version of the history of Auschwitz, I turn first to the submission that your Lordship will allow me to make on the 30 year international endeavour by a group of organizations to destroy my legitimacy as an historian. I use that phrase for a reason. I submit that I am entitled to draw these documents to your Lordship's attention, because these bodies, acting with that secret and common purpose, compiled dossiers and reports on me with the intention of destroying me. That did so, exercising no proper care for accuracy, and, as is evident from the second Defendant's, discovery, Professor Lipstadt's discovery, and from the introduction to her book, in which she explicitly acknowledges the assistance provided by many of these bodies, she drew upon these tainted well springs as the source for much of the poison that she wrote about me. We shall hear that, buried in the files of the Simon Wiesenthal Centre in Toronto, is a document now also in Mrs Lipstadt's files -- that sent it to her -- which forms something of a blueprint for the attempt to destroy my name. A researcher for the Centre, an anonymous researcher for the Centre, commissioned to investigate -- why was a person in Toronto commissioned to investigate my life? I do not know -- to investigate my life in detail, recommended in that compilation after referring to my thorough archival research and general historical insight as follows:

"Given this accurate version of reality, it is all the more clear why this activities must be curtailed, and why this alleged legitimacy must be eradicated".

This document is from Professor Lipstadt's own papers.

I have been subjected, since at least 1973 and probably before then, to what would be called in warfare a campaign of interdiction. I know of no other historian or writer who has been subjected to a campaign of vilification even 1/10th as intense. The book "Denying the Holocaust" was the climax of this campaign. There exist, as I have said in my opening speech, various bodies in this country, and around the world, who have at heart the interests of special groups. I make no protest about that but many other Englishmen have noticed, or found out, usually by chance, that these bodies keep files on us, which that use to our disadvantage if that believe we are a danger to their interests. To give one particularly gross example, under the cover provided by the United States First Amendment, the Jewish Telegraph Agency accused me in 1995 of having supplied the trigger mechanism for the Oklahoma City bomb. That item was picked up by the American press and then faintly echoed by the British press. It was only months later that I found out who started that particular lie.

But regrettably this has become a campaign to defame people whom they regard as a danger. A number of special bodies exist solely for this purpose. Professor Kevin MacDonald, of the University of California at Long Beach, a sociologist who is the world's leading expert on these things, expressed forceful opinions to this court in this expert report, on which he offered himself for cross-examination, it has to be said, and I urge your Lordship not to disregard the substance of what he had to say.

These bodies will not endear themselves, if found out, to the victims of their campaigns.

Mr Rampton made much of Mr Ernest Zundel's gross and ill considered reference to the Judenpack, as anti-Semitic a word as one might wish to hear. Mr Rampton labels this man as an extremist, and anti-Semitic in consequence. This court, of course, has been told nothing by Mr Rampton of what, if any, remarks or incidents preceded the outburst by Mr Zundel that was very briefly quoted. We do know, and I can so inform this court, that his home has been torched and burnt to the ground. Such violent incidents certainly cannot excuse the violent remarks but that can explain them -- a difference. Because that do not like what he writes or publishes, these bodies have attempted to destroy this life with criminal prosecution in an attempt to have him deported or jailed.

Going on down the page, my own experience at the hands of these self-appointed censors has not been so very different. It began in 1963 when agents of Searchlight raided my home and were caught red handed in this criminal attempt. Ever since then that publication has tweaked my tail with a stream of defamatory articles, a 37 year onslaught to which, as a good Christian, I turned the other cheek. In fact, the man who runs that magazine turns out to have been one of the producers of the film which has been put to the court, one of the editors.

It might be said, and I have turned the page now, my Lord, that the real Defendants in this case are not represented in this court but their presence has been with us throughout like Banquo's ghost. These are the people who commissioned the work complained of and provided much of the materials used in it. I understand that provided considerable funds for the defence.

I know very little about these bodies, but I am aware that the anti-defamation league of the B'nai Brith, which is an American body, has a 50 million dollar annual budget, substantially greater than an author commands whose livelihood has been destroyed by their activities. When your Lordship comes to consider such things as costs and damages, I would respectfully submit that you bear these things in mind.

We have them to thank for the spectacle that has been presented in this court room since January. Without their financial assistance, it is unlikely that Mr Rampton and this defence team and his instructing solicitors could have mounted this colossal onslaught on my name.

Further down, for over three years this well-funded team sitting opposite me, next to me, has drilled down deep into my private papers, burrowed on a broad front into the archives of the world and a multi-pronged attack trying to establish that what I

have written over the last 35 or more years is distorted or mistranslated in pursuance of an agenda, namely the exoneration of Adolf Hitler, trying to dig up every little morsel of dirt on me that that can.

My book Hitler's War was published by the Viking Press in New York and by Hodder and Stoughton in this country in 1977. That is when what can be seen as the coordinated attack on the book began. The Viking Press was and is one of that nation's most reputable publishers and in fact I believe they are owner of the first Defendant company in this case.

Turning the page now, the Anti-defamation League issued a report with more fervour than accuracy, saying: "David Irving is the nom de plume of John Cawdell" -- this not true, I hasten to say, do not get it wrong, it is totally untrue -- "a revisionist historiographer of Adolf Hitler, particularly regarding Hitler's role in and knowledge of the mass extermination of European Jewry. His major premise", says the Anti-defamation League, "is that Hitler was largely oblivious to the large scale killings of Jews in the death camps".

I carry on: The agent's report -- this is a report put out in 1977.

L0177 **Mr Justice Gray** I wonder, Mr Irving, really whether one might just go to the middle of page 35 without doing any injustice to your case.

L0178 **Mr Irving** Yes. When I then began my lecturing activities around the United States in the early 1980s, speaking at private functions, schools and universities, the headquarters of the ADL sent out a secret circular, a "Backgrounder", in 1983, to all their local agents. The backgrounder, dated July 6th 1983, began with the words, "British author David Irving has been of concern to ADL, as well as to the Jewish community generally, since the 1977 publication of his book Hitler's War", and it indicated that it was the controversy over Hitler and the Jews that was the reason. We have heard of similar such circulars being generated by them on other famous names. In my case the ADL instructed its "regional offices": "Should he surface in your region, please notify the Fact Finding Department and your Civil Rights Coordinator".

It is quite plain that the ADL were not concerned with promoting civil rights. I am mentioning them because of course that collaborated very closely with the Second Defendant in the preparation of the book that is the subject of this trial.

It is quite plain that the Anti-defamation League were not concerned with promoting civil rights, but in abrogating one of the most basic rights of all, the right to freedom of speech.

Further down, correspondence with my literary agent showed by 1984 that already the international smear campaign was inflicting substantial financial damage on me. It was at precisely this time, 1984 -- I will not comment on the year -- that the Second Defendant, then teaching in the Near Eastern Languages Centre of the University of California at Los Angeles, Professor Lipstadt, offered her services to Yehuda Bauer in Jerusalem, a very well known Israeli Professor. She attached "A proposal for research: The Historical and Historiographic Methodology of the Holocaust revisionists". This was the genesis of the book that we are complaining about. I ask your Lordship to note that on page 38 of the synopsis prepared by the Second Defendant, which is in my bundle E at page 38, The Second Defendant, Professor Lipstadt, mentioned my name in the following words: "They [the deniers] also find it expedient to associate themselves with those such as David Irving who do not deny that the Holocaust took place but seek to shift the blame to others."

To conclude this, on the matter of her employment: on May 31, 1988 Professor Lipstadt was awarded an additional agreement for research on this topic by the Vidal Sassoon Centre for the study of Anti-Semitism at the Hebrew University of Jerusalem. So at all material times, the book was being commissioned by that University in Jerusalem. This research, it should be added, was what finally bore fruit as the book complained of, "Denying the Holocaust". The publisher at that time was to be Mr Robert Maxwell, who was liaising with Professor Yehuda Bauer.

Briefly summarizing the next page: During this period the international campaign against me achieved some ugly successes. I was illegally deported from Austria. The Austrian government had to pay me compensation when it was overturned.

The Second Defendant's discovery -- lower down that page -- which included such correspondence with, and items from, the Anti-Defamation League as she has seen fit to provide, throws some interesting lights on the ADL. When a local newspaper, The Daily Pilot, published in Orange County, south of Los Angeles, a report on a function of the Institute of Historical Review, about which we have heard much from the Defence in the last few weeks. The anti-Defamation League was horrified as the regional office reported, to find that the reporter in the newspaper, and I quote "seems to find an air of legitimacy surrounding the group". That word "legitimacy" again; remember they were going to destroy my legitimacy? The reporter, Mr Bob Van Eyken, who had evidently not got the message, even described the IHR members as "neatly dressed ... evoking a sense of reasoned dignity". This clearly clashed with the skinheaded, jackbooted extremist stereotype that the ADL, like the expert witnesses in this case, wished to promote for the IHR and other "right-wing" groups. This material, though clearly discoverable in this action, was withheld from discovery by the Second Defendant until a summons was issued to produce all her correspondence with the ADL.

We know that the Second Defendant has had extensive dealings with the Anti-Defamation League, the ADL, this American body. Even from her own limited discovery, about the deficiencies in which I still have more to say, we know that Professor Lipstadt was provided with smear dossiers by them. She thanks them in her Introduction. She made not attempt to verify the contents of this material with me as the victim (or, so far as this court knows, with any others), but she recklessly published it raw and unchecked. A 25-cent phone call to me would have saved her endless trouble. Instead she preferred to rely on these sheets like the "confidential" and defamatory four-page item dated October 23rd 1986, headed: "Profile on Dave Irving", evidently coming from another Canadian body. Characteristically, the "profile" was disclosed to me by her solicitors without any covering letter from its author or custodian and shorn of any identifying material; I wrote more than once in vain asking for the missing pages to be provided.

It is quite evident that the Anti-Defamation League, who were in cahoots with the Second Defendant, set itself the task of destroying my career, in consort with other similar organisations around the world, many of whom, if not all, collaborated with the Second Defendant in writing her book. The pinnacle of their achievement came in 1996, when the Second Defendant, as she herself boasted to The Washington Post, was among those who put pressure on St Martin's Press Incorporated, who had been one of my United States publishers for some 15 years, to violate their publishing agreement with me and abandon publication of Goebbels, my Goebbels biography, "Goebbels, Mastermind of the Third Reich".

For a few days, these enemies of free speech stepped up the pressure. They publicised the private home addresses of St Martin's Press executives on the Internet. They staged street addresses in Manhattan. They organised a walkout by the publisher's staff. When SMP refused to be intimidated, Professor Lipstadt wheeled out the rhetoric: to Frank Rich, a syndicated columnist of The New York Times, she accused me of being a repeat killer, if I can put it like that: "What David Irving is doing ... is not the destruction of live people, but the destruction of people who already died. It's killing them a second time. It's killing history". This was not far distance from the outrageous claim on page 213 of her book, to which no justification has been pleaded to my knowledge, that I justified the incarceration of Jews in Nazi concentration camps. Quoted by The Washington Post on April 3rd 1996, Professor Lipstadt stated:

"They ... don't publish reputations, they publish books", referring to St Martin's Press. "But would they publish a book by Jeffrey Dahmer on man-boy relations? Of course the reputation of the author counts. And no legitimate historian takes David Irving's work seriously."

We have heard quoted in this Court two tasteless remarks I am recorded as having made, about Chappaquiddick and about the Association of Spurious Survivors, and I do not deny that those words were tasteless. But bad taste is not what is in the pleadings, while express malice is: and the odiousness of Professor Lipstadt's comparison, in a mass circulation newspaper of record, of a British author with Jeffrey Dahmer, a madman who had recently murdered and cannibalised a dozen homosexuals in the mid-West of the USA, in surely compounded by the fact that Lipstadt had at that time not read a single book that I had written, let alone the manuscript of Dr Goebbels that she had joined in trying to suppress. It is clear that neither she nor the ADL was concerned with the merits, or otherwise, of the Goebbels biography. They wanted it put down, suppressed, ausgerottet: and me with it.

Having, like St Martin's Press, thoroughly read it, the major US publisher Doubleday Inc. had selected this book as their May 1996 choice for History Book of the Month. But that deal depended on the SMP contract, and thus it too collapsed. The financial losses inflicted on me by this one episode in April 1996 were of the order of half a million dollars, which might seem proper reward for the eight years' hard work that I had invested in writing this book, and hauling it through its five draft versions. The book never appeared in the United States.

From the publication of Hitler's War onwards, the attitude of the print media to me changed. A strategically placed review written in one afternoon, by one man furnished with the appropriate dossier on me, could go a long way to destroy the product of six or eight years' research, as we have just seen. That was why these dossiers had been created.

To the right journalists or writers, such as the Second Defendant, these dossiers were on tap. A fax from Professor Lipstadt to the Institute of Jewish Affairs in London, or to the ADL in New York, or to the Simon Wiesenthal Centre in Toronto,

and we have got these faxes from her discovery, released to her a cornucopia of filth, which she had no need to check or verify, because in the United States such writings are protected by the authority of the First Amendment to the US Constitution, the laudable name of the freedom of speech, or by the authority of *New York Times v. Sullivan*, which effectively declares to libellers that it is open season on any public figure.

I turn the page, my Lord.

This Court will surely not take amiss of me that I refused to be intimidated by these truly "Nazi" methods, and that I have on a few occasions used perhaps tasteless language around the world about perpetrators. The violence against me spread around the world, and always it was orchestrated by the same organizations.

Turn the page.

In England, a parallel campaign was launched by the Board of Deputies, and by other organizations which we know to have collaborated with the Defendants in producing this libellous book. This kicked into high gear after my own imprint published an abridged edition of the Leuchter report in 1989. Pressure was put on the World Trade Centre in the City of London to repudiate our contract for the press conference. A picket, a muscle man picket, was staged outside our own front door to prevent journalists from attending when the conference was switched to my own harm. The Board arranged an early day motion in the House of Commons, as a privileged way of smearing my name -- publishing a smear on my name. On June 30th of that year the *Jewish Chronicle*, which is one of the newspapers that has reported this entire proceedings most fairly, in my view (and I wish to put that on record) revealed that representations had been made to my principal British and Commonwealth publisher, Macmillan Limited, to drop me as an author.

Macmillan had already published several of my books and they were under contract to publish several more. I had no fears that they would succumb to this intimidation. They had informed me that Hitler's War was running so successfully that they intended to keep it permanently in print. I am entitled to mention this background, as I have mentioned the Board's other clandestine activities against me, because it was said by Mr Rampton that I later made one tasteless remark in public about the Board of Deputies. If somebody attacks, using secret and furtive means, the very basis of the existence of my family then it may be at least understandable that I speak ill of them.

Lower down the next paragraph: Secretly, on July 17th 1991, the Board of Deputies wrote to the President of the German Office for the Protection of the Constitution (which is their MI5), a body of which we heard greatly admiring words from Professor Funke in the witness box; this English board urged that they take steps to stop me, a British citizen like no doubt the members of the Board, from entering Germany.

Germany is a country on whose publishers and archives I have been heavily dependent, as this Court is aware. We have only the BfV's reply, dated August 9th 1991, to the Board of deputies. I retrieved a copy of this letter. If your Lordship is

wondering how I come into possession of documents like that, I retrieved a copy of this letter from the files of the Prime Minister of Australia; so the same Board in London had evidently also sent its dossiers to its collaborators in Canberra and, no doubt, other countries, in its efforts to gag me worldwide. That is an indication of the worldwide networking that went on, this secret common enterprise, of which the Second Defendant is a party, to destroy my legitimacy as an historian and to deprive me of free speech, of which the Defendants have made themselves the willing executioners.

As is evident from a letter from the Austrian Ambassador dated June 22nd 1992, the Board also applied pressure on that country to ensure that I did not enter, or that if I did I would be arrested. The same kind of thing happened in Argentina.

Lower down the page towards the end: On December 6th 1991, an Internal Office Memo from Macmillan's files -- my own publisher in London -- records that "quite a number of people" had commented unfavourably to Macmillan's about them publishing my books, and one person, who was an unnamed Professor of Politics at Oxford, who had evidently learned nothing from the book burning episodes of Nazi Germany, stated "that they would be more inclined to publish with us [Macmillan] if we were not publishing Irving". (The Oxford professor of politics was probably, in my view, Professor Peter Pulzer, identified by Professor Lipstadt in her books as such and quoted by The Independent at the time).

This campaign had been coordinated. In some of its members, it seems that the illiberal spirit of Dr Goebbels lived on behind the Board of Deputies' facade. Meeting behind locked doors at their headquarters in December 1991, December 12, a body identified as the "Education and Academic Committee of the Holocaust Educational Trust, registered as a charitable body, held a conference, including point 6:

"David Irving: Concern was voiced over the publication of the second edition of Hitler's War". This is 1991, 14 years after the first edition. "There was debate over how to approach Macmillan publishers over Goebbels Diary". That was the other book they were going to publish of mine. "It was agreed to await new[s] from Jeremy Coleman before deciding what action to take."

We know more of this meeting from the statement to this Court by my witness Dr John Fox, who was present at this cabal in his capacity as editor of The British Journal of Holocaust Education. He testifies as follows:

"As an independently-minded historian, I was affronted by the suggestion concerning Mr David Irving [...] At a certain point in the meeting, attention turned" -- do you wish to suggest I move on?

L0179 Mr Justice Gray No. I am reading around what you are reading out to me.

L0180 **Mr Irving** Yes. "At certain point in the meeting, attention turned to the subject of Mr Irving and reports that the publishing company of Macmillan would be publishing his biography of Goebbels. Mr Ben Helfgott ... turned to me, the only non-Jew present at the meeting, and suggested that 'John'", John Fox, "'could approach Macmillan to get them to stop publication'. I refused point-blank to accede to that suggestion, arguing that in a democracy such as ours one simply could not do such a thing. That amounted to censorship ...

Nevertheless, as the Committee minutes make plain, it was planned by some to consider further action about how best to scupper Mr Irving's publishing plans with Macmillan".

The clandestine pressure on Macmillan's began at once. My editor at Macmillan's, Roland Philipps, noted in an internal memorandum of January 2nd 1992 that they should reassure prospective authors that they had turned down many other book proposals from me, and had no plans to continue publishing me after Goebbels. It was not the bravest of postures to adopt, you might think. The memorandum continues: "If this helps you to reassure any prospective authors we are happy for you to say it (although not too publicly if possible)". The desire of Macmillan's to stab in the back, for this stab in the back to be secret from their own highly successful author, myself, is understandable. In fact, their ultimate stab in the back was to come in the summer of 1992.

In May 1992, meanwhile, we find Deborah Lipstadt providing a list of her personal targets, victims, including now myself to the US Holocaust Memorial Museum in Washington; she advised the Museum to contact Gail Gans at the Research Department of the ADL (about whom we have heard) in New York City for additional names, and to "tell her I told you to call her". This establishes that the Defendants consider that that museum, which is a US taxpayer-funded body, was actively participating in their network, and the museum duly provided press clippings from London newspapers relating to me, which have now turned up in the Defendants' files.

The attempts to suffocate my publishing career continued. I mention a second arm of this attack. Since my own imprint, my own publishing imprint, which I had set up myself some years earlier, would not be intimidated as easily as Macmillan's, or indeed at all, the hostile groups applied pressure to major bookselling chains throughout Britain to burn or destroy my books and in particular the new edition of Hitler's War. Some of the press clippings reporting this nasty campaign are in my discovery. They include reports of a sustained campaign of window smashing of the branches of Waterstone's bookstores in the biggest Midlands cities, after complaints were made by local groups.

Waterstones informed one Newcastle newspaper that they were taking books off public shelves "following a number of vandal attacks on book stores across the country". The Nottingham Waterstones took the book off display

after a brick was thrown through its window. The campaign clearly coordinated from London. None of this was reported in the national press, but one would have thought that these groups would have recognized the bad karma in any campaign of smashing windows or burning books.

I wrote privately to Tim Waterstone, the head at that time of Waterstones, guaranteeing to indemnify his chain for their costs of any uninsured claims. But he refused to be intimidated by the campaign and, my Lord, that is one reason why I took the names of four Waterstones branches off the list of Defendants in this action at a very early stage.

I am turning the page now, my Lord: Demonstrations organized outside by property, violent demonstrations, police were frequently called. The same newspaper reported -- this is halfway down that following page -- that the Anti-Nazi League and its parent body, the Board of Deputies, were applying pressure to The Sunday Times to violate its contract with me which was the contract to obtain the Goebbels diaries from the Moscow archives. Again, the reason why I mention all of this may be apparent, it is when I make remarks about by my critics, occasionally using vivid language, I sometimes had reason. As an indication of the pressure ----

L0181 **Mr Justice Gray** Mr Irving, I am just wondering, and I am sorry to interrupt you and I am not going to stop you at all, but reading on to about page 54, you describe, do you not, the continuation of what you see as being this really worldwide attempt to close you down as an historian and attacks on your house and pressure of various kinds being brought to bear all over the world. I just wonder whether there is any particular benefit -- tell me if you there is -- in reading out the next seven or so pages? If there is any particular point you want to make, do, but I feel myself we could probably move on to the middle of page 54.

L0182 **Mr Irving** I will move on to 51, my Lord. When I found out - too late - that this fake evidence had been planted on Canadian files, which resulted in my being deported from Canada in handcuffs on November 13th 1992, I was angered and astounded that a British organisation could be secretly doing this to British citizens. It turned out from these files that academics with whom I had freely corresponded and exchanged information, including Gerald Fleming, had been acting as agents and informants for this body. I submit (which is why I am reading this out) that these are the bodies that collaborated directly or indirectly with the Defendants in the preparation of the book and that the Defendants, knowing of the obvious fantasy in some of what they said, should have shown greater caution in accepting their materials as true.

There was an immediate consequence of this fake data planted on Canadian files. One data report recorded the "fact" that I had written 78 books denying the Holocaust which, of course, is totally untrue. In August 1992 a docket was placed on Canadian immigration files about me saying, among other things, this is a secret file, "Subject David Irving is Holocaust denier, may be inadmissible" to Canada with the result, of course, that precisely that happened. I was arrested on October 28th at Vancouver, making a speech on freedom of speech, deported permanently from Canada on November 13th causing me great financial damage and loss. Access to the Public Archives of Canada was as essential for my future research as access to the PRO in Kew or to those archives in Italy. My Lord, this goes, of course, to the damage that has been caused to me by this general libel at being called a Holocaust denier. That is one proof of the direct and immediate cost of the pernicious label "Holocaust denier". And the same thing, they made the same attempt to get me banned from the United States but failed.

Page 54, my Lord. I now come to Macmillan's final stab in the back. The hand on the blade was Macmillan's but the blade had been forged and fashioned by all the Defendants in this courtroom, and by their hidden collaborators overseas.

On July 4th 1992, as this Court knows, I had returned Moscow with the missing entries of the Goebbels Diaries exclusively in my possession, having gone there on behalf of The Sunday Times. This hard-earned triumph caught my opponents unawares. Newspapers revealed that the Anti-Defamation League and its Canadian collaborator, the League of Human Rights, sent immediate secret letters to Andrew Neil at The Sunday Times demanding that he repudiate their contract. On Sunday, 5th, the London Sunday newspapers were full of the scoop - and also with hostile comment. On Monday, July 6th, The Independent newspaper reported under the headlines "Jews attack publisher of Irving book", that a UK body which it identified as "the Yad Vashim Trust" with which we, of course, were familiar, was piling pressure on to Macmillan's to abandon its contract with me to publish Goebbels, failing which they would urge booksellers not to stock or promote it.

Macmillans finally took fright that same day, as I only now know. After their directors inquired, July 6th 1992, in an internal memo, how many of my books were still in their stocks, and having been given totals of several thousand copies of all three volumes of my Hitler biography, representing a value of several hundred thousand pounds, my own editor, Roland Philipps, on July 6th issued the secret order reading: "Please arrange for the remaining stock of [David Irving's Hitler biographies] to be destroyed. Many thanks". Book burning. They prepared a "draft announcement", but it was not released. Although still a Macmillan author, I was not told. The royalties due to me on the sale of those books were books were lost and destroyed with them. The Defendants' campaign to destroy my legitimacy as an historian, of which the book published by the Defendants became an integral part, had thus reached its climax.

My Lord, I now pass over the next pages to page 57.

The same thing happened in Australia. I spoke in the Munich. Final paragraph: Opponents released -- I am sorry, yes. Opponents released to Australia television the heavily edited version of Michael Schmidt's 1991 video tape of me addressing the crowd at Halle about which we have heard from Mr Rampton this morning, the Sieg Haels and the rest of it. As edited, it omitted my visible and audible rebuke to a section of the crowd for chanting Hitler slogans. Grotesque libels about me swamped the Australian press, printed by various organisations including the New South Wales Board of Deputies and various newspapers. One example was an article by a lecturer in politics. He wrote: "Irving has a history of exciting neoNazi and skinhead groups in Germany which had burned migrant hostels and killed people ... Irving has frequently spoken in Germany at rallies... under the swastika flag ... himself screaming the Nazi salute..." This is how these stories begin. Unsurprisingly, Australia then banned me too. I was to be refused a visa, they announced, on February 8th 1993 as I was a "Holocaust denier". They had thus adopted the phrase that the Second Defendant, Professor Lipstadt, prides herself in having invented.

This new and very damaging ban on visiting Australia made it impossible for me to work again in the National Library of Australia in Canberra. At great personal expense I appealed to the Australian Federal Court. The Court declared the Minister's refusal of a visa illegal. The government in Canberra therefore changed the law in February 1994 to keep me out. We note from Professor Lipstadt's own discovery that the immigration minister faxed the decision to keep me out direct to one of her source agencies that same afternoon. The same kind of thing happened.

In July 1994, as the resulting fresh legal actions which I started against the Australian government still raged, the Second Defendant was invited by Australian organisations, all expenses paid to visit their country; she was hired to tour Australia, and to slander my name and my reputation and add her voice to the campaign to have me refused entry. The court, my Lord, you will probably remember the Australian TV video which I showed entitled "The Big Lie" in the early days.

L0183 Mr Justice Gray Yes.

L0184 **Mr Irving** Broadcast in July 1994, it showed both the expert witness, Professor van Pelt, and Mr Fred Leuchter. It showed Fred Leuchter standing on the roof of crematorium No. II, about which we are going to hear more, crematorium No. II at Auschwitz which van Pelt declared to be the centre of the Nazi genocide, and the Second Defendant being interviewed while still in Australia (and refusing once again to debate with the revisionists, just as she has obstinately refused to go into the witness stand here and be questioned). Thus I found myself excluded from Australia. We have had now Germany, Canada, South Africa, Australia, New Zealand as well, I lost the ability to visit my hundreds of friends down under and my own daughter too, who is an Australian citizen; and I lost all the bookshop sales that this ban implied in Australia - where my Churchill biography had hit the No. 1 spot in the best seller lists earlier.

Over the page: My lecturing engagements in the British Isles came under similar attack. I had often spoken to universities and debating societies, including the Oxford and Cambridge Unions, in the past, but now in one month, in October 1993, when I was invited to speak to prestigious bodies at three major Irish universities, I found all three invitations cancelled under pressure and threat of local Jewish and anti-fascist organisations. The irony will not elude the court that these Defendants, on the one hand, have claimed by way of defence that I speak only to the far right and neo-Nazi element, as they describe it, and yet it turns out that their own associates are the people who have done their damndest to make it impossible for many others to invite me.

The Second Defendant, Deborah Lipstadt, had meanwhile made progress with her book. She told her publisher that she had written a certain statement with the marketing people in mind. In other words, sometimes money mattered more than content, in my submission.

She had revealed in September 1991 in a letter: "I have also spoken to people in England who have a large cache of material on David Irving's conversion to denial". We do not know who the people are, but we can, of course, readily suspect who in this case those people were. She is once again not presenting herself for cross-examination, so there are many things we cannot ask her about, including and I would have asked her, in fact, most tactfully the reasons why she was refused tenure at the University of California and moved downstream to the lesser university, in my submission, in Atlanta where she now teaches religion.

In the light of Mr Rampton's strictures on my now famous little ditty -- your Lordship will remember the little ditty which I am supposed to have hummed to my nine month old daughter, the racist ditty, which went around the press because Mr Rampton issued a press release -- supposedly urging my nine month old little girl not to marry outside her own people, I should also have wanted to ask questions of Professor Lipstadt's views on race had she gone into the witness box. We know that she has written papers, and delivered

many fervent lectures, on the vital importance of people marrying only within their own race. Quotation: ("We know what we fight against...", she wrote, "intermarriage and Israel-bashing, but what is it we fight for?") She has attracted, in fact, much criticism from many in her own community for her implacable stance against mixed marriages, marrying outside their own race. In one book Professor Lipstad quotes a Wall Street Journal interview with a Conservative rabbi, Jack Moline, whom she called "very brave" for listing 10 things that Jewish parents should say to their children: "No. 1 on his list", she wrote (in fact it was No. 3) "was 'I expect you to marry Jews'." She considered that to be very brave. My one little ditty which I hummed to my nine month old daughter, Jessica, was a perhaps tasteless joke. Professor Lipstadt's repeated denunciation of mixed marriages addressed to adults was deadly serious.

Professor Lipstad accuses me of error or falsification, but is apparently unable to spot a fake even at a relatively close range. She admitted (in a recent interview with Forward) that she used memoirs of the spurious Auschwitz survivor Benjamin Wilkomirski in her teaching of the Holocaust to her defenceless students, according to Professor Peter Novick who has written a book on this. Those "memoirs" have now been exposed, worldwide, as fraudulent. Wilkomirski was never anywhere near Auschwitz. In fact, he was in Switzerland. When it turned out that Wilkomirski have never been near the camp or in Poland for that matter, but had spent the war years in comfort living with his adopted Swiss family, she acknowledged that this "might complicate matters somewhat", but she insisted that the Wilkomirski "memoirs" would still be "powerful" as a novel. It may seem unjust to your Lordship that it is I who have had to answer this person's allegation that I distort and manipulate historical sources.

We have Professor Lipstadt's handwritten notes, however, in the rather meagre discovery, evidently prepared for a talk delivered to the Anti-Defamation League in Palm Beach, Florida, in early 1994, which again is meagre but substantive evidence of her connection with the Anti-Defamation League. In these, if I read her handwriting correctly - and she appears to be relying on something Lord Bullock had just said - she states that my aim seems to be to de-demonize Hitler; and that I had said that Roosevelt, Hitler and Churchill were all equally criminal. This is hardly "exonerating" any of them. Summarising Hitler's War (the 1977 edition) she calls me merely an "historian with a revisionist bent" which is rather like AJP Taylor - and she adds, and this seems significant - "Irving denies that Hitler was responsible for the murder of European Jewry. Rather, he claims that Himmler was responsible. But he does not deny its occurrence. Had she stuck with that view, of course, of my writings, which is a very fair summary of my views, both then and now, she and we would not find ourselves here today.

But she was led astray, my Lord. She fell in with bad company, or associates. These things happen. We know that, in conducting her research for the book, she spoke with the Board of Deputies, the Institute of Jewish Affairs, the Anti-defamation League and other such worthy bodies, since she thanks all of them in her introduction.

My Lord, I have given a list of the bodies she thanks in an affidavit which is contained in my bundle based on the introduction to her book.

Some time in 1992 her book was complete in its first draft, and Professor Lipstadt sent it to the people who were paying her, the Hebrew University of Jerusalem. We do not know what was in the book, since I cannot question the second Defendant and she has not disclosed the early draft, with Professor Yehuda Bauer's scribbles on it, as he said, in her sworn list of documents. The early draft was clearly discoverable but it has not been provided to us. We do know however what was not in it. We know that there was no mention of his Hizbollah and Hamas and Louis Farrakhan and the November 1992 terrorists in Stockholm, or of the lie about my speaking on the same platform with them. In fact, we also know that in this first draft I was merely mentioned in passing. This is a book about denying Holocaust and I am only mentioned in passing. This is evident from the letter which Professor Yehuda Bauer wrote back to her, congratulating her on November 27th 1992. Bauer complained that the book lacked the "worldwide perspective" and said, "Irving is mentioned, but not that he is the mainstay of Holocaust denial today in Western Europe" which is where all the misery then began of course.

Somehow therefore I had to be shoe horned into the text before publication. Professor Bauer urged her too not to write things inadvertently that might convince the reader that there was something to what revisionists or deniers said, although that is hardly a true scholar's method, to suppress mention of opposing arguments. In a letter to Anthony Lerman, of the Institute of Jewish Jewish Affairs, (the same Mr Lerman who would spread later the lying word that I had supplied the trigger mechanism for the Oklahoma City bomb) Lipstadt revealed that there was an earlier incarnation of the book.

Now, that earlier incarnation, to use her words, has also not been disclosed in her sworn list of documents. She had been ordered to swear an affidavit on her list, my Lord, which is why there is a sworn list, because of discrepancies previously. When I made a subsequent complaint about deficient discovery, her solicitors reminded me that I could not go behind her affidavit under the rules until she presented herself for cross-examination, which I think is, if I may say so, my Lord, deceptive. Had they intended not calling this witness to the witness stand, they should not have written that to me. This chance of cross-examining the witness has been denied to me.

Professors Lipstadt spent of that last month of 1992 therefore putting me into the book, whereas I had only previously been mentioned, and thus putting herself into this court room today. They were the weeks after the spectacular success of the global campaign to destroy my legitimacy, which culminated with getting me deported in manacles from Canada on November 13th, 1992.

"I am just finishing up the book" she wrote to Lerman on December 18th "and, as you can well imagine, David Irving figures into it quite prominently". She pleaded with Lerman to provide, indeed to fax to her urgently, materials from "your files". Your Lordship may think that this haste to wield the hatchet compares poorly with the kind of in-depth years long shirt sleeved research which I conducted on my

biographical subjects. "I think that he (in other words Irving) is one of the most dangerous figures around", she added, pleading the urgency. It was a spectacular epiphany, this court might think, given that only three weeks earlier the manuscript barely mentioned me, as Bauer himself had complained. From being barely mentioned to being one of the most dangerous figures around.

Lerman faxed his materials to her from London a few days later. We do not know precisely what, and it is a complete extent, as here too the defendants' discovery is only fragmentary, and these items were provided to me, again only in response to a summons.

That is an outline of the damage, and the people, including specifically the Defendants in this action, who were behind it. Mr Rampton suggested at a very early stage that I had brought all of this on my myself, that I even deserved it. He was talking about the hate wreath that was sent to me upon the death of my oldest daughter. We shall see.

My Lord, I now come to Auschwitz Concentration Camp.

Auschwitz has been a football of politicians and statesmen ever since World War II. The site has become, like the Holocaust itself, an industry, a big business in the most tasteless way, the Auschwitz site. The area, I am informed, is overgrown with fast food restaurants, souvenir and trinket shops, motels and the like. As Mr Rampton rightly says, I have never been to Auschwitz and Mr Rampton knows the reason why. The Auschwitz authorities said they would not allow me to visit the site and they would not allow me into their archives, and they have every reason to know why they do not want to allow a David Irving to get his hands on their papers. Under Prime Minister Josef Cyrankiewicz (who had been prisoner number 62,993) it was known at its opening in 1948 as a monument to the martyrdom of the Polish and other peoples.

Auschwitz was overrun by the Red Army in January 1945. The last prisoner had received the tattooed number 202,499. Informed by Colonel General Heinz Guderian, the chief of the German Army general staff, that the Russians had captured Auschwitz, Hitler is recorded by the stenographers as saying merely "yes". The court might find it significant that he did not prick up his ears and say something like, "Herr Himmler, I hope you made sure the Russians will not find the slightest trace of what we have been up to". (Or even, "I hope you managed to get those holes in the roof slab of crematoria No. II cemented over before you blew it up".) I will shortly explain the significance of that. When the name of SS General Hans Kammler, the architect of the concentration camps, was mentioned to him a few days later by Goebbels, it was evident that even Kammler's name meant little to Hitler because Goebbels commented on the fact.

How many had died at Auschwitz? We still do not know with certainty, because the tragic figure has become an object of politics, too. Professor Arno Mayer, the Professor of European history at the University of Princeton, a scholar of considerably greater renommee than Professor Evans, and himself a Jew, expressed

the view in one book that most of the victims of the camp died of exhaustion and epidemics. He said: "From 1942 to 1945 more Jews died, at least in Auschwitz and probably everywhere else, of 'natural' causes of death than of 'unnatural'.

The Russians who captured the camp did not at first make any mention in their news reports of gas chambers. There is a famous report published in the first day or two in February 1945 in Pravda. Moreover, as we saw on the newsreel, which I showed on the first day of this trial, even the Poles, with access to all the records, claimed only that "altogether nearly 300,000 people from the most different nations died in the Auschwitz concentration camp". This is the news reel trial of the trial of the Auschwitz officials. "300,000 people from the most different nations died in the Auschwitz concentration camp". It concluded that the camp now stood as a monument of shame to the lasting memory of its 300,000 victims. In both cases gassing was not mentioned. The New York Times quoted the same figure 300,000 when the trial began in 1947. The figure gradually grew however. The Russians set up an inquiry including some very well-known names, including the experts who had examined the Nazi mass graves at Katyn, and even the notorious Lysenko. They announced that 4 million had been murdered at Auschwitz. Under the Polish communists, a monument to "4 million dead", with those words on it, was duly erected, a number which was adhered to until the 1990s even under Franciszek Piper, one of the later (but still communist) directors of the Auschwitz State Archives. After the communist regime ended that figure was brought down to 1.5 million, and then to 750,000 by the acknowledged expert Jean-Claude Pressac. The Defendants' own expert Peter Longerich spoke of one million deaths there from all causes, and then in response to cross-examination by myself and to your Lordship's enquiries, Dr Longerich confirmed that he included all non homicidal deaths, deaths "from other causes", including epidemics and exhaustion in that overall figure of 1 million.

Perhaps I should pause there and say that these figures seem appalling figures but, if it is one million or 300,000 or whatever the figure is, each of them means that many multiples of one individual. I never forget in anything I have said or written or done the appalling suffering that has been inflicted on people in the camps like Auschwitz. I am on the side of the innocents of this world.

As for the overall death roll of the Holocaust, what meaning can one attach to the figures? The International Military Tribunal at Nuremberg found that the policy pursued resulted in the killing of 6 million Jews, of which 4 million were killed in the extermination institutions, but the 6 million figure derives, as the American chief prosecutor Jackson recorded in his diary in June 1945, from a back of the envelope calculation by the American Jewish leaders with whom he met in New York at that time. Professor Raul Hilberg puts the overall Holocaust figure at one million or less. Gerald Reitlinger had the figure at 4.6 million, of which he said about 3 million were conjectural, as it was not known how many Jews had escaped into the unoccupied part of the Soviet Union. The Israeli prime minister's office, we are told by Norman Finkelstein, recently stated that there were still nearly one million living survivors.

There are doubts not only about the precise figures but about specific events. The same Nuremberg tribunal ruled on October 1st 1946 that the Nazis had attempted to utilise the fat from bodies of victims in the commercial manufacture of soap. In 1990 historian Shmuel Krakowski of Yad Vashem announced to the world's press that that too had been a Nazi propaganda lie. Gradually the wartime stories have been dismantled. As more documents have been found, widely stated propositions have been found to be doubtful. For a long time the confident public perception was that the Wannsee protocol of the January 20th 1942 meeting at the Interpol headquarters in Berlin, Wannsee, recorded the actual order to exterminate the European Jews. Yehuda Bauer, the director now of Yad Vashem, the world's premier Holocaust research institution in Israel -- one of the correspondents of the second Defendant you remember -- has stated quite clearly: "The public still repeats time after time the silly story that at Wannsee the extermination of the Jews was arrived at". In his opinion Wannsee was a meeting but "hardly a conference", and he even said: "Little of what was said there was executed in detail". Despite this, your Lordship has had to listen to this "silly story" all over again from the expert witnesses.

Surely, my critics say, there must now be some evidence of a Hitler order.

Back in 1961 Professor Raul Hilberg, one of Yehuda Bauer's great rivals for the laureate, one of my correspondents, asserted in "The Destruction of the European Jews", his book, that there had been two such orders, one in the spring of 1941, and the other soon after. By 1985, after I had corresponded with him and I had begun voicing my own doubts, Hilberg was back pedalling. Hilberg went methodically through his new edition of his book, excising the allegation of a Hitler order. It is not as though he did not mention the Hitler order. He actually went through a book, taking every reference to it out. "In the new edition", as Professor Christopher Browning, another of our expert witnesses here for the defence, who testified before this court, said, "all references in the text to a Hitler decision or Hitler order for the Final Solution had been systematically excised. Buried at the bottom of a single footnote stands the solitary reference: 'Chronology and circumstances point to a Hitler decision before the summer ended (1941)'". "In the new edition", Browning repeats, scandalized, "decisions were not made and orders were not given". Your Lordship will find my exchange with Professor Browning as to whether he had indeed written those words in 1986 on day 17. You will find too that he regretted that he could not recall the events clearly of 15 years ago, which invited a rather obvious riposte from me about the probably similar memory deficiencies in the eyewitnesses on whom he had on occasions relied.

The director of the Yad Vashem archives has stated that most survivors' testimonies are unreliable. There is a quotation from him. "Many", he writes, "were never in the places where they claim to have witnessed atrocities, while others relied on second-hand information given them by friends or passing strangers". It is the phenomenon that I have referred to as cross-pollination. Your Lordship may have been as startled as I, I confess, was, upon learning the degree to which the case for the mass gassings at Auschwitz relies on eyewitness evidence, rather than on any firmer sources. Your

Lordship will remember perhaps the exchange I had with Professor Donald Watt, professor emeritus at the London School of Economics, a distinguished diplomatic historian, early on in the trial, about the value of different categories of evidence. I will just summarize that. I asked him, I said, Professor I was not going to ask you about----

L0185 **Mr Justice Gray** He said it all depends, did he not, really? Is that unfair as a summary?

L0186 **Mr Irving** Well, my Lord, I draw your eyes straight down to the second line from the bottom. Professor Watt answers all of that, saying:

The Bletchley Park intercepts, in so far as they are complete, are always regarded as the most reliable because there is no evidence that the dispatcher was aware that his messages could be decoded by us (by the British), and therefore he would put truth in them".

This supports my view, my Lord, that eyewitness evidence is less credible than forensic evidence and the Bletchley Park intercepts. I do not completely ignore eyewitness evidence, but I feel entitled to discount it when it is contradicted by the more reliable evidence which should then prevail.

I mention the forensic evidence and that brings us seamlessly to the Leuchter report.

I am criticised by the Defendants for having relied initially on what is called the Leuchter report, 1988. At the time they levelled their criticism at me the Defendants appeared to have been unaware that subsequent and more able investigations were conducted by both American and Polish researchers. The tests were in other words replicated.

First, the Leuchter report. In 1988 I was introduced by defence counsel at the Canadian trial of Ernst Zundel to the findings made by a reputable firm of American forensic analysts of samples extracted from the fabric of various buildings at Auschwitz and Birkenau by Fred Leuchter, who was at that time a professional American execution technology consultant. These and his investigations at the Maidanek site formed the backbone of his engineering report. Since there have been tendentious statements about why the Leuchter report was not admitted in evidence at that trial in Canada I have studied the transcripts of that trial. It emerges that engineering reports are not generally admissible under Canadian rules of evidence unless both parties consent. In this case the Crown did not consent. As Mr Justice Thomas explained, "I get engineering reports all the time (that is in civil cases). That does not make them admissible, because they have prepared reports. They (the witnesses) go in the box, they are qualified experts and they testify". So the non-admission of the report by Mr Justice Thomas was no reflection on the worth of the report or on the qualifications of the witness.

My Lord, I have to go in some detail into the Leuchter report because of the criticisms levelled at me for having been swayed by it.

L0187 **Mr Justice Gray** Yes. I do not disagree with that.

L0188 **Mr Irving** Mr Leuchter testified on April 20th and 21st 1988 as an expert in gas chamber technology. He had inspected the three sites (Auschwitz/Birkenau and Maidanek) in February 1988 and he had taken samples which were subsequent sent for analysis by a qualified analytical chemist in the United States, a Dr James Roth of Cornell University, who was not told where the samples had come from. His firm Alpha Laboratories, were told on the test certificates only that the samples were from brickwork. Mr Justice Thomas ruled that Leuchter would give oral evidence but that the report itself should not be filed. He held further that Mr Leuchter was not a chemist or a toxicologist, which are findings, of course, that he is quite entitled to make, but he agreed that Mr Leuchter was an engineer because he had made himself an engineer in a very limited field.

A summary of the rest of the judge's findings was that Leuchter was not capable in law of giving the expert opinion that there were never any gassings or exterminations carried on in the facilities from which he took the samples. For the same reasons he was not capable of testifying regarding the results of the analysis, because he was not a toxicologist in other words. He was restricted to testifying as to the actual extraction of the samples from the buildings and his own observations on the feasibility of the buildings that he had examined being used as gas chambers.

So the Defendant was wrong to write on page 164 of her book, "The judge ruled that Leuchter could not serve as an expert witness on the construction and function of the gas chambers". To give evidence in a criminal trial Mr Leuchter must have been accepted as an expert witness. Further, Professor Lipstadt stated on pages 164 of her book, and 165, "The judge's finding as to Leuchter's suitability to comment on questions of engineering was unequivocal". In fact, the judge's findings referred only to his lack of qualifications to testify on the results of the laboratory tests for cyanide and iron, because that was Dr Roth's area, and he himself (Roth) gave testimony on those matters. On page 169 Professor Lipstadt insists: "The exposure to the elements lessen the presence of the hydrogen cyanide ... Nor did Leuchter seem to consider that the building had been exposed to the elements for more than 40 years so that cyanide gas residue could have been obliterated. He also took samples from a floor that had been washed regularly by museum staff". Dr Roth however testified under oath that the formation of Prussian blue, which is a cyanide compound, was an accumulative reaction, that it augmented with each exposure to the gas, and that it did not normally disappear -- in other words, could not be just washed away -- unless physically removed by sand blasting or grinding down.

Roth seems then to have changed his mind, to judge by the television film "MR DEATH" which I believe is shortly to be shown on Channel 4, and upon which film both I and learned counsel in the current action partially rely. Zundel's counsel comments, "He (Roth) obviously is frightened now", and no wonder, considering what subsequently was inflicted on Mr Leuchter. Your

Lordship will remember that, in order to destroy Roth's absurd argument, which was quoted to the court by Mr Rampton, learned counsel, that the Prussian blue stain would have penetrated only a few microns into the brickwork. I showed a photograph of the stain penetrating right through the brick work to the outside face of one of the cyanide fumigation chambers, where it has been exposed to sun, wind and rain for over 50 years, and where it is still visible, as deep and blue as ever today. Crematorium II has been protected from these outside elements. It is possible to crawl beneath the famous roof, the one we were hearing about, the one with the no holes. You can crawl beneath it even now -- about which roof I shall have more to say -- but neither Jan Sehn, nor Fred Leuchter, nor James Roth nor Germar Rudolf, nor any of the subsequent investigations have found any significant traces of cyanide compounds present in the fabric of this building, despite the eyewitness accounts of that same chamber having been used for the gassing of half a million people with cyanide. Moreover, the wood grain of the original wooden formwork (or moulds) can still be seen on the face of the concrete, which is evidence that it has not been sandblasted or grounded down.

Now, my Lord, this takes us to the famous roof of Leichenkeller No. 1 of crematorium No. II at Auschwitz.

I referred earlier to the expert witness on Auschwitz and Birkenau in this case, Professor Robert van Pelt. He has made unequivocal statements both here and elsewhere about crematorium II at Birkenau. To him it was the factory of death, the mass gassing chamber of Birkenau. He did not mince his language. In the new television film MR DEATH we saw him and we heard him, as the film camera showed Fred Leuchter descending into the hole which was broken post-war through the collapsed concrete roof slab and reinforcing bars of Leichenkeller I (morgue No. 1) of crematorium II and we heard him uttering these words, quoting off the sound track:

"Crematorium II is the most lethal building of Auschwitz. In the 2,500 square feet of this one room, more people lost their lives than any other place on this planet. 500,000 people were killed. If you would draw a map of human suffering, if you created a geography of atrocity, this would be the absolute centre."

The court will recall that on ninth day of this action I cross-examined this witness most closely about this statement and I offered him a chance to change his mind about the pivotal importance of crematorium II and its underground Leichenkeller No. I (morgue No. 1) the chamber which van Pelt alleged had been a mass gassing chamber.

IRVING: Very well. You say: This is quoting him from his report ----

L0189 **Mr Justice Gray** You need not read the whole of it. He confirms that it is Leichenkeller I at crematorium II where he says the 500,000 were killed.

L0190 **Mr Irving** Thank you, my Lord. The expert witness could hardly have been clearer in his answer.

At page 53, I then asked him to identify the buildings referred to on the aerial photographs of Birkenau and crematorium II, so that there could later be no doubt as to which precise building he had just agreed was the factory of death at Auschwitz, Auschwitz/Birkenau.

The great problem about accepting that this building was an instrument for mass murder is that the evidence produced by Professor van Pelt relies on three "legs", if I can borrow Mr Rampton's word, a handful of eyewitnesses, a few architectural drawings, and a slim file of documents.

The eyewitnesses, in my submission, have turned out ----

L0191 **Mr Rampton** No, I am sorry, that is one error that cannot be allowed to pass. There is a fourth leg, forensic chemical analysis both in 1945, 1988 and 1994.

L0192 **Mr Justice Gray** Just to elaborate that, of Leichenkeller I and crematorium II?

L0193 **Mr Rampton** Yes, Leichenkeller I at crematorium II by the Krakov forensic laboratory in December 1945, which found traces of cyanide on the ventilation covers by Mr Leuchter's analysts.

L0194 **Mr Justice Gray** Ventilation covers from where?

L0195 **Mr Rampton** From Leichenkeller I in crematorium II. If one looks at the report, it is as clear as anything. Leuchter himself, of course, in 1988, and Professor Markowitz at Krakov in 1994.

L0196 **Mr Justice Gray** Thank you.

L0197 **Mr Rampton** They are all in the evidence.

L0198 **Mr Irving** My Lord, I will ask your Lordship when the time comes to look at that forensic evidence and to ask yourself the obvious question, what is the proof that these items came from that building?

L0199 **Mr Rampton** Leuchter is certainly proof, because Mr Irving relies on him.

L0200 **Mr Irving** Then we have to look at the actual figures and the concentrations. If I can now continue with my three legs, my three-legged argument?

L0201 **Mr Justice Gray** Yes, do. Eyewitnesses?

L0202 **Mr Irving** The eyewitnesses have turned out to be liars, particularly those who testified to the SS guards opening manhole covers on top of the flat roof of Leichenkeller No. I (mortuary No. 1), and tipping tins of Zyklon B pellets in through the holes. One witness was David Olere, an artist who drew sketches years later in Paris, to which Mr Rampton has also referred, obviously intending to sell them. His sketches show flames and smoke belching from the crematorium chimney of crematorium No. II, which goes purely to the credibility of the witness, which was quite impossible. He portrays the victims. Your Lordship will remember that I asked Professor van Pelt to calculate the length, the path, from the furnace doors to the top of the chimney, and how long that flame would have had to be. He portrays the victims of the Nazi killers mostly as nubile young females, all naked and sketched in a pornographic way, often clutching naked teenaged children to their breasts. It was Olere I invite the court to remember, who told Jean-Claude Pressac that the SS made sausage in the crematoria out of human flesh (a passage which Mr Van Pelt did not inform us of in his expert report). Another witness is Ada Bimko, who proved at the Belsen trial that she too had lied. Entering another gas chamber building at Auschwitz she said she had "noticed two pipes which I was told contained the gas. There were two huge metal containers containing gas". She evidently did not know that the "gas" supposed to have been used, Zyklon-B, was actually in pellet form, not cylinders. Distorting her account too, van Pelt omitted also this part of her testimony. Dr Bendel, another of van Pelt's eyewitnesses, stated that at crematorium IV the people crowded into the gas chamber found the ceilings so low that the impression was given that the roof was falling on their heads. This too was untrue, as the court has seen how high these ceilings were in the computer-generated "walk through". The court will find that in my cross-examination of van Pelt I destroyed the worth of each supposed eyewitness after eyewitness in the same way, if I can summarize it like that.

Let us first look for those holes that they talked about. My Lord, your Lordship will remember that I had the big photograph of that roof photographed from a helicopter quite recently, standing here for some days or weeks. The roof pillars beneath the roof were blown up in 1945, and the reinforced concrete slab pancaked downwards into the morgue basement, starred but otherwise intact. By the word "starred" I mean what happens to a pane of reinforced glass that has been hit by a stone.

Van Pelt suggested that the Zyklon-B introduction holes in the roof of Leichenkeller I were not much larger in diameter than tennis balls, but the evidence of his eyewitnesses, Henry Tauber and Michal Kula, was that they were closer to the size of manholes -- "70 centimetres square". Kula testified that the wire mesh columns that he had made were of that cross section and three metres (ten feet) tall. One witness said that the concrete covers on top of the roof above these holes had to be lifted off "with both hands," with two hands. As the ceiling height in Leichenkeller I was 2.40 metres, 60

centimetres of each column, which is 3 metres tall, would have had to extend through the holes in the concrete ceiling with about six inches poking up outside. As Professor van Pelt admits in his report, the part I was about to read out when your Lordship stopped me, there is no trace of those holes in the roof today. I am sorry, I was wrong. He did say that. He says it later on.

L0203 **Mr Justice Gray** What did I stop you reading?

L0204 **Mr Irving** You did not. I made a mistake, my Lord. As he admits in his report, there is no trace of those holes in the roof today. The underside of that roof, which can be inspected and photographed from beneath even today, is intact. Even if one could lose sight of the much smaller three inch diameter holes in the pancaked concrete roof of which van Pelt spoke, and I do not accept that they were that small, one could not possibly have lost sight of four holes as large as manholes. Those holes would be perfectly obvious today on the ground that Auschwitz to any observer using the naked eye, without the slightest possible doubt as to their location, because, of course, Professor van Pelt told us where each hole was supposed to be. It was right next to the supporting columns.

Professor van Pelt accepts that those holes are not in that roof slab now.

L0205 **Mr Justice Gray** I am not sure that is right, is it? I think what he says was that the state of the collapsed roof is so poor now that you simply cannot see where those holes would have been if they were there, which is a slightly different thing.

L0206 **Mr Rampton** Not only that, my Lord. I sit here, I listen to, quite frankly, a continuous misrepresentation of the evidence of my witness.

L0207 **Mr Justice Gray** Let us concentrate on this one.

L0208 **Mr Rampton** I will, but this is serious. Van Pelt said a number of things. He said, first of all, the fragmentary condition of the roof prevents any kind of assessment one way or the other. Then he says, anyway, even if it did not, it is the wrong part of the roof. The third, of course, is that there is no evidence on Mr Irving's side of the court one way or the other. Mr Irving has not been there.

L0209 **Mr Irving** May I now continue with preferably fewer interruptions?

L0210 **Mr Justice Gray** No, I think that is not fair. Mr Rampton I think has been restrained.

L0211 **Mr Irving** My Lord, restraint is what I showed.

L0212 **Mr Justice Gray** There are the odd things which I have noticed which I do not think are quite borne out. I think the best thing is not to interrupt you, but that is quite an important misstatement of van Pelt's evidence.

L0213 **Mr Irving** I will come to the alleged misstatement in a moment. Of course, I sat with the utmost restraint this morning ----

L0214 **Mr Justice Gray** You did.

- L0215 **Mr Irving** -- while numerous things were said. My Lord, I put to your Lordship at the time photographs of the underside of that roof. To say that the underside of that roof is fragmented is a gross distortion of what one could see with one's own eyes. The underside of that roof was as pristine as the concrete which is in this room today, every inch of the underside of that roof which can be accessed.
- L0216 **Mr Justice Gray** Yes, I remember the photograph quite well and quite how much of the roof it shows and which bit of the roof, it is impossible, I think, on the evidence to say.
- L0217 **Mr Irving** I did, as your Lordship will know, make one very grand offer and very generous offer to the Defendants in this case saying, "Come back with photographs of those holes and I will stop the case within 24 hours because my position will be indefensible". I made that offer, not once, but twice. It is in the transcript. They did not take it up, and that would have saved ----
- L0218 **Mr Justice Gray** Press on.

L0219 **Mr Irving** It reminds me of the early days in this action when every time I was making a killer point, Mr Rampton was up and it is happening again. Professor van Pelt: In his expert report, and for this honesty I give him full credit, he writes: "Today, these four small holes" -- this is his expert report which he provided in this case -- he did not have to write this, my Lord, but he put it in and it is a great testimony to his honesty, I think - "that connected the wire-mesh columns and the chimneys cannot be observed in the ruined remains of the concrete slab. Yet does this mean they were never there? We know that after the cessation of the gassings in the fall of 1944 all the gassing equipment was removed, which implies both the wire-mesh columns and the chimneys. What would have remained would have been the four narrow holes and the slab. What would have remained would have been the four narrow holes and the slab. While there is no certainty in this matter, it would have been logical to attach at the location where the columns had been some formwork at the bottom of the gas chamber ceiling, and pour some concrete in the hole and thus restore the slab".

That is why I listened with relative patience, my Lord, to Mr Rampton's interruption because it very largely bears out what I said. The point at which he rose to his feet was when I said van Pelt accepted those holes are not in that roof slab now. I think that his interruption was ill-called for.

Professor van Pelt thus asserts, without any evidence at all, that late in 1944, with the Russian Army winding up to launch their colossal final invasion only a few miles away on the River Vistula, the Nazi-mass murderers would remove the "Zyklon introduction columns" and then fill in the holes in the ceiling, as he says, to "restore the slab" (before dynamiting the pillars supporting it anyway). He again asserted when I cross-examined him on January 25th as follows: "It would have been logical to attach", he then reads out what he said, "pour some concrete in the hole and thus restore the slab".

How would this have been more logical than completely removing the roof of Leichenkeller 1 just as the Nazis had removed the roof of Leichenkeller 2, identified by Professor van Pelt as the "undressing rooms", as shown in the aerial photographs taken on December 21st 1944 that one can see on page 15 of this book "The Holocaust Revisited", the book published by the CIA. The originals of this photograph were shown to Professor van Pelt in court. I showed them to him. To believe his version, we would have to believe that the Nazis deliberately created relics, architectural relics, of Leichenkeller No. 1 to confound later generations of tourists and Holocaust researchers.

The fact is that the holes are not there - at least they are not visible from a distance of 0 to 4 feet or when photographed from the underside of that slab. Unable to point them out to us in close up at ground level, the Defendants invited us to consider instead either their vertical aerial photographs taken from 35,000 feet up, or a horizontal photograph taken from several hundred yards away, past a locomotive, where three (not four) unidentified objects are placed irregularly on the rooftop (the fourth "object" turns out to be a window

on the wall behind). The Court will recall what my response was to the not unexpected discovery that during building works such subjects as barrels of tar were placed on a large flat slab, and I will not repeat it here. The notion that the high flying plane could have photographed an object of 27 centimetres, let alone of tennis ball size, protruding from six inches above the ground from that roof is quite absurd. The four smudges seen on one photograph are evidently many feet long, nothing to do with these so-called holes.

Your Lordship will remember that on day 11 I brought into the Court half a dozen very large vertical aerial photographs, black and white photographs, taken by the Americans or the South African Air Force during 1944, and invited Professor van Pelt to find those same smudges on that roof, the same dots.

Where until this moment he had seen dots on another photograph with no difficulty, the witness van Pelt now pleaded poor eyesight: ("I have now reached the age I need reading glasses", he said, "and I do not have them with me. I did not expect this kind of challenge". Precisely). Had he used even a microscope, he would not have found the dots in the 1944 pictures I showed him. Because the holes were not there and are not there, and he and the Defendants know it.

Even if the Nazi architects who designed the building had willingly agreed to the weakening of the roof by having makeshift holes cut that size right through the slab next to the supporting pillars - I say "makeshift" because there is no provision for them in any of the architectural drawings that were shown to us - we should certainly expect to see those holes now. My Lord, the court will recall two things:

Firstly, I asked the witness van Pelt if he was familiar (in view of the fact that he is not qualified architecturally, as it turned out) with the expression "fair faced concrete finish". He confirmed that it is concrete that has been left untreated. In other words, it is not covered with cement or pebble dash or tiling. He confirmed also that it is the most expensive such finish that an architect can specify because the concrete has to be poured right first time because blemishes like holes and cavities can never be retouched afterwards. Filling in the holes with cement, as van Pelt suggested in an extraordinary piece of naivete, would have been evident in the concrete face for ever after by differences in general appearance, colouring, wear and fracturing; there would have been a visible "drying line" as a ring around the patch, and the wood grain pattern left by the wooden formwork would have been interrupted. Common sense tells us all of this as well.

The second point is, of course, we photographed the underside of that slab and there is no trace of any such blemish on the concrete roof's underside, and there are supposed to have been four of those filling holes. Those holes are a major problem for this entire case.

On two occasions I stated a challenge in Court, including to the witness van Pelt, as I said earlier. I challenged the Defendants to send somebody to Auschwitz even now, to scrape the thin layer of gravel and dirt off the topside of the roof slab where they

"know" the holes must be because they know where the pillars - because the eyewitnesses agreed they were next to the main columns - and bring back a photograph of one of the holes or evidence that it had been filled in.

If they did, I said, I would abandon my action forthwith because my position would have become quite indefensible. To my knowledge, the Defendants have not attempted this exercise. They know and they knew from the outset that I was right about that roof. Their entire case on crematorium No. II - the untruth that it was used as a factory of death, with SS guards tipping canisters of cyanide-soaked pellets into the building through those four (non-existent) manholes - has caved in, as surely as that flat roof.

Accordingly, the eyewitnesses who spoke of those holes also lied, or bluffed, and I have called their bluff. In the absence of the holes themselves, and minus his "eyewitnesses", Professor van Pelt's only remaining proofs that Leichenkeller 1 of Crematorium No. II was an instrument of mass murder - a factory of death, as he said, in which 500,000 Jews were gassed and cremated - are these: architectural drawings (rather oddly for a "professor of architecture" he calls them blueprints) and wartime documents. He confirmed this to your Lordship when your Lordship asked.

As for the wartime documents, to take them first, he referred, for instance, to the - to him, sinister requirement that the morgue should be vorgewarmt, prewarmed, by a central heating plant. In cross-examination I drew his attention to the relevant section of the wartime Neufert, which is the architect's handbook or building code which was standard for the SS architects, which specifies that morgues, mortuaries, must have both cooling and central heating facilities to avoid damage to the corpses in the kinds of extremes of temperature which exist in Central Europe. Document after document fell by the wayside in this manner. Mr Rampton introduced the timesheet of one humble workman in March 1943, showing him actually concreting "the floor in the Gaskammer", the gas chamber. But Birkenau camp was full of gas chambers. In his fine facsimile building of the camp documents, Jean-Claude Pressac has printed drawing No. 801 of November 8th, 1941, for an Entlausungsanlage (delousing installation) for the prison camp, right in the middle of which is a Gaskammer. He also reproduces drawing No. 1293, dated May 9th 1942, of the drainage and water supply of the delousing barracks, building BW5b. Here too there is a Gaskammer smack in the middle of the drawing. So there goes that one too.

The real handling capacity -- my Lord, of course, we did look at other documents and I am sure your Lordship will attend to that particular part of the transcript in detail, but I just wanted to give the flavour of the problem. The real handling capacity of the crematoria is also surprisingly difficult to establish, notwithstanding what Mr Rampton said this morning. Professor van Pelt produced a histogram on an easel for us which showed truly staggering projections of cadavers to be cremated in coming years; but on cross-examination the witness admitted that the projection was based solely on one document, the questionable "crematorium capacities" document of June 28th, 1943, and that all else was extrapolated backwards from

that sheet of paper. Mr Rampton said that, as ever, I challenge that document, as though I had challenged many other documents. My Lord, to my knowledge, I have challenged ----

L0220 **Mr Justice Gray** Yes. If I may just intervene and say that I would find it easier if there were not such an overt reaction to what you are saying on the other side of the court.

L0221 **Mr Rampton** I am sorry.

L0222 **Mr Justice Gray** Yes, sorry, you got to the Bischoff document?

L0223 **Mr Irving** The Bischoff document. Professor van Pelt relies heavily on this document. My Lord, you will notice that I have given all the appropriate footnote references to assist you in navigating through the transcripts, and so on.

L0224 **Mr Justice Gray** Yes, thank you.

L0225 **Mr Irving** Even if genuine, even if the actual paper itself is genuine, the handling figures which this document gives for the furnace installation in Crematorium No. II do not tally with any of the figures in the specifications provided by the manufacturers, the Topf Company, for this type of equipment. Furthermore, the document refers to some crematoria which were at that time shut down, and to others that were due to be taken out of commission, which is again a mystifying business.

I had shown the Court on the previous day that this one page of paper contained not just one or two, but four or five, four or even five, bureaucratic discrepancies which indicated to me that the document is not authentic. It was not just that the year date was wrong. Any one of those flaws would normally be enough to call its integrity into question: but five such flaws in one document, including the wrong rank for the highest man in the SS site-construction system, SS Gruppenfuhrer Hans Kammler? Professor van Pelt was unable to explain these flaws; he had not noticed them. The document was first published in East Berlin in the 1950s, and it is now to be found in the Auschwitz archives, because it was sent there from East Berlin in 1981. That alone is why it now bears an Auschwitz archival stamp. It did not originate there, but elsewhere. Even if the flaws can be explained, and the figures were genuine, there is no indication of how such huge numbers of bodies were to be handled within 24 hours; nor of where the coke was to come from. There is no -- logistic problems defeat the document. (There is no acceptable evidence that the Auschwitz staff found any way of improving on the average coke consumption of 30 kg per cadaver achieved by other camps).

The bottleneck in the entire crematorium II "factory of death" story is however that little freight elevator that was installed between that morgue, the underground mortuary, Leichenkeller No. 1, as in any such state-of-the-art crematorium, to haul the bodies up from the basement-level morgue up to the crematorium furnaces on the ground floor. We are told by the Defendants that this elevator was never anything more sophisticated than something like a builder's hoist. The real elevator was never delivered. It had no door, no cage, no walls - it was just a platform jolting up and down that elevator shaft. We do know that as finally installed it had a specified load bearing capacity of 1,500 kilograms. Professor van Pelt suggested that the hoist could, therefore, have hauled 25 cadavers at a time. In practice, as there was just a flat platform with no walls or door, jolting up and down that narrow concrete elevator shaft, I submit that it would have been impossible to stack on to one small platform 25 naked cadavers in the conditions of filth and slime, the horror, that had been described by the eyewitnesses.

It does not bear thinking about, I agree, and that is why I am not going to dwell on it. We cannot produce hard figures for this part of the exercise, but one thing is plain: that one elevator in crematorium II was the inescapable

bottleneck, and it makes plain that, whatever was happening downstairs in the mortuary, Leichenkeller No. 1, it was not on the huge scale, on the huge scale that history now suggests.

In response to your Lordship's helpful questioning, Professor van Pelt stated that the wartime documents to interpreted if they were to be relied on for this proof. These interpretations are quite tenuous. He produced to us a document referring to the special secrecy to be attached to the crematorium drawings. I am sure your Lordship remembers that document. It was at first blush quite an interesting document. He suggested that this was because of the mass gassings being carried on in the buildings, in the crematorium. It stressed that this was because -- the document stressed that this was because of the wehrwirtschaftlich importance [the importance to the military economy] of the work being conducted in that building or those buildings. But van Pelt confirmed under my cross-examination that the homicidal Final Solution, the genocide, was never regarded as being wehrwirtschaftlich important, important to the economy. I submitted that the reference was clearly to keeping secret the ugly business of the looting by the SS of the gold and valuables from the corpses being processed by the building, a system which was undoubtedly of economic importance to the SS.

Similarly, the architectural drawings seemed to provide the required "proof" only when one was compared with another. That was one of the other problems. As Professor van Pelt said: "... we can look now at two or three drawings together and ... We start to observe some very weird things and some modifications made between one drawing and the other drawing..." Those were his words, to which my comment is, is that the best level of proof that is available now, even after 55 years?

During his slide-show, Professor van Pelt told us that one cardinal piece of evidence in this drawings was the relocation of an internal double-door which sealed off Leichenkeller No. 1 from the interior of the building, from the inside of the Leichenkeller doorframe to the outside. The door was moved in the drawings from the inside of the wall to the outside. I pointed out that in the new layout, the doors were shown as being actually rebated into the doorframe and I suggested to the witness that this was indicative of a gas-tight door being fitted as in any standard air raid shelter design. Air raid shelter doors are routinely fitted outside the shelter, to open outwards, so as to withstand blast. Neufert, which is the wartime architects' handbook, bears this out.

The witness seems not to have considered this possibility. As Mr Rampton again mentioned, the doors allegedly found around the Birkenhau and Auschwitz sites subsequently are fitted with peep holes. But I say that that is the standard air raid shelter design complete with the obligatory peep hole that is fitted to air raid shelter doors. The amendment of the drawings to provide for an external door, leading from the far end of the subterranean morgue to the open air, Leichenkeller No. 1, was also consonant with its dual use as an air raid shelter, and I put this to the witness on Day 11, as was the relocation of the main entrance staircase from the back of the building to the street-side. Among the architectural drawings provided to us from the Auschwitz archives is one entitled "Modification of the old Crematorium",

namely crematorium No. 1 in Auschwitz, subtitled: "Air Raid Bunker for SS Station HQ with an Operating Theatre". So such modifications of the morgues to provide air raid shelter capacity were clearly nothing extraordinary. Mr Rampton made a lot of the order for the doors with peep holes both during the hearings and this morning, but peep holes were standard fittings, not only on the gas-tight air raid shelter doors, but also on the delousing facilities. Jean-Claude Pressac prints photographs of two such doors on the "Canada" delousing chamber at Birkenhau.

Looking specifically at the possible use of crematorium No. II and the underground basement area as being adapted for future air raid shelter use: Crematorium No. II, like its mirror image Crematorium No. III on the other side of the road, was originally designed as a state-of-the-art crematorium, possibly not just for the camp but for the whole catchment area of Auschwitz which had for centuries been an area of pestilence and plague. No expense was spared in its design. This was German taxpayer money and they did not care. The best equipment and architects were used on what was clearly a permanent facility. Building the morgue, the mortuary, underground, instead of above ground, increased construction costs by several times, but provided for keeping the morgue cool during the baking hot Central European summers. Had the building been designed from the start as a human slaughterhouse, it would certainly not have been designed on several levels with resultant handling problems. Slaughterhouses are normally built on one level.

We saw in Professor van Pelt's slide-show the pouring of the concrete roof, the roof slab, of the subterranean Leichenkeller No. II; the roof was undoubtedly much the same as Leichenkeller No. 1 with a six inch reinforced steel mesh. This undoubtedly made the new building one of the most robust on the site: certainly more robust and fireproof in an air raid than the flimsy wooden horse-barracks in which the prisoners and slave labour were housed.

We were told by Mr Rampton this morning this seemed improbable to establish an air raid shelter facility for the SS who were 1.5 miles away. Well, the early warning posts were in Holland, and they were probably 1,500 miles away. So they would provide more than adequate time for the SS to gallop that 1.5 miles to this building with the concrete roof.

The captured Bauleitung records of Auschwitz housed in Moscow confirm that from mid 1942 onwards they began to consider the construction at the camp of shelters, splinter trenches, and other ARP, Air Raid Precaution, measures. To be fair to the witness, when these Moscow catalogue entries were put to Professor van Pelt he seemed unfamiliar with them. After the air raids, our British air raids, on Cologne, Rostock and Lubeck - that was in March/April 1942 - the German High Command recognized the likelihood that air raids would spread across Poland and Central Europe, and they ordered the construction of extended ARP facilities throughout the occupied Eastern territories insofar as they can within bomber range. Existing basements, this document said, were to be converted into shelters, and anti-gas equipment provided, and personnel trained in anti-gas warfare, as gas attack was widely expected. I have given your Lordship the reference. I put the document to Professor Longerich and on Day 10 I said to him: "[...] the Defence rely on a number

of photographs of doors found scattered around the compound of Auschwitz and Birkenhau, and we will show that these are standard German air raid shelter doors complete with peep holes". And, my Lord, I have provided photographs of such air raid shelter doors in various bundles.

These precautions were not in vain. In May 1943, there was an air raid on the nearby Auschwitz Buna plant. This is reflected in the Auschwitz documents. At least one of the American aerial photographs that I produced to the Court, the black and white photographs, the big ones, and to the witness, Professor van Pelt, shows a stick of heavy bombs just released by the plane that took the photograph descending over the camp. By the end of the war, there was also an anti-aircraft unit assigned to defending the region, as shown by the reference in Judge Staglich's membership of the Flak unit that manned it.

Your Lordship will also remember that during his slide-show, van Pelt showed the court a series of most interesting computer-generated "walk-through" reconstructions of the interiors of Crematorium IV and V. Your Lordship had actually memorized the dimensions of the shutter, the wooden shutter, of 30 centimetres by 40 centimetres. There were also said to be steps leading up to the openings. The wartime civil defence journal Luftschutz shows precisely this arrangement of gas type shutters and steps as a standard air raid shelter feature designed for the event of gas warfare.

I put this fact to the witness van Pelt: "Would you agree that those shutters that have been found in the Auschwitz camp are, in fact, standard German air-raid shutters supplied by manufacturers to a standard design?"

The eyewitnesses stated that thousands of victims were gassed in these rooms, however, and their bodies burned in large pits to the building's rear. But the contemporary air photographs taken by the Americans show no such pits, nor are they evident today. Confronted with what your Lordship has yourself referred to as the lack of documentary evidence for the gassings, Professor van Pelt could only offer the suggestion that the use of gas chambers at Auschwitz and Birkenhau was a "moral certainty". Three times in his report, three times in his report, he fell back upon that semi-religious phrase. The available proofs certainly do not support the belief that gassings there occurred on a mass scale.

If I can just fill in what I have not said there? Of course, I do accept that there were gassings on a small scale at Auschwitz in the buildings identified as bunkers I and II which were houses which have since been torn down.

I will not dwell long on the uniformly poor evidentiary basis on the other extermination camps, known to the Court as the Operation Reinhard camps - Belzec, Sobibor and Treblinka. Here we do not have even the "moral certainty" which comforted Professor van Pelt. I can only challenge here the scale and the systematic nature of the alleged gassing of more than one million people in these centres. The Defendants' own witness, Professor Browning, admits that the documentation for these camps is "scant", that is his word, and I place great weight on that admission. Here, the expert cannot find even one contemporaneous

document. He relies upon the eyewitnesses - men of the ilk of Kurt Gerstein, Jan Karski, Adolf Eichmann and Rudolf Hoss. The fictional elements in their statements - your Lordship will remember the "130 foot high mountain of clothes" which Professor Browning in his first draft skipped over, the "electrocution chambers" and the "steam chambers", the deliberately inflated death rolls which would otherwise shriek their warnings to critical researchers - are either ignored or suppressed in order to maintain appearances.

My Lord, there is an impressive (and we are both agreed on this, all parties) level of documentation which demonstrates that the liquidation by shooting of hundreds of thousands of Jews, probably over a million, by the Einsatzgruppen, but there is nothing of equivalent value for the Operation Reinhard camps. One word, Why? justifies the revisionist's scepticism.

The Walter Fohl letter produces a similar response from the experts. Found in his Berlin Document Centre personnel file, this man, who is in charge of a resettlement office at Krakow, is seen writing on June 21st 1942 to his SS comrades as follows:

"Every day, trains are arriving with over 1,000 Jews each from throughout Europe", in Krakow, passing through. "We provide first aid here, give them more or less provisional accommodation, and usually deport them further towards the White Sea or to the White Ruthenian marshlands, where they all - if they survive (and the Jews from Kurfurstendamm or Vienna or Pressburg certainly won't) - will be gathered by the end of the war, but not without first having built a few roads. (But we're not supposed to talk about it)." An extraordinary document.

The expert witnesses, unable otherwise to explain this document, dismissed it as obvious "camouflage" talk. But why should Fohl use camouflage when writing to his SS comrades? As I pointed out to Dr Longerich, Reinhard Heydrich himself had spoken of the White Sea option a few days later, on February 4th 1942 in Prague.

It was noticeable elsewhere that none of the experts was willing to give documents their natural meanings when they did not accord with their views. It is a clear case of manipulation, in my view. The Ahnert document, recording a meeting at the RSHA in Berlin, under Eichmann, on August 28th, 1942, was another example. There was talk of the need for the deportees, August 1942, to be provided with blankets, shoes, eating utensils before dispatch to Auschwitz. Eichmann requested the purchases of barracks for a Jewish deportee camp to be erected in Russia, with three to five such barracks being loaded aboard every transport train. In each case, because the document did not accord with their "exterminationist" views, the expert had failed to pursue it. Dr Longerich, who included it as an appendix in one of his books, had forgotten it even existed when I cross-examined him about it.

Coming now towards the end of my submission, my Lord, the allegations of racism and anti-Semitism. I have to address the allegations of racism, although I have the feeling that your Lordship is not over-impressed by them.

L0226 Mr Justice Gray Do not get feelings one way or the other about any part of the case, Mr Irving. It is a trap.

L0227 **Mr Irving** It was a good try.

L0228 **Mr Justice Gray** On the other hand, it is a matter for you because I am letting you say pretty much what you want to say, I know because I have them now provided very conveniently, exactly what it is that is relied on by way of anti-Semitic statements, racist statements and so on.

L0229 **Mr Irving** I shall definitely make some response therefore.

L0230 **Mr Justice Gray** Yes. I mean you can deal with them generally, if you like, rather than going through them, as it were, one by way. I appreciate you do not go through them all.

L0231 **Mr Irving** I have not gone through them one by one, my Lord. In fact I have not even read them.

L0232 **Mr Justice Gray** I offer you the opportunity of making general answers to those submissions rather than by reading it all out. It is entirely up to you.

L0233 **Mr Irving** I do not read them all out, but I shall certainly deal with my arguments. The Defendants have resorted to the allegations that I am anti-Semitic and racist. It may be that they are going to pay dearly for those remarks. Mr Rampton's highly paid experts have found one 1963 entry in my diary, four lines written 37 years ago, about a visit to my lawyer Mr Michael Rubenstein to discuss a satirical magazine article which I had written, after which visit I commented: "Thick skinned these Jews are". This is all that they could find from the millions of words in my diaries available to them by way of anti-Semitism. Twenty million words of diaries and they found "Thick skinned these Jews are". When I remarked on March 2nd in court, my Lord, upon the obvious paradox that an alleged anti-Semite would have retained Michael Rubenstein as his solicitor and respected advisor for 20 years, Mr Rampton's comment, which your Lordship may well remember, was: "Many of my best friends are Jews too, Mr Irving". This stock line does not disguise the paucity of his evidence against me.

In further support of this contention they have taken isolated remarks made in lectures and speeches for which they have transcribed around half a million words. My Lord, I trust that your Lordship will in each case consider the context in which the remarks are made.

L0234 **Mr Justice Gray** Of course.

L0235 **Mr Irving** And also the broader surrounding countryside, if I may put it like that. What I would ask your Lordship to do is to take the ugliest example, whichever your Lordship deems that to be, reach up for the full transcript of whatever that speech was, and ask yourself why I have put that remark in and see what else is in that speech. Then I submit that the alleged anti-Semitic remark fails into insignificance, if it is even taken to be anti-Semitic at all.

For 30 years, as I set out earlier in this room this afternoon, I have found myself subjected to vicious attack by bodies, acting, as they freely admit, as Jews. For 30 years I endeavoured to turn the other cheek and did nothing about it. I hope I succeeded. Mr Rampton drew attention to the fun I poked at Simon Wiesenthal. I made a joke in a public meeting about his, an explicit joke I made about his other than good looks, if I can put it like that. Mr Rampton called that remark "anti-Semitic". It was not. It was a joke about the man's looks, of the same genre that Mr Rampton made when he enquired rhetorically of Professor Funke whether a certain outer-fringe Swedish revisionist seen in one video shown to the court with long blonde hair was a man or woman. It is exactly the same kind of throw-away remark.

In view of the manner in which the two Simon Wiesenthal centres have been abusing my name in their fund raising leaflets, and endeavouring to destroy my own livelihood, the court might think that my fun-making, while tasteless, remark was not undeserved, possibly it was even rather reserved. It was not anti-Semitic. Mr Wiesenthal is no more immune from criticism either as a person or as a public figure than I am.

Searching hopefully for evidence of "anti-Semitism" in me, the investigation by the Board of Deputies in 1992 came up empty handed in their secret report which they planted on Canadian government files. They confirmed that I had dealings with my Jews in my professional life, and they added that I "used this as an excuse" to say that I am not an anti-Semite. These people are hard to please. "He is far too clever an opponent" the Board wrote in this secret report, "to openly admit to being an anti-Semite". "We endorse all condemnation of anti-Semitism", they quote me as writing in my newsletter back in 1982. All of these things, including the actual 1992 secret intelligence report filed by the Board of Deputies, were disclosed to these Defendants in my discovery. The Defendants quoted a passage from a speech delivered, they said, in May 1992. In fact, as my diary confirms, it was delivered in May 1993. So it may be that the year was not accidental, because by that time my family and I had been subjected to a catalogue of insults by the leaders of these various bodies. If a writer's books are banned and burnt, his bookshops are smashed, his hands are manacled, his person insulted, his printers are burnt down, his access to the world's archives is denied, his family's livelihood is destroyed, his phone lines are jammed with obscene and threatening phone calls, death threats, his house is beset by violent, angry mobs, the walls and posts around his address are plastered with stickers inciting the public to violence against him, and a wreath is sent to him with a

foul and taunting message on the death of his oldest daughter, then it ill-behoves people to offer cheap criticism if the writer finally commits the occasional indiscretion and lapse in referring to the people who are doing it to him.

I singled out in this -- well, I am not going to comment at length on these evil allegations and slurs. They lend fire and fury to the original libel complained of, that is my view. I submit that the word "racism" in the ears of the man in the Clapham Omnibus is about Stephen Lawrence and cone heads in the Ku Klux Klan. It conjures up images of murder and thuggery and violence and foul-mouthed graffiti. In deliberating on the conduct of the case and on the appropriate scale of damages, your Lordship will no doubt bear them in mind, these allegations made against me.

I voluntarily provided all my entire private diaries to the Defendants in this action. They asked to see a few pages and I said "take the lot". Fifty-nine volumes of private diaries, 20 million words on paper and on disk. Mr Rampton produced from them one nineteen-word ditty attached to another quite harmless one about the "messica dressica" of my daughter Jessica. To find in all those diaries and telephone conversations written since 1959 just one nineteen-word ditty that you could trot out for the media, does not suggest that I am as obsessed with race and racism as learned counsel and, for that matter, the newspapers that report this case too.

I repeat, this multi-million dollar Defence team has found one nineteen-word nonsense poem, recorded in my diary with other Lear- or Belloc-type rhythmic verses as having been recited to my own nine-month old infant who has, I am glad to say, grown into a delightful girl of six now, bearing none of the traces of the poison that Mr Rampton recklessly suggested that I had fed to her. Fortunately, I did not sing to her "Three Blind Mice".

Similarly, from my hundreds of lectures and talks these very proper spaniels have sniffed out a few lines of music-hall whit of the type that a Dave Allen might indulge in, with Mr Trevor McDonald as one of the butts. That in Mr Rampton's words is racism. One wonders which well-shielded part of the modern world is inhabited by learned counsel. Can anyone go and live there?

The references that I have made to what is now formally called the Instrumentalization of the Holocaust, have also been adduced as evidence of anti-Semitism. Are non-Jews disbarred from making a criticism that is made increasing vocally now by others like Professor Peter Novak or by Leon Weiseltier, the literary editor of the New Republic who wrote on May 3rd 1993: "It is a sad fact, said the principal philanthropist of the grotesque Simon Wiesenthal Centre of Los Angeles, that Israel and Jewish education and all the other familiar buzz words no longer seem to rally Jews behind the community, the Holocaust though works every time."

I turn to page 89, my Lord, the third paragraph. In general, I would invite your Lordship to pick out one such utterance as a sample, to reach then for the transcript of the entire speech, to take note of the rest of its content, its clear reference to the very real sufferings of the Jews, the liquidations, the Bruns report and the rest, and then ask: Was the remark true? Was it explicable? Was it rhetorically justified as part of the skilled lecturer's armoury?

Your Lordship has been told of my remarks that more women died on Kennedy's back seat than in the gas chamber at Auschwitz, the one shown to the tourists. It is a tasteless but quite literally true. It is, as I have shown in this court, even true if the main gas chamber at Birkenau is brought into the equation, crematorium (ii), the factory of death, because the eyewitnesses lied about that one too. The Poles have admitted that the Auschwitz building and its chimney are a post-1948 fake. My colourful language, my tasteless language, was a rhetorical way of bringing that extraordinary revelation home to audiences.

The audiences, I am told, are extreme audiences, of extreme people, although the photographs suggest rather differently. They appear rather boring middle-age kind of people.

My files confirm that I occasionally addressed audiences of the Association for Free Journalism in Germany, the National Democratic Party in Germany and the German Peoples Union. My Lord, those four documents which I have disclosed to the Defendants, they are English translations of the policy leaflets, the manifestos of these bodies, and in my submission they do not show them to be extreme in any way. These were, furthermore, bodies that were accepted at that time under Germany's very strict laws as being legal and constitutional. But the court is more concerned, I believe, with have individual personages than with bodies, than with the actual organizations. I have not the slightest doubt that this court will find that I had no meaningful contact with the ugly rag-bag neo-Nazi extremists mentioned by Professor Funke, people with whom, to make the point quite clearly, the Defendants, their experts and their legal team seem more familiar than I. Most of the names were completely unknown to me and the Defence have sought, in vain, for them in my diaries and papers, to which I emphasise yet again I gave them complete and unlimited privileged access. This has not stopped them from bringing these names forward and mentioning these alleged links in the open court in an attempt to smear me still further with an eye particularly on the German media. I urge that this, their conduct of the case, be held against them.

Characteristically of the weakness of their case, Professor Funke listed one entry in a diary where I noted "road journey with a Thomas" whose second name I never learned; Funke entered the name "Dienel?" So far as I know, I have never met a Dienel, but it illustrates the kind of evidence that the Defence were hoping to rely upon.

As for Michael Kuhnen, the documentary evidence before both Professor Funke when he wrote his report and before this court, is that I explicitly said I would not attend any function at which he was even present. I never did and I never met him.

By way of evidence the court has been shown a number of videos. Shorn of their commercial packaging, they do not amount to very much, in my submission. In view of the weight attached to it by learned counsel and by his witness Professor Funke, my Lord, I have re-examined the raw video of Halle function of November 9th 1991

at which I briefly spoke, and I have timed and listed the scenes that it shows. My Lord, you will see in the footnote on that page that I have given the appropriate breakdown referring to the time on the video.

Your Lordship may wish at sometime to have the video back to check that these times are correct, or the Defendants' solicitors may wish to submit any corrections they feel are needed.

L0236 **Mr Justice Gray** No. I will assume your time is correct unless I am told otherwise.

L0237 **Mr Irving** Yes, unless otherwise informed. The raw details are, when the when camera's meter shows 170021 I am first seen arriving at an unnamed hotel restaurant in Halle, accompanied by Mrs Worch and by David Leigh of he Sunday Observer. At 17:14:40 I am again glimpsed, 14 minutes later, still at the hotel speaking to a reporter. The cameraman and David Leigh then go off to film the rival processions during which I am at no time seen on film. In fact I remained lunching at the hotel. At 18:11:00 a truck is seen being rigged as an open-air platform, and at 18:14:26 I am seen with two reporters watching from the edge of the square. In my submission, my Lord, I do not have a particularly happy look on my face at all at what I am seeing.

At 18:16 I walk over to the platform, hands in pockets and mount it. The man whom Professor Funke tells us is Dienel, and I have no way of checking it one way or the other, is seen to get off to the left and there is no contact whatever between him and me. Mr Worch briefly introduces me to the audience. I begin speaking at 18:16:39 and the filmed portion of my speech ends less than three and a half minutes later.

When the off-screen chanting of slogans begins at 18:18:59 I am clearly seen to interrupt my speech, shake my head at them and gesticulate with my left hand to them to stop, and I am clearly heard to say, "You must not", because they are shouting the "Siegheil" slogans, Mein Fuhrer, and things like, "you must not always be thinking of the past". I am heard clearly to say: "You must always be thinking of the past. You must not keep coming out with the slogans of the past. We are thinking of the future [voice emphasised] of Germany. We are thinking of the future of the German people. As an Englishman I have to say ...", and so on. So I am quite clearly expressing extreme anger at these people who have come along with their Nazi slogans.

Six seconds after ending my brief speech I am seen to leave the platform without further contact with anybody. My diary notes that I at once left by car and drove back to the Rhur in Western Germany.

Heavily edited, for example to remove my rebuke to these slogan-shouting people, whom I took and take to have been agents provocateurs, this sequence was shown on November 28th and 29th to British TV audiences in a "This Week" programme entitled "Hitler's Children, the New Nazis", directed by the German Michael Schmidt, Professor Funke's star witness, and with none other than Gerald Gable of Searchlight listed as the consultant, and in Despatches on the other channel. This indicates whose hands were behind the editing. Again, heavily edited the film has been shown around the world against me. This was the thrice edited film to which I drew your Lordship's attention in suggesting there was evidence of dubious admissibility.

May I again remind your Lordship of my basic principle on lecturing. Unlike the Defendants who have proudly stated that they refuse to debate with opponents, I have expressed a readiness to attend, to address all and any who are willing to listen. Your Lordship will remember my letter of June 24th 1988 to my editor William Morrow, Connie Roosevelt, to whom I wrote:

"I have been invited to speak as a guest speaker at a right-wing function in Los Angeles next February. They have offered a substantial fee and all my expenses, and until now I have adopted a policy of never refusing an invitation if the speakers meet my terms, namely a free speech and a fat fee. On this occasion I intend to give the audience a piece of mind about some of their lunatic views."

I may secondly point out that were it not for the clandestine activities of the violent and extremist bodies dedicated to destroy my right to free speech and the rights of all audiences in the United States and elsewhere, at Berkley, at Dublin, Pretoria or wherever, to hear my opponents and equally dedicated to intimidating my publishers and smashing bookstall windows, where it not for their hate campaign I would have been able to continue in the normal manner with my exemplary professional career. It rings hollow that the same shabby bodies who have generated the hatred against me now point their crooked finger at my and abuse me using the very considerable privileges afforded to them by this court, to continuing to make my voice heard whenever I can. When I use words to describe them in detail, which they well deserve, they ring their hands lament about extremism.

I have pointed out that so far as Germany is concerned, none of the German bodies who invited me to speak was illegal or banned. In fact when first invited to address the German Peoples Union I wrote to and telephoned the Germany Embassy, as the documents in my discovery show, and asked them specifically whether this was a legal and constitutional body. The Embassy confirmed in writing on July 25th 1984 that was. The extremism was in the eye of beholder. The further to the left the beholder squinted from, the more distant these bodies may have seem from him.

We have heard a lot from Professor Funke, the sociologist of the Free University in Berlin. My Lord, I am now going to pass over the next two pages and continue from the bottom of page 94. As for his allegation, the allegation by Professor Funke, here in court, my Lord, I also ask you to disregard those two pages.

L0238 **Mr Justice Gray** Yes, I think I know why, and I think that is very right and proper.

L0239 **Mr Irving** As for his allegation here in court that I should have known that various allegations were going to be banned in years ahead, it is difficult for an Englishmen coming from a country with deeper democratic traditions than Professor Funke's, to implant himself into the brain or mindset of the authoritarian German mould where book burning is now once again de rigueur, where a German academic like Funke does not bat an eyelid upon hearing that a teacher is still serving a seven-year jail sentence imposed for chairing a lecture at which I spoke, where two District Court judges who acquitted that teacher were reprimanded and finally retired in disgrace by order of the Minister of Justice, and where governments recently have begun routinely banning fringe opposition parties and circumscribing even their legal activities.

My general response to this attempt at "guilt by association" which we have seen a lot over the last few weeks, is to compare it with the worst accesses of the inquisitions conducted by Senator Joseph McCarthy. In Britain the courts have always viewed it as repugnant; most recently I believe Morland J in another court in the same building. Hollywood's finest scriptwriters, many of them Jewish, had their careers vernichtet, to use that word again, by the reckless allegation that they had associated with known communists. Now come these Defendants levelling the mirror image of these same charges at me. McCarthyism was rightly exposed for what it was in more recent years and more enlightened years, and these Defendants for their own purposes are seeking to turn the clock back.

As far as the United States are concerned, apart from the Institute of Historical Review, which I shall deal with separately, the one organization identified by learned counsel for the Defence, as I understand it, is the National Alliance. First let me point out that, no doubt with good reason, the Defendants have decided not to call their expert on political extremism in the United States, Professor Levin, and they have withdrawn his expert report. I think "junked" was the word. Mr Rampton used the word "junked" or "dumped" I believe. Had they not I would have "debunked" it I think. We have, therefore, no general expert evidence as to the nature of the National Alliance, and I think I ought to emphasise that matter. The court is probably as much in the dark about this group as anybody else.

The Defence invites the court to study the leaflets put about by that body at one meeting, but could offer to the court not the slightest evidence that I was aware of such leaflets or, for that matter, if they are once again falling back on negligence, that I ought to have been aware of them.

If, as I submit, the meetings were organized by individual friends of mine acting outside whatever their capacity, if any, within the National Alliance may have been, there is no reason why I should have read such leaflets if they were indeed on offer.

As for the IHR, the Institute of Historical Review, I have little to add to what I have stated in my various written replies and on the witness stand. It is clearly unsatisfactory, though not surprising, that establishment scholars feel the need to dismiss any rival body of scholars or historians as extremists, merely on the basis that these others propagate a different version of history from their own consensus versions.

The officials of the IHR nearly all hold academic qualifications. True they are not trained historians, but then neither are some of the most famous names of historians in both ancient and contemporary times. It is clear from correspondence before the court that I recognize the shortcomings in the old IHR, and I was keen to introduce them to new speakers, including mainline scholars, historians like John Toland who did in fact speak there, Professor Ernst Nolte and Michael Beschloss. I am not and never have been an official of the IHR. At most, one of many friendly advisers. As for speaking engagements, my association with the IHR has been the same as my association with (I use the word "association" again), for example, Cambridge University Fabian Society because I spoke there too, or the Trinity College Dublin Lit. & Deb., or any other body of enlightened people keen to hear alternative views.

Professor Evans in his odious attempts to smear and defile my name which I hope will long haunt him in the common rooms at Cambridge, called me a frequent speaker at the IHR, and may I say "so what?" None of my lectures had a Holocaust denial or anti-Semitic or extremist theme. I spoke on Churchill, on Pearl Harbour, on Rommel, on the Goebbels' Diaries, on my Eichmann papers find, and on general problems of writing history. The court has learned that I have in fact addressed functions of the IHR only five times in seventeen years, one lecture each time. No amount of squirming by this expert witness could increase that figure. It is true that I socialized before or after the event with the IHR officials and their wives. So what? It is true that I use their warehousing facilities. So what? It is true that the IHR, along with thousands of other retail outlets sell my books. So what? It is true that I introduced them to subjects which some members of their audience found deeply uncomfortable, for example, the confessions of Adolf Eichmann, the harrowing Bruns report and the Kristallnacht. I would willingly read out the relevant extracts of my lectures to the IHR, but my Lord, through the courtesy and industry of the Defendants' solicitors, which I have already had cause to praise, your Lordship is already funded with extensive transcripts of precisely those talks, and I would ask that your Lordship read them or look at them with this paragraph in mind.

I am accused of telling audiences what they want to hear, and that may be partially true, but, by Jove, having done so, then I used the goodwill generated like that to tell them a lot of things they very much did not want to hear. The Defendants would willingly overlook that aspect of my association with the IHR, and I trust that the court will not.

As for the National Alliance, an organization of which the Defence makes much, once again, as an Englishman ----

L0240 **Mr Justice Gray** You have dealt with that already.

L0241 **Mr Irving** We have had it, but I am back again, my Lord. It must have been quite late at night when I wrote this part. As an Englishman I am completely unfamiliar with the nature of the National Alliance, its logo and its name. It may be that the name means more to the Defendants and to those who are financing the efforts than it means to me. It certainly meant nothing to the English members of the gallery on the day that it was mentioned here.

I have no meaningful contacts with the organization as such. One or at most two of its individuals members who were already on my mailing list volunteered, like scores of other Americans, to organize lectures for me. One was Erich Gliebe who has always organized my lectures Cleveland in Ohio. On the evidence of his notepaper from the year 1990 (that is ten years ago now) he is also a National Alliance member. I ask the court to accept that when asked about it ten years later I had long forgotten receiving that one letter from him with its heading and its logo. Before each lecture date I mailed an invitation letter to my entire mailing list of friends in each State. The audience was, therefore, largely my own people, if I can put it like that. That is why Mr Breeding rather superfluously welcomes the strangers in his opening remarks on the Florida video tape as seen. Had he told me he would also claim to do so on behalf of his organization, I would have told him not to. It was my function and the audience were my guests and not his.

The photographs taken at this meeting shows, as the Defendants' own agents have warranted, no formal National Alliance presence, flags, arm bands or whatever. The witness statement of Rebecca Gutmann has confirmed this.

Learned counsel for the Defendants has drawn attention to one 18-inch wide pennant, that is my estimate, displayed at the function on a side wall with what they state is the National Alliance logo on it visible on the video film. Its logo appears to be based on the CND design. I did not notice it at the time nor would I have had the faintest idea what it was if I did. Evidently Mr Gliebe told me that his pals at the National Alliance had had a hand in organizing my successful Cleveland function, and that is why I noted in my diary with a hint of surprise that it turns out that the National Alliance had organized the other meeting too.

The court may agree that this phrase alone is evidence that their involvement was (A) not manifest, and (B) not known to me before. Given that the audience was largely my own making, it does not seem worthy of much note. I submit that this kind of defence evidence really does not meet the enhanced standard of proof required by law on defamation for justification of the more serious charges.

L0242 **Mr Justice Gray** I do not think you need bother with the next paragraph frankly.

L0243 **Mr Irving** In general, it is also to be stated that at material times, namely when associated with those individuals, they were not extremists -- I take it that your Lordship accepts what I said in that paragraph?

L0244 **Mr Justice Gray** I do not think, frankly, that the evidence of your contacts with the BNP amounts to anything.

L0245 **Mr Irving** Thank you very much. In general, it is also to be stated that at material times, namely when I was associated with those individuals, they were not extremists; nor has it been shown to the court that at that time they were. Thus at the time I first met this young man Ewald Althans in Germany late in October 1989, he seemed full of promise and eager to learn. I later learned that he had been to Israel for six months on a German Government voluntary scheme for young Germans who wished to atone. Over the two or three years that our orbits occasionally intercepted I could see that he was growing more extreme and provocative in his actions. He also became undependable and wayward in a number of non-political ways that I mentioned in court.

According to Der Spiegel at his 1995 trial in Berlin, Althans had acted for the Bavarian security authorities as a top agent until 1994 when they ended the liaison. The German security authorities had, as Professor Funke agreed, a record of hiring agents provocateurs.

I now come to Ernst Zundel, the next paragraph. Ernst Zundel is a German born Canadian for whose own particular views I hold no brief. I later learned that he had apparently written some provocatively-themed books with tongue-in-cheek titles on flying saucers in Antarctica, and on the "Adolf Hitler that I knew and loved", which is said to be worst than outre; wild horses would not make me read such books myself. I had met him in 1986 and found that as a personality he was not as dark as had been painted in the media. I was asked to give expert evidence at his trial in Toronto in 1988 relating to the Third Reich and Hitler's own involvement in the Holocaust. I did so to the best of my professional abilities, and I was told that I had earned the commendation of the court in doing so.

It is plain to me from what I know that Mr Zundel has been subjected to 20-year onslaught by the Canadian organizations dedicated to combatting what they regard as Holocaust denial because of his dissident views, which are certainly more extreme than mine. My own relationship with Mr Zundel has been proper throughout, and the court has not been given any evidence to the contrary. At times it has even been strained because of the misfortune inflicted on me in retribution for having spoken at his trial.

My Lord, there remain one or two minor matters, in my view. The Defendants alleged that I wilfully exaggerated the Dresden death roll in my 1963 book "The Destruction of Dresden", and that I had no basis for my figures. I have satisfied this court, I believe, that at all times (A) I set and published the proper upper and lower limits for estimates that I gave, giving a wide range of figures which necessarily decreased overall over the years as our state of information improved, and that (B) I had an adequate basis for the various figures which I provided in my works at the material times. It has to be said that authors have little or no control over the content of books that are sub-licensed by their main publisher to other publishers. Revisions are not encouraged for costs reasons.

I have always been aware of the highly charged political nature of the figures quote for this event, the bombing of Dresden. The highest figure of 250,000, which I mentioned in my books only as the maximum ever alleged, was given, for example, by the German Chancellor Dr Comrade Ardenau in a West German official government publication which I showed the court. The lowest figures only became available in a book published in 1994 by Fredrich Reichardt. A copy of this book was provided to me in 1997. By that time I had already published the latest updated version of my book which is now called "Apocalypse 1945, The Destruction of Dresden", in which I had lowered the death roll still further on the basis of my on investigations and considerations. This was the first edition over which I, not the publisher, had total control, as it appeared under my own imprint.

In 1965, as the court is aware, I received written estimates of 140,000 and 180,000 dead from a rather anxious Soviet zone citizen, Dr Max Funck, who claimed to have received them about nine days after the raid from the City Commandant and the Chief Civil Defence Officer respectively, both of them his personal friends. That being so, there was no reason why I should have revised the 135,000 estimate which I had earlier received from Hans Voigt, a city official charged with drawing up death lists when I was researching my first book in 1961.

In 1966 I received the police final report of March 1945. While still remaining sceptical about it for the reasons stated, for example, the officer was responsible for Dresden's ARP and it was too early to achieve any kind of overall final figure, the number of refugees killed was also an imponderable. I took the correct action, however. I sent a letter to The Times within a few days of finding the new documents, that is July 1996, within a few days of finding the new documents in the mail on my return from a trip to the United States. Not only that, but at my own expense I had the letter reprinted and sent to hundreds of historians and the like. One hopes that the expert witnesses whom we saw in the witness stand on behalf of the Defence would have had the same integrity to do the same kind of thing.

As for the Goebbels diaries, the Defendants, as I understand it, do not now seek to justify their claim that I broke an agreement with the Moscow archives in 1992.

L0246 **Mr Justice Gray** I do not think that is right, but do not take time on it because I think I know what the case is.

L0247 **Mr Irving** They have withdrawn witness reports of the Russian archivists and will provide me no opportunity to cross-examine them. I was prepared to pursue those cross-examinations most vigorously. I produced a witness statement from Mr Peter Millar of the Sunday Times, my colleague in Moscow, and I made him available for cross-examination. He confirmed that there was no verbal or written agreement, as I had also stated in my various replies, so therefore I could not have broken it. The Defendants have left no satisfactory evidence before the court that refutes this, in my submission.

Mr Millar also confirmed to the court that he did not agree that my conduct gave rise to significant risk of damage to the plates. The plates had been withheld from historians by the Russians for 55 years or more. That figure of course is wrong. It is 48 years at that time, I am sorry. The plates have been withheld from historians for 48 years or more. By my actions I made this historically very important materials available to the world, and I placed copies of them in the appropriate German archives at my own expense.

My Lord, I make submission now on the Heinrich Muller document.

L0248 **Mr Justice Gray** I do not think I would read that out if I were you. I think that is not the best way of dealing with it.

L0249 **Mr Irving** No. I will leave it as a written submission.

L0250 **Mr Justice Gray** Have you seen what -- I am sure you have seen it because I have a copy of a letter to you with attachments.

L0251 **Mr Irving** I have seen it, my Lord, yes.

L0252 **Mr Justice Gray** In the light of those attachments and including Professor Longerich's really quite helpful account of his investigations, what is your submission?

L0253 **Mr Irving** I am not challenging the authenticity of the document, my Lord, but I am asking that attention be paid to the fact that it is highly unsatisfactory that I am not provided in good time, in a timeous manner, with the file dated that I needed in order to go behind the document and establish whether there was anything which would undermine the purport that the defendants were seeking to attach to that document.

L0254 **Mr Justice Gray** You mean the other documents in the same file?

L0255 **Mr Irving** Like in the case of the Schlegelberger document, which enabled the Defendants to attack the meaning of the Schlegelberger document, because they had documents relating to it in the same file which enabled them to narrow it down and say this is clearly a reference to the Mischlinge.

L0256 **Mr Justice Gray** Sorry, we are talking about the Muller document, are we not?

L0257 **Mr Irving** We are talking about the Muller document. I am saying that, had I had the other documents in the same file ----

L0258 **Mr Justice Gray** What has it got to do with Mischlinge?

- L0259 **Mr Irving** I could have gone behind the Muller document, using the other documents in the same file.
- L0260 **Mr Justice Gray** You mean as you did with Schlegelberger?
- L0261 **Mr Irving** As they did with Schlegelberger.
- L0262 **Mr Justice Gray** Yes, I follow. I am not quite sure, Dr Longerich wrote to Dr Aaron Reich, as I understand it, to see what other documents there were in the file, but I do not know what the result was, or indeed when the question was asked. You do not know either?
- L0263 **Mr Irving** I asked the question and I was given a totally fictitious file number in the German Federal archives.
- L0264 **Mr Rampton** Not by us.
- L0265 **Mr Irving** It was given by you because it was in the footnote of one of your expert reports as being the source.
- L0266 **Mr Justice Gray** As I understand it, and do not let us talk over each other too much, my understanding is that first time around the wrong file number was given, but then later the correct file number is thought to have been discovered, which then prompted Dr Longerich to write to or to fax Dr Aaron Reich, asking if he could say what the other documents in this file are.
- L0267 **Mr Irving** The correct file number was then notified to me this last weekend, which of course gave me no time whatsoever to do the kind of research that I would have had to do.
- L0268 **Mr Justice Gray** Anyway, your position is you do not deny its authenticity, but you do say that the provenance is unsatisfactory.
- L0269 **Mr Irving** I do say it has been improperly produced to me in a manner which has made it impossible for me to attack its meaning, but I have attacked its meaning nevertheless in my submission.
- L0270 **Mr Justice Gray** I know you have.
- L0271 **Mr Irving** I am not seriously worried about it because I am sure that your Lordship will accept what I said about the meaning.
- L0272 **Mr Justice Gray** Do you mind if I ask Mr Rampton what the explanation of----
- L0273 **Mr Rampton** I do not see it that any criticism at all can be made ----
- L0274 **Mr Justice Gray** When was Dr Aaron Reich asked the question?
- L0275 **Mr Rampton** Where is that, my Lord?
- L0276 **Mr Justice Gray** It is paragraph numbered 4 on the second page.

- L0277 **Mr Rampton** I think that, unless I have completely misunderstood this clip of papers, I confess I have not paid it a terrific lot of attention recently, there is, I think, actually a page of the little clip showing that a fax was sent or received -- I can see. It has my own fax number right at the top of it so I think it is what Dr Longerich says he sent from my chambers. It looks like 16.48 on Friday, but unfortunately I cannot read it.
- L0278 **Mr Justice Gray** That was the problem I had which is why I asked when it had been sent. Leave aside when it was sent. What was the answer?
- L0279 **Mr Rampton** I do not know when it was sent.
- L0280 **Mr Justice Gray** Sorry, what was the answer from Aaron Reich?
- L0281 **Mr Rampton** There was one in the Washington archive as well. The reply says, whatever its date may be -- I can see it is 10th March. It is from somebody called Anna Row. She is writing to both Aaron Reich, who I think might be in New York, I really do not know, and to Dr Longerich. What she says is: "After some searching and help from Jurgen, we were able to find a copy of the document in question. The citation in Moscow is, according to the two records" etc. etc., and gives the reference. "If a fax copy is desired we can send it along".
- L0282 **Mr Justice Gray** I follow all that and, as I understand it, not making too much of a meal of it all, there are two copies of this document, one in Moscow and another in Germany, the German copy having been provided from Moscow. That may or may not be satisfactory, but what I was really concerned to know is what attempts, if any, have been made to discover what other documents were in the same file, because I think the request was not an unreasonable one, that the other documents in the file might cast some light on the significance of Muller.
- L0283 **Mr Rampton** I simply do not know. If that is not addressed in Dr Longerich's note, I cannot give an answer about it because I was not a party to it.
- L0284 **Mr Justice Gray** That was one of the things that I think I suggested on day 30 or day 31, I cannot remember, Mr Irving should be given an answer to.
- L0285 **Mr Rampton** Plainly, I would submit, the position must be this. The reason why, not including the November 1941 document, Mr Irving tendered the other Schlegelberger documents is that, on one view of its dating, the other documents might be of some relevance. I assume -- this is an assumption -- that a distinguished and respectable historian like Dr Longerich would not produce a single document from a file if there were other surrounding documents which, to his knowledge, had a bearing on its interpretation.
- L0286 **Mr Justice Gray** Yes, but he does not say so, that is the problem. He does not say that he has looked, or tried to look and failed.
- L0287 **Mr Rampton** In any event, since Mr Irving accepts the authenticity of the document, the fact that there are not any other documents around it leads nowhere.

- L0288 **Mr Justice Gray** We do not even know that, do we? We do not know whether there are other documents in the same file.
- L0289 **Mr Rampton** There might be a source, I do not know. In fact, I think I may have been guilty of not reading the message carefully enough. I read paragraph 1 of Dr Longerich's note which was prepared yesterday: "I am familiar with this document. A copy is available in the archival collection of the Zentralstelle in Ludwigsburg. This is a collection of documents which was handed over by the Soviet authorities in 1969 to the Federal Republic". It begs the question, I interpose there, how on earth it is that Mr Irving has never seen it. It has been there since 1969. "The document is accompanied by a covering page with an archival reference to the file where the original is kept 500.1.25. This is an archival reference from the Soviet archive in Moscow. Fons" -- whatever that means -- "security police and SD, part 1 of the collection, file 25. I was in Moscow", says Dr Longerich "in 1992 for four weeks, and I looked at documents from this fons extensively. At the moment I cannot remember whether I saw the original of this document during my stay in Moscow, but I kept notes about this day and could reconstruct what I saw there. The notes are at the moment in Munich". That plainly does not suggest that he believes that there are any other relevant documents in that file.
- L0290 **Mr Justice Gray** It does not say one way or the other. He says he cannot remember. It probably is a point of absolutely no significance but, since it is something that Mr Irving has raised and I did indicate that I thought he ought to have an answer, I would still like such information as can be obtained from Dr Longerich to be communicated to him and to me.
- L0291 **Mr Rampton** I will try again. Given that it is accepted to be an authentic document, and given also that it is not perhaps a document that lies at the heart of the case though it has some significance obviously, I will do it. That leads me to make an enquiry, if I may, of your Lordship.
- L0292 **Mr Irving** Can I just finish?
- L0293 **Mr Justice Gray** Yes. You have some other points?
- L0294 **Mr Rampton** My Lord, I am sorry, this is a connected enquiry, if I may. That may take time. I do not know myself at the moment what date judgment is likely to be because obviously, if your Lordship is going to consider any additional documents, they will need to be got sooner rather than later.
- L0295 **Mr Justice Gray** I do not know either. I hope it will not be as long as you might fear. That does not tell you very much, does it. That is not intended to be delphic, but think in terms of a small number of weeks rather than a large number of months.
- L0296 **Mr Rampton** I was not trying to put any pressure on at all. For the sake of this exercise, I obviously need to know. If it is going to be in three or four days time, I probably will not be able to achieve it.

- L0297 **Mr Justice Gray** I think that will be unlikely. That is all I can do. If you can obtain it as soon as possible -- if you cannot, so be it. We will have to manage without.
- L0298 **Mr Rampton** We will do what we can.
- L0299 **Mr Justice Gray** Mr Irving, you have listed some other matters.
- L0300 **Mr Irving** I wish to conclude on page 104, if I may.
- L0301 **Mr Justice Gray** I am so sorry. Hang on, why are you telling me about that now?
- L0302 **Mr Irving** Okay, then it is wrong that I should let your Lordship know.
- L0303 **Mr Justice Gray** Is that not relevant only to costs? Tell me if I am wrong, but that would be the way I would see it.
- L0304 **Mr Irving** Not only the costs, my Lord, there are other features of part 36.
- L0305 **Mr Justice Gray** Let me just read it.
- L0306 **Mr Irving** My understanding is that your Lordship was not informed of what was in the offer, but that offer was made under the new rules.
- L0307 **Mr Justice Gray** I do not see the relevance of telling me that unless and until it comes to the question of costs.
- L0308 **Mr Irving** Yes. The question of costs is covered by the next paragraph, which is that I do not propose asking for my costs in this action.
- L0309 **Mr Justice Gray** It is premature to be telling me that.
- L0310 **Mr Irving** Not at all, my Lord. This is surely the place when I can put this into your Lordship's mind and that deals with it, puts it out of the way.
- L0311 **Mr Justice Gray** It is true, but I would only address that question once judgment had been given.
- L0312 **Mr Irving** But I do ask your Lordship to give judgment in the terms and premises set out in my writ and statement of claim, namely damages, including aggravated damages for libel and an injunction restraining the Defendants and each of them, whether by themselves or agents or otherwise from further publishing or causing to be published the said or similar words defamatory of myself as claimant.
- L0313 **Mr Justice Gray** Yes. You gave me that little list of other things you were going to raise today. Standard of proof in graver libels, I think you know that I believe I know what the law is on that so you need not trouble with it, unless you want to. Is there anything you wanted to say particularly, Mr Irving? I am not stopping you, I just do not think it is really necessary.
- L0314 **Mr Irving** It is trite law, is it not, my Lord?
- L0315 **Mr Justice Gray** It is.
- L0316 **Mr Irving** We had this discussion earlier and I thought it important -- in fact it is obviously very impertinent of me to draw it your Lordship's attention.

- L0317 **Mr Justice Gray** It is not at all, no. I have it in mind anyway. Section 5, I think we have resolved that in an earlier discussion today.
- L0318 **Mr Irving** We have dealt with 4 because I have now done it.
- L0319 **Mr Justice Gray** Yes. Costs we have decided it is premature. Now I realize time is passing but it is obviously sensible to conclude everything today, and I hope I can perhaps do it in this comprehensive way. You have seen that in the Defendants' detailed written submissions they recite various concessions -- you may not like the term but they call them concessions which they say you have made about such matters as shootings in the East, numbers killed, whether it was systematic, whether Hitler knew about it, and also in relation to deaths at the Reinhardt death camps. Do you accept you did make those concessions?
- L0320 **Mr Irving** The answer is I have not seen them, but I know of them. I have not had any time at all to read that big thick thing.
- L0321 **Mr Justice Gray** Then I do not think it is fair to ask you to give answers on the hoof. What I will ask you to do though is this. If you either dispute that you ever made the concessions that the Defendants say you made, or you want now to reconsider ----
- L0322 **Mr Irving** Resile.
- L0323 **Mr Justice Gray** Well, I was trying not to use that word actually -- to reconsider, then would you write to me and to the Defendants, shortly setting out what you say you said, or what you now say?
- L0324 **Mr Irving** Yes.
- L0325 **Mr Justice Gray** Because I do not want to be under any misapprehension.
- L0326 **Mr Irving** Purely on the matter of concession?
- L0327 **Mr Justice Gray** Yes.
- L0328 **Mr Irving** I will certainly do that within the next two or three days.
- L0329 **Mr Justice Gray** Good. Is there anything else, Mr Rampton?
- L0330 **Mr Rampton** Yes, there is. I should like to apologise personally -- I dare say I am right in thinking it was directed at me -- for not being able in one moment to restrain my frustration. I apologise for that.
- L0331 **Mr Justice Gray** There is no need for that.

L0332 **Mr Rampton** Yes. I should at my age know better. But, as your Lordship will remember, it is sometimes extremely difficult to restrain oneself when one can actually hear the evidence of one's own witnesses being misrepresented. I am not going to do a trawl through what Mr Irving has said. Your Lordship has the evidence.

But there is one thing which he said which I really do think needs to be corrected. If this is a case without this kind of high profile, I might say nothing at all. Mr Irving said that Professor van Pelt had no explanation for the many oddities in Bischoff's letter of 29th June 1943. That is an important document. In fact, when I re-examined on 2nd February, that is day 14, page 3 to page 13 at the end, by reference to the little clip of documents by which Mr Irving sought to show the uniquely ----

L0333 **Mr Justice Gray** Yes, I remember that quite well, all the oddities, as it were.

L0334 **Mr Rampton** In fact, he explained every single oddity, except the missing year date in the reference.

L0335 **Mr Justice Gray** Yes, I remember that quite well, but thank you for reminding me what the reference is.

L0336 **Mr Irving** My Lord, in view of my traditional right to the last word, I would reserve the right to write your Lordship a letter setting out the oddities in that Bischoff letter, with a copy to the Defendants.

L0337 **Mr Justice Gray** No. I do not think I am going to invite that. I feel fairly deluged anyway with paper. I really do. I have in mind both what you said were the reasons why you at that stage disputed the authenticity, and I know you still question the authenticity of that document, but I also have in mind, in a general sense, the explanations that were given by Professor van Pelt. Now, anything else?

L0338 **Mr Rampton** I hope what I am going to say will be a joint request. Because of all, as your Lordship can see, the interest in this case, much of it from overseas, I would ask that, perhaps a bit unusually, we could have -- whenever the judgment may be, that is not what I am asking -- some reasonable advance notice of the date.

L0339 **Mr Justice Gray** Yes. I am anxious for all sorts of reasons, including the consideration you have just mentioned, that it should happen sooner rather than later, but I do not know how much notice is in practical terms really required, because I will not know until quite shortly before I actually finish that I am actually going to finish on a particular day. I mean two or three days. Is that far too short?

Adjournment for judgment

L0340 **Mr Rampton** The only thing perhaps, if I might gently suggest it, is your Lordship might in fact finish before the day of judgment, if you know what I mean, in other words finish writing and have a fixed day, so that, even if your Lordship finished before that day is reached----

L0341 **Mr Justice Gray** Yes, all right.

L0342 **Mr Rampton** I think a week actually would in all the circumstances ----

L0343 **Mr Justice Gray** That is what you want? Mr Irving, I do not suppose you disagree with that, do you?

L0344 **Mr Irving** I have my own reasons for wanting to have a lot of advance notice please, yes.

L0345 **Mr Justice Gray** I will do that. I think that is sensible. You are going to forfeit the last word, are you?