

PROCEEDINGS - DAY SIXTEEN

P-1

Day 16 Monday, 7th February 2000. (10.30 a.m.)

MR JUSTICE GRAY: Mr Irving and Mr Rampton, I have received a letter from I think it is a German lawyer called Gunter Murmann, the significance of which is not immediately obvious to me, but I thought I had better hand it down to you to make what you will of it. I know you have been receiving a lot of similar documents. Have a look at it when you have a convenient moment. Yes, Mr Irving?

MR IRVING: May it please the court. I have here this morning a witness on summons, Sir John Keegan. I also have a number of points that I wish to submit to your Lordship. I think, out of fairness to Sir John Keegan, we ought to hear his evidence first, and then I will put to your Lordship the various procedural points which I wish to.

MR JUSTICE GRAY: That sounds perfectly sensible. Let us have him straightaway.

MR IRVING: I call Sir John Keegan.

SIR JOHN KEEGAN, sworn.

Examined by **MR IRVING.**

Q: My Lord, Sir John's evidence will go entirely to reputation and no other matter in this court. Sir John, first of all, to make it perfectly plain to the court, you are here pursuant to a witness summons, in other words, what used to be called a subpoena. Is that correct?

A: I was subpoenaed by you. I would also like to say that

P-2

until this moment I have never met you, never spoken to you and never corresponded with you.

Q: That is precisely what I was going to ask next. In other words, I have not rehearsed with you in any way what I might or might not ask you by way of questions?

A: I would not have agreed to that in any case.

Q: Yes, of course.

A: Sir John, you are now Defence Correspondent for Telegraph Newspapers Limited?

A: Defence Editor.

Q: Defence Editor of Telegraph Newspapers Limited. How long have you held that post, please?

A: I was Defence Correspondent to begin with in 1986 and became Defence Editor about 1990.

Q: You have, it is fair to say, a very high reputation in England as what I might call an establishment historian?

A: Well, I was knighted for services to military history

Q: My congratulations and the congratulations of the court go to you for that very recent honour. It was in the New Year's Honours list?

A: Yes.

Q: I do not wish to detain you at all long, Sir John, here this morning. I am grateful to you for coming in spite of your disability. I just want to take you through a number of papers which I have handed to you a few minutes ago going back to 1980. I believe your Lordship also has that

P-3

small clip of them?

MR JUSTICE GRAY: Yes, I do. Thank you very much.

MR IRVING: Do you remember writing an article for The Times Literary Supplement in about April 1980?

A: Yes, I do not, because I review a great deal, but I am quite sure that I did write what is quoted here.

Q: Is it right that in that review you wrote -- this is a review of another book, not a book by myself?

MR JUSTICE GRAY: Well, both, is it not?.

A: I am sorry, I did not understand the question.

MR IRVING: This was not reviewing a book by me, was it? It was reviewing some other book.

A: If you say so.

Q: Is it right that you wrote the following words: "Two books in English stand out from the vast literature of the Second World War, Chester Wilmott, 'Struggle for Europe' published in 1952 and David Irving's 'Hitler's War' which appeared three years ago"?

A: Yes, and that is my general opinion. I think that, taken together, they are -- if I were to recommend to a starter two books which would explain the Second World War from Hitler's side and from the Allies' side, those are the two books I would choose.

Q: This does not, of course, mean that you endorse or accept all the views that I might be held to propagate in them or not, or otherwise?

P-4

A: Indeed not, because later on in the papers you have given me I reprove you for your lack of a moral point of view in your discussion of Hitler and of his status relative to Churchill and Roosevelt.

Q: Is it right to say that this opinion which you expressed in that review was not only publicly held but also privately held by yourself?

A: Yes. I often say you have to read Hitler's War.

Q: Can I draw your attention to letter No. 2 in the bundle? This is a letter from a man called Mr Alan Williams?

A: Yes, he used to be my editor at the Viking Press, my American publishers.

Q: Yes. The late Alan Williams was also my editor, of course, so he knew us both. Is it true that sometime early in 1980 you had a conversation with our mutual friend, Alan Williams, in which you commented on the same book 'Hitler's War'? Will you read, please, the middle sentences of the second paragraph? Does he state ----

A: "John Keegan is, as you may know, writing a book for us on the D-day invasion. While we were talking about it, he said that there were two general survey books that really stood head and shoulders above all the rest, one of them the Chester Wilmott and the other 'Hitler's War'".

Q: He did not know ----

A: "He did not know I had any involvement with the latter volume when he said this".

P-5

Q: Thank you very much. Were you expressing your true opinion in that conversation with Mr Wilmott?

A: Of course.

Q: Has he accurately reflected in this letter what your opinion was at that time?

A: Yes. Alan Williams and I were great friends.

Q: Yes, he was a man of insight and perception. In fact, I gave him a silver tray from Harrods

inscribed for his bravery in publishing my book. He had it displayed in his office. Would you turn to page 5, Sir John?

A: Yes.

Q: Is this a panel from the Sunday Telegraph of August last year?

A: Yes.

Q: Is it headed "Book of the Century"?

A: Yes.

Q: Do you there make your choice of which book you considered to be the book of the last century?

A: Yes.

Q: Can you remember what book that was?

A: Of course, it is a 'Struggle for Europe'. I regard it as a slightly odd choice, and I do not expect many people to support me, but it happens to have been an enormously informative influence on me.

Q: I also read it. I agree with you, for what it is worth. It is a very fine book indeed. So your opinion on the

P-6

Chester Wilmott book had not at that time changed?

A: No.

Q: You still rank it among the highest. Finally, would you turn to pages 6 and 7 which, I am afraid, is the only copy I have of a two page extract from your recent book 'The Battle for History'.

A: Yes.

Q: Will you agree that in that you repeat once again, 16 years after the first time you expressed this opinion ----

A: Yes, I do.

Q: --- that Hitler's War was a valuable book?

A: Indeed, you are honest enough to include a message on the Internet which points out that you omitted ----

Q: One sentence, yes, in the bundle. Would you read out that sentence too perhaps, for the record? This is somebody writing an e-mail to me, chiding me.

A: Could I quote the whole thing?

MR JUSTICE GRAY: It would help me if you did because I am not sure which sentence has been omitted from what.

MR IRVING: I am not sure if it is in your Lordship's bundle. It would be page 10 if it is in your Lordship's bundle. Do you have page 10?

MR JUSTICE GRAY: Yes, I do.

MR IRVING: Would you read out that brief message on page 10 from a correspondent?

A: It is a message from somebody called Graham Broad on a web

P-7

site, dated 28th December 1999: "If Mr Irving is going to quote John Keegan when Keegan supports him, he might as well have the integrity to quote him when Keegan does not. He cites at length from Keegan's 'The Battle for History', but does not, to my knowledge, anywhere on this web site quote Keegan's remark on page 10 of that book. Some controversies are entirely bogus, like David Irving's contention that Hitler's subordinates kept from the fact of the Final Solution".

Q: That is, of course, still your opinion, is it not?

A: I am sorry?

Q: That is, of course, still your opinion, is it not, that I am wrong on the Holocaust, or that my opinion on that is flawed?

MR JUSTICE GRAY: That Hitler did not know.

A: Well, I read Hitler's War, the appropriate passages, very carefully over the weekend, and I continue to think it perverse of you to propose that Hitler could not have known until as late as October 1943 what was going on to the Jewish population of Europe, and indeed many other minority groups as well, not only minority groups.

Q: I do not accept your word "perverse", of course. We have spent many weeks here in this very room, examining how perverse or otherwise it is to put forward that proposition. Would you accept that, to somebody who has not had complete access to all the records that are now

P-8

correctly available, it may still seem an unusual opinion?

MR JUSTICE GRAY: That is almost by definition an impossible question for him to answer.

MR IRVING: It became rather tortuous in the utterance, I am afraid.

MR JUSTICE GRAY: I think, bringing yourself up to date with historical knowledge as it has been emerging, do you still retain the view that it is perverse to say that Hitler did not know about the Final Solution?

A: I think, my Lord, that it defies common sense.

MR IRVING: It does indeed defy common sense, and this is what makes it such a fascinating subject to investigate. Would you agree with that? If it turned out to be against all common sense and yet not demonstrable, would it be worth investigating?

A: It would be so extraordinary that it would defy reason.

Q: I agree, "extraordinary" is possibly a better description of this conclusion than "perverse". Perverse, would you agree, implies a wilfulness, a deliberate tendentiousness in the way one looks at the documentation?

MR JUSTICE GRAY: Well, wrong headed, I think is the meaning.

MR IRVING: Wrong headed, yes. Can I ask you finally to turn to pages 8 and 9? My Lord, the only reason this is included is this is one way of putting this before your Lordship.

MR JUSTICE GRAY: Yes.

P-9

MR IRVING: Are you familiar with the United States Holocaust Memorial Museum?

A: Well, I have passed it. I have not been in.

Q: Would you accept that this is an official history published by the United States Holocaust Memorial Museum by its former director, Michael Berenbaum?

A: Yes.

Q: I am sure I will be corrected by Mr Rampton if that is wrong. Would you turn to page 9?

A: Yes.

Q: Would you accept that Professor Aberhard Jackel is a leading German historian?

A: I am never heard of him, but then I am a military historian of a rather technical sort and it is not necessary that I should have heard of him.

Q: Could I ask you briefly to read the paragraph number 5, beginning with the words "rehearsal for destruction" and I will ask you a question about it. Just read it to yourself.

A: (Pause for reading) Yes.

Q: Would you agree that the tenor of that passage is that this German Professor is stating that, until my biography of Hitler was published in 1977, there had been no worth while research on the Holocaust, and that the publication of my book provoked the historians of the world into finally doing the research on that subject?

P-10

A: I do not think I can agree with that. As an under graduate I think I read what I still think is a remarkable book called the Final Solution by Gerald Reitlinger, and I felt that I have learned from Gerald Reitlinger everything substantial that I know about the Holocaust.

Q: Of course.

A: And that not much has been added to that since.

Q: There has been a book by Raul Hilberg in the interim as well, 'The Destruction of European Jewry'?

A: There have been an enormous number of books on the Holocaust.

Q: Not before 1977.

A: I am sorry, it is not my subject. I do not know the unrolling of the historiography of the subject in that detail.

Q: My question to you, Sir John, was, would you agree that the tenor of this paragraph is to suggest that, in the eyes of this leading German historian, that, until my book on Hitler was published, there was no worth while research into the Holocaust, and that triggered, with this outrageous hypothesis, as he puts it, the entire research which has developed since then?

A: I do not know. I could not endorse that. I do not know enough.

Q: You appreciate my question? I am not asking your opinion, I am asking whether this----

P-11

MR JUSTICE GRAY: Let us cut this short. It obviously says what you have just indicated it says, but Sir John is not able to agree with it from what he knows.

MR IRVING: Very well. Sir John, finally I had to coerce you into the witness box, although in the 1980s and 1990s you wrote very favourable things about my writings. Can you in a very brief sentence explain why you were unwilling to come voluntarily?

A: Yes. Briefly, perhaps not. Just because I admire Hitler's War, which I do, I admired it again when I was reading it last night, it does not mean to say that I endorse your opinions beyond what you have to say, about what I am interested in in Hitler's War, which is your picture of how Hitler conducted military operations. As a military historian, that is the sort of history in which I am interested and I think you do it extremely well in Hitler's War. That does that not mean to say that I can go further in following you. It seemed to me this was to be a very contentious case, and one is easily misunderstood, I think, in discussion of this dreadful episode, this terrible period in European history, easily misunderstood. I did not wish to put myself in a position where I might be misunderstood.

Q: Would be it fair to say that you were apprehensive about the repercussions of giving evidence on my behalf?

A: Naturally. I am not giving on your behalf.

P-12

Q: Giving evidence as a witness for the claimant?

A: Under subpoena.

Q: Yes. No. The question was ----

MR JUSTICE GRAY: This is a slightly meaningless debate. Sir John is right. He is here compulsorily, not voluntarily. He has no choice but to answer your questions, which he has done very clearly.

MR IRVING: The evidence I was trying to produce here was evidence of the fact that this is an exposed position that one takes, and that there are professional repercussions which can be expected by those who take this position in view of the very unfortunate nature this debate has adopted. It is very difficult for me to produce evidence on that matter, particularly as a lot of the witnesses are not going to be called.

MR JUSTICE GRAY: If I may say so, it is a point that does not really need evidence. I am not blind to the realities of the position and I understand the point you are putting.

MR IRVING: I am indebted to your Lordship and in that case I have no further questions.

MR RAMPTON: I have no questions.

MR JUSTICE GRAY: Sir John, that finishes your time in the witness box. Thank you very much. You are free to go.

(The witness stood down)

MR JUSTICE GRAY: Mr Irving, I think you have some procedural points to make?

P-13

MR IRVING: Yes.

MR JUSTICE GRAY: Before you do that, can I just ask you where, if anywhere, you are suggesting I put the clip you have just handed in?

MR IRVING: Miss Rogers has generated a catalogue of these stray items and no doubt the catalogue will grow longer.

MR JUSTICE GRAY: I think they might say they are their stray items. Shall we put this into one of the C bundles, perhaps C4?

MR RAMPTON: Back of J2 is suggested.

MR JUSTICE GRAY: That is really your documents, is it not?

MR RAMPTON: No. Ours are L.

MR JUSTICE GRAY: You probably claim J, too, do you not? I will put it wherever you suggest.

MR RAMPTON: I do not have one, so I cannot really help.

MR JUSTICE GRAY: I do not have one either. J2?

MR RAMPTON: Yes, something called J2.

MR RAMPTON: It is Claimants Bundle E, Global, which apparently is in J2. Why, I do not know.

MR JUSTICE GRAY: If there is a J2, which I doubt, I would like one. Yes, Mr Irving?

MR IRVING: My Lord, your Lordship will see that I have provided to you once again a number of newspaper articles.

MR JUSTICE GRAY: Yes.

MR IRVING: I do not know how far I am testing your Lordship's patience on this matter, but I am a litigant in person and

P-14

I certainly need education on this matter and possibly members of the press also need education

as to what is permissible and what is not in a non-jury action.

MR JUSTICE GRAY: Well, show me.

MR IRVING: I am not familiar with any ruling which says in a non-jury action it is open season on one or other of the parties in an action.

MR JUSTICE GRAY: Certainly that is right. It is not. On the other hand, it is presumed -- you may or may not agree with it -- that judges are more able to ignore what is written outside court and more able to focus on the evidence. I hope I am doing that, which I have slightly discouraged you in the past when you have raised various newspaper articles. I cannot obviously tell the press what they should and should not say, but show me what you are objecting to because, if you have a point----

MR IRVING: I will provide your Lordship with three articles which I certainly do not expect you to read in an instant. Two are, in fact, from newspapers produced by Guardian Newspapers. One is the Guardian which was published on Saturday, a major article by a man called Jonathan Friedland, who is a very well-known and very responsible journalist. The other one is an article published in The Observer yesterday. The one published in The Observer yesterday by Mr Neil Acheson seems to equate David Irving, Jorg Haider and Adolf Hitler in a rather

P-15

unbecoming manner. "If Irving wins and Heider wins, then what?" I have also highlighted "Niematz Wieder never again and Den Anfenge, stop it at the start", what used to be called in Latin I believe *principe obstat*. The repugnance of those articles is that of course the Guardian Newspaper are Defendants in a second action I am bringing of a very similar nature, which they maintain is of a similar nature, and they have a clear and vested interest, in fact, in trying to see me knocked out in this action. Then, slightly more sinister and more difficult to control, I appreciate, by your Lordship are the articles being written by London journalists for the foreign press which then come bouncing back to us through Cyber space.

MR JUSTICE GRAY: Probably not bouncing back to all that many people, would they be? National Post?. I have never heard it.

MR IRVING: It is a major Toronto newspaper published by Conrad Black in conjunction with the Daily Telegraph. Article called "David Irving versus The Dead", written by a man called Geoffrey Wheatcroft, who is a British, London based journalist.

MR JUSTICE GRAY: Which bit in this?

MR IRVING: Well, the whole article is sinister in as much as it also incorporates a number of items that have so far not been produced in court, including privileged items, and this morning in today's Ottawa Sun, I believe, there

P-16

were also quotations from Professor Richard Evans' report, which is a highly libelous and defamatory document and it is privileged only when used in connection with a report in the case.

MR RAMPTON: My Lord, this discussion is becoming unwieldy for two reasons. One is that I am excluded from it because I do not have what Mr Irving is referring to. The other is that the reason why people have access to Professor Evans' report is that Mr Irving put it on his web site.

MR IRVING: With a severe health warning, warning people that the entire contents of the report are considered to be libelous.

MR JUSTICE GRAY: Are the entire contents of the report on your web site?

MR IRVING: They are accessible with a password. There is a health warning that flaps down so that anybody who looks at it is warned in advance that the contents are deemed to be defamatory

and untrue, and will be established when we have Evans in the box.

MR JUSTICE GRAY: I have not read these obviously because you have just presented me with them. All I would say, subject to anything Mr Rampton wants to say afterwards, is that it is not open season and, in particular, if journalists who are based here choose to write in foreign publications articles which perhaps do create a risk of prejudice, then they must realize that they may be

P-17

amenable to this court's jurisdiction, albeit that the publication in question occurred abroad. But beyond that I am slightly reluctant to get into this because it is a bit of a diversion. I can certainly understand you get fed up with it. It is not going to affect my mind, that is the point.

MR IRVING: I am faced here by extremely powerful and wealthy litigants who have expended a lot of effort in posting a defence to this case, and more than that I will not say, my Lord.

MR JUSTICE GRAY: Yes.

MR IRVING: In that case I do not ask your Lordship to read the articles. I think that has now dealt with that.

MR JUSTICE GRAY: I will glance at them or, if you rather, I will not, whichever.

MR IRVING: By uttering your warning that it is not open season ----

MR JUSTICE GRAY: Mr Rampton may disagree with that as a matter of law.

MR RAMPTON: It is open season. I believe, there being no jury, it is open season except in one respect. It would not be right and would be a contempt of court to put direct or indirect pressure on the litigant or any of his witnesses.

MR JUSTICE GRAY: Yes.

MR RAMPTON: It is also of course if they were saying terrible

P-18

thing about your Lordship. That could theoretically become contempt, but I do not believe that is what we are talking about. Otherwise not.

MR JUSTICE GRAY: I am not so sure about that. If you write here for publication in a journal which you know is going to come back, it seems to me that that could amount to a contempt. This is a very gentle warning shot over the bows.

MR RAMPTON: It would depend on the content.

MR JUSTICE GRAY: Of course.

MR RAMPTON: That which is merely, what shall we say, tendentious in its reporting?

MR JUSTICE GRAY: It has to establish a substantial risk of serious prejudice.

MR RAMPTON: It would have to be such material that Mr Irving said in honesty to your Lordship, "I really do not think I can continue under this kind of fusillage".

MR JUSTICE GRAY: It may not have to go quite as far as that.

MR IRVING: I can give one example of the kind of pressure that we come under by virtue of the press reporting now. The principal of the school attended by my little girl, the ballet school, well, enough.

MR JUSTICE GRAY: That sort of thing must be personally upsetting for you but it cannot possibility affect my mind because I do not know anything about it.

MR IRVING: If ordinary citizens are affected in this way by

P-19

this abusive press coverage even at this stage in the case, then eventually this will mean that the entire public gallery of this court will be affected by it, and waves of hostility will be felt by the members of this courtroom.

MR JUSTICE GRAY: Mr Irving, all I would say is that, as long as you can carry on, which you are doing, despite what you are having to put up with, then I hope you will find me approaching the evidence unaffected by anything that may be published in newspapers.

MR RAMPTON: Can I add this? If the public's mind is affected adversely to Mr Irving by a fair and accurate report of the proceedings in court, then only Mr Irving has himself to blame.

MR JUSTICE GRAY: That of course is true, but I think his complaint is that these are things that are said or published which really do not reflect in any way the proceedings in court. That I think is his complaint.

MR RAMPTON: The only one of those things that I have read is the Guardian article and, so far as that is concerned, I would not agree.

MR JUSTICE GRAY: I have not read it.

MR IRVING: My Lord, a number of newspapers are prejudging the issue and, as your Lordship is aware, we are just at the watershed, so to speak. We are now beginning to hear the defence witnesses in detail.

P-20

MR JUSTICE GRAY: Yes. They do not have the last word, though, do they?

MR IRVING: My Lord, I now turn to the question of these very witnesses, once again the non-appearing experts, the witnesses whom we are informed on Thursday would not now be being called. Once again, I am asking for your Lordship's tutelage as to in what manner I can address the matters that they have raised in their expert reports, using the abundance of material that we have developed. These witnesses have in some part relied on witness statements put in lower down the hierarchy, so to speak, which I also impugn. There is one famous case of one of the witnesses who accused me of having the skin heads at one of my meetings, who himself turned out to police records as a skinhead gang leader. There is no way that I can put that kind of material before your Lordship because these witnesses are not now going to be called.

MR JUSTICE GRAY: Well, the way I would suggest, I am not saying this would necessarily, as it were, work but these are things you would have wanted to put to Eatwell and Levin, I suppose?

MR IRVING: Eatwell and Levin, for example, yes.

MR JUSTICE GRAY: You probably can put -- I do not know what you are talking about -- some of the things you were going to put to them to one of the other experts.

MR IRVING: That is what I hope to do, but your Lordship will

P-21

appreciate it is going to be difficult, for example, now that we know that the Russian witnesses are not going to be coming, we had an abundance of questions that I intended to put to them, for example, about the legality or the legitimacy of their holdings of these papers under The Hague rules, materials like that, and the conditions which rule in the Russian archives, how accessible they are to other historians, things that would have assisted your Lordship in forming an opinion and I am just ----

MR JUSTICE GRAY: You can give that evidence yourself. You have been there.

MR IRVING: Yes. Well, some of that evidence, yes, my Lord, but it is difficult because I have the last word in this case, my closing speech, it would be improper, indeed unfair, for me to

adduce or lead that kind of evidence in a closing speech without having tested it in any way.

MR JUSTICE GRAY: Yes, no, you could not do it in your -- you would have to give evidence, as it were, from the witness box first. Try putting the material to whichever you think is the most appropriate expert who is being called. Mr Rampton has been, I think, fairly liberal in the sense he has not objected when he might otherwise have done because this is such a curious case, it is all experts. So try to do it that way. I think you will find that you will get your point over.

MR IRVING: This is a little bit of red flag waving so that

P-22

your Lordship understands why sometimes I am putting material to witnesses when you think to yourself, "Well, this is not covered by this witness's statement".

MR JUSTICE GRAY: Yes. You have put things to Sir John Keegan which you would not in an ordinary case have had the right to put to him, but nobody objected and the points got other to me.

MR IRVING: I am indebted.

The third point, my Lord, concerns the snatch of remarks by me from the Errol Morris film which your Lordship may remember, the film 'Mr Death'. It was put to your Lordship as a transcript of fragments of remarks by me on the question of what generates anti-Semitism, where does anti-Semitism come from?

MR JUSTICE GRAY: Is this the National Alliance?

MR IRVING: No, it was the other little thing that they put in afterwards. I think Miss Rogers is probably looking for it. It was, I think, highly prejudicial. There is one sentence in there which actually reads, "I am a racist" and taken, of course, out of context that sentence can be flung at me around the world and, no doubt, will be.

MR JUSTICE GRAY: Well...

MR IRVING: What I am asking your Lordship is that I should either see the film or have a much longer transcript of those remarks in ----

MR JUSTICE GRAY: That sounds to me entirely fair.

P-23

MR IRVING: --- continuous form because the problem was in that particular fragment of conversation, Errol Morris, the producer, asked me to role play, so to speak. "Imagine yourself in that position and state what your motives would be".

MR JUSTICE GRAY: Sorry, I have already said whenever you feel that the context puts a different spin on the part that the Defendants are relying on, you are perfectly entitled to draw my attention to the context.

MR IRVING: It was not actually a piece used in the film. It was a piece that they picked up, the Defendants picked up, off the cutting room floor, so to speak, and then wiped off and produced for your Lordship's delectation.

MR JUSTICE GRAY: I cannot at the moment claim to remember which bit it is.

MR RAMPTON: I will tell your Lordship where to find it. It has been in the files since goodness knows. It was a late arrival in the sense that it was not in the original file. It is at tab 9 of the bundle K4, and a complete transcript of the whole untransmitted or pretransmission interview is in that tab transcribed by the court transcribers. Mr Irving has had the tape as well.

MR IRVING: Do we not have the film of it?

MR JUSTICE GRAY: What is the film going to add which is not in the transcript, Mr Irving?

MR IRVING: Unfortunately, this tape is, I believe I am right

in saying, very fragmentary. It jumps and stops and starts in the way that things do that are taken off a cutting room floor.

MR JUSTICE GRAY: Well, it looks to me like a complete transcript.

MR RAMPTON: I am told it is a complete transcript.

MR JUSTICE GRAY: There we are. You have it there. You can ask the Defendants if they will provide you with the tape or you can read it into the transcript, Mr Irving, but I do not think I can do anything about it, can I?

MR IRVING: Reverting to the witness statement of Professor van Pelt, my Lord, again a general question: we covered parts of that in the cross-examination and I think your Lordship welcomed the fact that I did not intend to go through it paragraph by paragraph. How much attention is your Lordship going to pay to the paragraphs that we did not test under cross-examination?

MR JUSTICE GRAY: I am a little troubled by this, but the way I think it is right to deal with the parts that you were not cross-examined on, that is to say, those parts of Professor van Pelt's expert report which did not form any part of Mr Rampton's cross-examination of you, I am treating as not being part of the Defence of Justification, unless and until they crop up in the evidence of other witnesses ----

MR IRVING: For example ----

MR JUSTICE GRAY: --- as a result of their being cross-examined by you.

MR IRVING: --- the testimony of the Commandant of Auschwitz, Rudolf Hoess, was hardly tested, I believe -- and Mr Rampton?

MR JUSTICE GRAY: No, we have had enough on Rudolf Hoess to make him part of the Defence of Justification. He is -- you have been cross-examined about this -- one of the camp officials, or the camp official, on whom the Defendants place really most reliance, I think it is fair to say.

MR RAMPTON: My Lord, the position at Auschwitz is quite different from the rest of the case. Van Pelt contains the evidence that a responsible historian would have looked at as a minimum. Mr Irving has made it perfectly clear that until this case came along he has never looked at it. It is the convergence of all the evidence in van Pelt that makes the case that Mr Irving should have known about before he jumped on the Leuchter bandwagon. So the whole of that is before your Lordship. Evans is quite different. If I do not cross-examine on parts of Evans, your Lordship can probably assume that I do not pursue them, but not so with van Pelt.

MR JUSTICE GRAY: I think that in a way that is a correction of what I have just said. I think you will find that already reflected on the transcript is the proposition that the Defendants do not have to go through each individual

eyewitness, for example, or each individual document relating to the construction of Auschwitz, although we have had quite a lot of it, because they say that is the totality of the evidence you ought to have looked at.

The distinction Mr Rampton draws is between that, on the one hand, and, on the other hand, criticisms of you for perverting the historical record, mostly in 'Hitler's War', which they are only entitled to rely on if they put it to you fair and square in cross-examination, and that is a fair correction ----

MR IRVING: I am startled by this distinction between the two reports.

MR JUSTICE GRAY: Well, it relates really to the nature of the criticism that is made. In relation to perversion of the historical record, a positive case is made against you, you have deliberately done this, you have deliberately manipulated the data, and Mr Rampton has put that, he has not put the whole of Evans' report, but he has put a lot of it. So that is the kind criticism made there.

But in relation to Auschwitz, as I understand it, it is really a rather different criticism. It is that you have taken a perverse view which ignores and flies in the face of the totality of evidence that there was gassing at Auschwitz. So do you follow why it is a different kind of case?

MR IRVING: I appreciate what Mr Rampton and your Lordship are

P-27

trying to say, but your Lordship will remember quite clearly that on more than one occasion I asked the witness, "Are these the eyewitnesses that you are relying on? Are there any more?" We had dealt, I think, by that time with five and he quite clearly said, no, there are no more that he was relying on at that point.

MR JUSTICE GRAY: Not quite.

MR IRVING: And I think it is perverse now for Mr Rampton to say, yes, but what about Hoess or what about Aumeier or what about the others who are in the written report, but who the witness was inviting me not to cross-examine him on, shall I put it that way?

MR JUSTICE GRAY: I think, I hope, I accurately reflect Professor van Pelt's evidence when I say this, that in relation to inmates' eyewitness evidence, he was inclined to rely only on the very early reports, because he accepted the possibility of cross-pollination and contamination, or whatever you would like to call it, with the later ones. But in relation to camp officials, I do not think he ever said that he was discarding any of them, as it were, as some support for the proposition that there was gassing there. That is my broad recollection of his evidence.

MR IRVING: Well, in my closing speech I may have to remind your Lordship of the actual words. Your Lordship will probably remember that I also said to him, "How many

P-28

survivors were there?" and we came to several thousand. I said, "Why have you always then picked on just those five? Why haven't you ever questioned any of the other 10,000?"

MR JUSTICE GRAY: That is a point you are perfectly entitled to make.

MR IRVING: My Lord, that is all I wish now to...

MR JUSTICE GRAY: It is not a bad thing to have those points ventilated. Now I think it is Professor Browning?

MR RAMPTON: He is here, my Lord. Yes.

PROFESSOR CHRISTOPHER ROBERT BROWNING, sworn.
Examined by **MR RAMPTON QC**.

MR RAMPTON: Professor Browning, what are your full names?

A: Christopher Robert Browning.

Q: Have you made an expert witness report for the purposes of this case?

A: Yes, I have.

Q: Do you have it with you?

A: I have my own report. I do not have the pagination of the court's.

Q: We must make ----

A: The reformatting of it.

Q: --- sure you have the same version as we do. I ask you only this, in so far as that report contains statements of fact, are you satisfied so far as you can be that they are accurate?

P-29

A: There are some things that I have become aware since the report that I would have added if I had known of them as of mid July 1999, but it only affirms what I have already written, except it changes some dates but, in general, I would say, yes, that the report still stands.

Q: In so far as it contains expressions of opinion, are you satisfied in your own mind that those opinions are fair?

A: Yes.

Q: Will you please remain there to be cross-examined by Mr Irving?

Cross-Examined by **MR IRVING.**

MR JUSTICE GRAY: Mr Irving?

MR IRVING: Good morning, Professor Browning.

A: Good morning.

Q: You say you have made a number of fresh determinations on dates and things recently, since July 1999, that you would have written certain dates differently?

A: Yes, particularly the dates as to when certain special of Operation Reinhardt appeared.

Q: Which spellings?

A: I would say now that we have not two but three different spellings, one with a T, one with a DT and one with a D, and that those all appear as of 1942 when earlier the first DT spelling I had found had been of 1943.

Q: What is the significance of 1942, in your opinion?

A: The significance of this would be if there are three

P-30

different spellings, that it was made in honour of any particular individual because one would know how the spelling was. Well, obviously, this was phonetic and they spelled it in any way that it occurred to them, and, of course, in 1942 is the height of the clearing of the gettoes and the killing of the Jews in Poland.

Q: Yes. We were going to come later on to the Aktion or Operation Reinhard. Am I correct in saying that there has been one school of thought, the thought that the Operation Reinhardt had been named after the late lamented or unlamented chief of the security police, Reinhard Heydrich?

A: That is one suggestion made because the files on personnel in Berlin spell it with just a D which is the way he spelt his name, so that was one suggestion that has been made which I do not endorse.

Q: While we are on the matter, because we are going to have a joint journey of discovery and exploration over the next day or two, I think, have documents come to your attention that have the initials AR in them instead of a security classification?

A: I only saw reference to that from the transcript here.

Q: Yes?

A: But I had not noticed that myself.

Q: It is an interesting discovery, would you agree?

A: I would like to look at the documents to see how it was

P-31

written, but I had not noticed that before.

Q: Yes. You are familiar with the correspondence between Wolff and Gunsen Muller?

A: Yes.

Q: In July 1942?

A: Yes.

Q: Where Wolff -- can you remember what Wolff wrote to Gunsen Muller?

A: Yes, he wanted trains and Gunsen Muller replied that, yes, he had trains and told him how many would be going each day.

Q: It is correct that Wolff replied that he was glad to hear that 5,000 of a chosen race were going to be sent to ----

A: That is my memory of the document, yes.

Q: And is there any significance you would attach to the fact that that had the initials AR on it?

A: It could indicate that a copy of this was to be filed in some file called Aktion Reinhardt.

Q: So we are constantly discovering new things, is this correct?

A: Yes.

Q: So that the last chapter on the Holocaust really still has to be written?

A: We are still discovering things about the Roman Empire. There is no last chapter in history.

Q: It is quite an adventure, though, is it not, as fresh

P-32

archives around the world open up, would you agree?

A: Yes.

Q: Have you worked in -- I suppose you have worked in the German archives, have you not?

A: Yes.

Q: Have you worked in the archives in Munich?

A: Yes.

Q: Have you had the opportunity to work in the Moscow archives yet?

A: No, I have not.

Q: What other major holdings are there of records on the Holocaust -- for example, in the United States?

A: There would be the National Archives collection of captured German documents and the microfilms at the United States Holocaust Museum from various East European archives and the Berlin Document Centre of Microfilms now also in the National Archives.

Q: Have those microfilms also been placed in the German Federal Archives now?

A: The German Federal Archives took over the originals of the Berlin Document Centre, so I presume they have both the microfilm and the originals in their possession.

Q: Shooting off on one brief side excursion, have you found German archives sometimes rather secretive about recently acquired collections?

A: The area where I have had difficulty is getting court

P-33

access to see pretrial interrogations because of the increased emphasis on privacy law in Germany. That is, I would say, the greatest difficulty that I have encountered.

Q: I am surprised by this. In other words, what you are saying is the pretrial interrogations of suspected war criminals or of witnesses conducted in the 1940s and 1950s?

A: Mostly 1960s and '70s.

Q: Have now been closed again, have they?

A: Not closed, but there simply is more paper work to get them. In the 1970s I could ask to see them and I would be granted immediate access by the local person. Now it has to go to somebody higher up to approve it.

MR JUSTICE GRAY: Does it make any difference if they are dead?

A: No, generally it applies to whether you can see the records of this particular case, and they make no distinction as to whether people there are living or dead because the family members, children, would still be living too. I believe that there was concern, or at least that is what is cited, the family is still sensitive to the issues.

MR IRVING: Would it be right to say that if an historian went to Moscow and came back with the Goebbels diaries and gave them to German archives, they would then vanish for several years?

P-34

A: It is a possibility that they would say, "We need to classify these" and do whatever else and it would temporarily not be available.

Q: Are you familiar with the Goebbels diaries in any respect?

A: Only in the publications of the various -- the Frohlich publication from Munich and previous publications. I have not worked in an original Goebbels.

Q: Have you any sense of how long the period elapses between the arrival of the original diaries in the hands of those, shall we say, processors and the publication in generally accessible form? Is it a matter of months or weeks or years?

A: I do not know.

Q: Professor Browning, do you have any particular problems as a non-Jewish historian writing about the Holocaust?

A: Could you tell me a little more -- can you give me a little more direction as to what you are looking at? In terms of do I have a psychological problem or personal problem? Have I encountered ----

Q: Professional problems?

A: --- professional problems? Occasionally, one might say that it has been -- I can say in one or two cases I think it affected the opinions of some people concerning my publications.

Q: I do not want to explore this in any great depth, but would I be right in suggesting that the Jewish historians

P-35

regard the Holocaust as their patch?

A: No, I would not. I think, in fact, many of them were very accepting of my coming into the field because it, in fact, indicated that this was not their patch, if I can use your phrase, but something that was not just important to Jewish history but important to world history, and that the fact that a non-Jewish historian would look at this would be seen as a validation of the universal importance of the topic, not just that it was a parochial ethnic history of a particular people and that no one else, this was not important to anyone else.

So I would say I have had for more re-affirmation of supports from Jewish historians than the very few cases in which I felt my work would have been seen in a negative way because I was not Jewish.

Q: So you have not been disadvantaged in any way by being a non-Jewish historian?

A: There are one or two instances where that may have been the case, but far more prominent -- far more often that has not been the case.

Q: You used to be Professor of History at Pacific State Luther University?

A: Pacific Luther University.

Q: In Tacoma in Washington State?

A: Tacoma, Washington.

Q: You are now currently a Professor of History at?

P-36

A: University of North Carolina at Chapel Hill.

Q: At Chapel Hill. One of the most prestigious universities to have held tenure at would have been Harvard, would it not?

A: Harvard would be a very prestigious university.

Q: So if a chair in Holocaust studies had been appointed in Harvard, it is a position you would have applied for or hoped to obtain?

A: I was considered for a position there.

Q: What militated against you, do you think?

A: No one received the position, Jewish or non-Jewish historians. At least one person on the Search Committee made a statement to the press that they felt that only someone deeply grounded in Jewish culture should be eligible.

Q: What did he mean by that, do you think?

A: Well, in fact it was a she and the statement was applied to me and the other candidates because they were mainly working in German history, not in Jewish history, and I think this was meant that she did not like any of the candidates.

MR JUSTICE GRAY: No. So no one was appointed, is that what you say?

A: No one was appointed.

MR IRVING: In fact, the man who had put up money for this new chair then starting raising obstacles, is this not right?

P-37

A: I believe when they did try to make an appointment for a semester per year, rather than a full-time, he refused to release his money to support the appointment on that basis.

Q: Yes. Is it right that the New York Times in July 1997 quoted you as saying that you felt that you had been ruled out because, and I am quoting, "I am not Jewish. I come from a small college"?

A: That was a quote that was taken entirely out of context. In the letter to the editor published the following Friday, I explain what the full quote had been, and that is she had asked me why I had not, why did I think I had not been appointed, and I had said, "Well, I do not know. I am not on the committee, but I can read in the press what several people have said themselves", one of which is the one I gave you earlier, and having quoted this person on the Search Committee to the effect that someone only deeply grounded in the Jewish culture should get it, I then commented, "That would make me doubly ineligible because I do not work in Jewish history and I am not Jewish". She quoted the last four words and left out all of the context and totally distorted the

meaning of the statement that I gave and that was explained in a letter to the editor at the end of the week.

Q: Are you as deeply shocked as I am to hear that the press takes things out of context?

P-38

A: Not a surprise, no. It does happen.

Q: Professor Browning, just one more question on this particular avenue: if you were to apply for a position of Director of the US Holocaust Memorial Museum, do you think you would be in the running there or would there be an obstacle there too?

A: My guess is in this generation it would be considered not likely to happen, but that within another generation this would be very different.

Q: Changing the theme somewhat now, how long has there been talk of Holocaust, not necessarily that word, but just of this particular -- it appears to come to the fore again in the 1970s, the campaign, would you agree?

A: When I started work in the early '70s, very, very few people were working on it. By the end of the '70s there were academic conferences on it. So that was the decade in which I think there was a shift to a greater consciousness of the Holocaust as an important historical topic.

Q: Were you here in the courtroom earlier when we examined a book published by the Memorial Museum, a passage written by Aberhard Jackel?

A: I was here, and yes.

Q: Aberhard Jackel, would you agree in that passage, or as it was rendered here in the court, suggested that until my book 'Hitler's War' was published, there had been no real

P-39

investigation of the Holocaust apart from the Reitlinger and the Hilberg books?

A: Yes, I think I would not agree with that statement. I would say that there had been substantial study of the Holocaust; the Trunk book, in terms of the Jewish Council's, Hilberg in terms of the apparatus, Schloenus in terms of the preHolocaust bureaucratic process. What had not been studied before you published was a particular focus on decision-making process and Hitler's role. That is one part and, in so far as we can confine ourselves to that, indeed, your publication of 'Hitler's War' was the impetus for the research in that area.

Q: What was the reason for this 20 year, 22 year, lack of interest in examining whether the decision had been given or how the decision had been given for the Holocaust?

A: I think probably several things. One, the person who had focused mainly in the German documents, Raul Hilberg, was very interested in the bureaucratic structure, but not terribly interested in dating decisions. This happened to be his focus.

Q: Have you discussed this matter personally with Raul Hilberg?

A: Yes and he is more interested in bureaucratic structure than he is in linear or chronological decision-making process. I am more interested in chronological process than bureaucratic structure.

P-40

Q: Do you know what his opinion is on whether Adolf Hitler actually issued an order or not?

A: I think his feeling is if you are looking for an order in a formal sense, that such a thing probably was not given. If you are looking at it in the way that you described earlier, calling it the Richard Nixon complex, that Hitler made very clear to Himmler and Heydrich what he expected

and they understood what was expected of them, that he -- I cannot speak for him, but I believe he would not have been uncomfortable with that formulation.

Q: The kind of "don't let me find out what you are up to"?

A: Well, but also, "this is what I want but don't let me find -- don't bother me with details". He often said to several people on record, "Take care of this. In 10 years report back that it was done and I will not ask you how it was accomplished".

Q: In connection with what topics would that kind of decision have been made, not in connection with the Holocaust?

A: I think in terms of the ethnic cleansing from the annexed territories from Poland, he used that expression, to the Gauleiter along with Warthegau and Schlesier and whatever ----

Q: Gauleiter Dreiser or someone like that?

A: Yes.

Q: He say he did not want to have interim reports, "Just tell me when it has been done"?

P-41

A: That he indicated he did not want to be bothered with the details. He wanted it accomplished -

MR JUSTICE GRAY: Are we still -- I am so sorry -- talking about Raul Hilberg's view or are we sliding into your own view?

MR IRVING: No. We are now talking about his own expertise.

MR JUSTICE GRAY: It is quite important to know whose opinions I am hearing.

MR IRVING: I believe this is Professor Browning's opinion. (To the witness): Am I right?

A: Well, we started talking about what Hilberg and I explained what I thought he would be comfortable with, and then I believe we kind of shifted into how we would understand this kind of decision making process would be done that was not attributed to Raul Hilberg specifically but a general discussion.

Q: My Lord, it may be helpful ----

MR JUSTICE GRAY: What I want to have clear is what you have just said, which was very clear, if I may say so. Was that your view, namely, he effectively made clear what he wanted done and then said, "You get on with it and I do not want to know the details"? Is that your view?

A: Yes. We have documented cases where, in terms of ethnic cleansing, he made that statement, and so I would say this is a way in which Hitler conveys or makes decisions or gives orders that we would not consider a formal order in

P-42

the sense of a signed document, and I would say that is my opinion, not attributed to Raul Hilberg.

MR IRVING: My Lord, I should also have given you a kind of topic paragraph of what I intend doing today.

MR JUSTICE GRAY: I have made that clear before; it does help me.

MR IRVING: Yes. I intend having this general discussion to start with and then we will revert to his report, and I hope that we will cover the first 25 pages of the report during the day which is covering very much ground level operations of the Einsatzgruppen on the Eastern Front.

MR JUSTICE GRAY: Yes. At the moment it is a sort of bird's eye view which is very helpful to start off with.

MR IRVING: Indeed, my Lord. This kind of discussion is helpful because I do not know Professor Browning, we have never met, and we have never had the pleasure and I am, frankly,

interested in finding out what he knows.

MR RAMPTON: I have something to say, if I may since, we have now been told what the plan is. (A) I am not interested, I mean as an advocate appearing for clients, in having this court used as what one might call an historical forum and I dare say your Lordship is not either unless it goes to an issue in the action.

I heard with some alarm Mr Irving threatening to spend the rest of the day cross-examining about the Einsatzgruppen shootings in the East. Your Lordship may

P-43

recall that Mr Irving has made a very clear concession that those shootings happened on a massive scale, that they were systematic and that Hitler authorized them. So where ----

MR JUSTICE GRAY: Yes, but, well, I do not know what the questions are going to be yet, but this is your -- I am just going to say something to Mr Rampton -- expert. He is saying what he says. He is making various historical assertions. Obviously, Mr Irving cannot resile from what he has already conceded, but he is entitled to go through it. I do not know exactly what he is going to ask.

MR RAMPTON: I do not know either. If there is some area of Professor Browning's report which Mr Irving disputes which is still relevant to the case, then, of course, and it may be that there are other areas of the report which he can, as it were, try to use to undermine Professor Browning's credibility. That I cannot object to either. What he cannot do in cross-examination -- I am only putting down a marker -- now is to try, as it were, to go back behind the concession that he has made.

MR JUSTICE GRAY: I think it is helpful to be reminded of the concession. I do not suppose Mr Irving will but I certainly do not see any reason why he should not follow the path.

MR IRVING: I do not think that was a helpful interruption at all from Mr Rampton. Normally Mr Rampton's interruptions

P-44

are welcome and very helpful but, if he had only waited, I have written in large letters here on my notes, "We do not contest the shootings".

MR JUSTICE GRAY: I think so far, if I may say so, you have been perfectly consistent in the way you have put your case, but Mr Rampton was putting down what may turn out to be an unnecessary marker.

MR RAMPTON: It may well do.

MR JUSTICE GRAY: Let us press on.

MR IRVING: You were talking about the ethnic cleansing of these Polish regions. What would have been meant by that? If Hitler had said, carry out the ethnic cleansing but do not tell me for the next ten years, just come back in ten years to tell me it has been done, would the ethnic cleansing have actually involved the mass extermination of any category of people?

A: That involved the mass expulsion of Jews, gypsies and what they said was other undesirable people, in these areas to be repopulated with ethnic Germans brought back from the regions of Eastern Europe conceded to Stalin in the non aggression pact.

Q: We have a bit of a problem, do we not, with the fact that parts of Eastern Europe had been conceded to Stalin? Do we have any clear figures as to how many thousands or hundreds of thousands of Jews had been dumped across the demarcation line by the Nazis into the Soviet controlled

areas?

A: We do not have exact figures on either those that were dumped or those that fled, but the estimate that I have seen ranged between 200 and 300 thousand that escaped from the German occupied side of Poland to the Soviet occupied side. But those are estimates because obviously no one is keeping track in any systematic way.

Q: Yes. To recapitulate, for the first 20 years after World War II there was no real investigation into the decision making process by which this appalling crime had been set in motion?

A: There were not studies focused on that, but they focused on a great deal about the Holocaust. One could not say the Holocaust had not been subjected to careful study. The decision making process in the 1930s was subjected to very careful study by Karl Schleunes and Adam and Adam also did venture into the field up to 1941 and came up with a very late date by those times. He said Hitler did not decide until the fall of 41, which to historians at that point seemed to be shockingly late. It is now a figure that many of us would agree with but at that point it was quite a revolutionary proposal.

Q: To cut straight to the bottom line, nobody has ever found a single document indicating a Hitler decision or a Hitler will in this direction. We have had to do a lot of extrapolating and reading between the lines. Is that

correct?

A: A lot of it comes from a collection of documents from which one draws inferences, from which one looks at circumstantial evidence and how one construes the Nazi system of work. But we do not have what we would call the smoking pistol document; your thousand pounds is still safe in your bank account in that regard. We do not have a signed order by Adolf Hitler or a document that explicitly refers to him taking the decision in that kind of way.

Q: Are you surprised at that?

A: No, because we have -- one area in which we have a record of how a decision was made was when Himmler goes to Hitler in late May of 1940, when he wants to revalidate the ethnic programme that Frank and Goering had more or less slowed down in the spring 1940 on the grounds of priority of military concerns, and then, when it seemed clear that victory in France was very near, Himmler goes back, presents his memorandum to Hitler.

Q: May 25 1940, is that right?

A: Yes. What Himmler then records is that Hitler read the memorandum, found it very good and correct, and said to Himmler, "You may show this to the others and tell them it is in my line of thinking".

Q: How do we know that?

A: That is because we have a second memorandum by Himmler

recording the conversation.

Q: Yes, but he does not actually quote those words, does he? You have rather embroidered them.

A: This is how Himmler records the conversation. He does not have a quote, Hitler said, quotation mark.

Q: Do you remember one particular phrase in that Himmler memorandum of May 1940 in which Himmler says something like, "There can of course be no question of the wholesale

extermination of the Jews"?

A: At that point he considers what he calls a Bolshevic solution as unGerman and impossible. Yes, I have quoted that many times.

Q: How would you interpret that particular phrase?

A: I would interpret that, that Himmler is not the one who would propose such things, that if he eventually did that it could have to have come from someone with greater authority than him.

Q: Let us take it in stages.

MR JUSTICE GRAY: Mr Irving, do you mind me interrupting you? Are we now on the general perspective? Are you going to come back to these individual documents?

MR IRVING: You will notice that when I start referring to page numbers of his report, my Lord. If I could take that piece by piece, if Himmler wrote in his May 25th 1940 memorandum that sentence saying "There can be no question of a Bolshevic solution of the Jewish problem", in other

P-48

words, just liquidating them ----

A: Liquidating a whole people.

Q: There is no indication of course, either on that document which Himmler actually marked in his own handwriting, or in the subsequent memorandum that he wrote, that Hitler had overruled him and said, "Oh, on the contrary", is there?

A: What Himmler wanted to get from Hitler was backing for his renewed ethnic cleansing, and that Himmler comes away with the affirmation that he can cite Hitler's backing if Frank and Goring and others try to block him again.

Q: Of course, you would agree that there had been a lot of killing of the Jews in the Polish campaign and afterwards had there not? .

A: The greater focus I believe, was on killing of Polish intelligentsia but certainly, given the Jews are about 10 per cent of the population I think that the percentage of fatalities percentage wise is greater among the Jewish population than the Polish.

Q: In the conferences conducted by Heydrich in the autumn 1939 and over that winter, of which we have the records, the Jews are also mentioned as being a category to be exterminated, are they not?

A: There is a series of different quotes. I do not think there is a global reference to killing all Jews. There is one to killing Polish intelligentsia.

P-49

Q: The Jews, the clergy?

A: They list this as a category of people. It is not a global killing of all Jews but Jews are among the groups that can be killed. No one is going to get into trouble killing Jews.

Q: Were they to be killed because they were potential leadership material, or potential trouble makers, or what? Was there a reason giving for the killing given on that occasion?

A: No.

Q: Or was it purely ideological?

A: I do not remember the exact document in its entirety so I would hesitate to say something.

Q: There is a string of documents September and October 1939.

A: There is a collection of references. Sometimes these references refer to different categories. They are not the same categories each time. Sometimes Jews appear among that category. I do not recall that they give a detailed justification of why each of those categories is mentioned at

this time.

Q: I do not know if you familiar with my book Hitler's War at all?

A: Not very familiar.

Q: Will you accept that -- and I can be proved wrong by Mr Rampton -- I refer in great deal to these particular

P-50

September and October 1939 conferences at which the Jews were to be killed and the orders were given?

A: I cannot answer that because I have not read that section.

Q: Very well. Have not the Jewish people throughout this century, in fact long before World War II and since World War I, constantly proclaimed that they were in danger of being exterminated, or indeed that they were already being exterminated?

A: I could not say yes to that.

Q: It has been a kind of an ongoing story, has it not?

A: No. When you say "the Jews have said", I am afraid that is the kind of formulation that it is impossible to answer. You may find one Jew or another, but that does not mean "the Jews" have constantly said that.

Q: Can I hand you this book to have a look at? Can you read the title on the jacket of that book?

A: "The Yellow Spot, the Extermination of the Jews in Germany".

Q: Can you see who has published it?

A: With an introduction by the Bishop of Durham.

Q: If you look on the back of the spine, you will see the initials VG, Victor Gollantz.

A: I see the Gollantz written at the bottom.

Q: So the book has been published by a reputable English publisher. Can you rapidly flutter inside and see what

P-51

year that book called "The Extermination of the Jews" was published?

A: In 1936.

Q: Three years before World War II we are already hearing books on this subject.

A: If one looks right below the title page, it says "The Yellow Spot, the outlawing of half a million human beings". It does not say the murder of them, but it does say "the outlawing".

MR JUSTICE GRAY: Is it confined to 33 to 36?

A: It is published in 36.

Q: I wonder what the events are it describes. It may be it is only the last three years?

MR IRVING: It is a very good history, actually, of the Nazi persecution of the Jews up to that time.

MR JUSTICE GRAY: You mentioned the first world war. It does not go that far back?

MR IRVING: I could have gone back to similar publications back at the First World War but it is a rather arcane exercise. It is an odd thing that the word "extermination" at that time can be taken to mean something which means something totally different to the way we understand it now, is it not?

A: It seems a fairly hyperbolic title.

Q: Do we have the same problems with word in German? Words like umsiedlung and ausrotung?

P-52

A: The conventional use is turned into a specialised use. Language changes that way all the time. Before 1971 "destabilization" meant one thing. After Kissinger uses it, it takes on a second meaning because of historical context.

Q: Of course, "pot" and "grass" and things like that change their meaning, do they not? Is there any indication that words used even at the same time in the Third Reich can have totally different meanings depending who is using them, who they are speaking to? For example, an apparently innocent word like umsiedlung, which means resettlement, can take on a totally different sinister meaning when uttered by Heinrich Himmler?

A: Yes. If you are referring to ethnic Germans, it generally means that you are removing them from one place to another. In documents referring to Jews after 1942 it usually means sending them to a camp.

Q: Without wishing to pre-empt the logical flow of this examination in a way, can I direct your attention to one document in the bundle which is probably next to you, H3(i)? Footnote 54 is the one I am after.

A: Where do I turn?

MR IRVING: If you look at the bottom there is FN 54 in black felt pen.

A: Which tab? FN 54.

Q: You will remember the episode because it is the umsiedlung

P-53

of 20,000 Jews at ----

A: Yes, and then two pages later it becomes a different word.

Q: You have got it. You are absolutely right. Two pages later they are quite plain that they were shot?

A: Yes.

Q: So in this document umsiedlung refers to killing?

A: Correct.

Q: And you can see the word umsiedlung. My Lord, you will see it in line 7 of the first paragraph. Does your Lordship have the document?

MR JUSTICE GRAY: I am still making my way there.

MR IRVING: In 54 (i), document November 8th, 1942. Actually, there is no dispute about this. The Nazis killed 20,000 Jews in two days in the middle of October 1942. We are just looking at words.

MR JUSTICE GRAY: Where is umsiedlung?

MR IRVING: Seven lines down my Lord "Umsiedlung der Juden". Then in the following line you have umgesiedelt. So quite clearly it means killing, does it not?

A: Yes.

Q: So in this man's mouth at this time, in this document, umsiedlung and umgesiedelt means killing?

A: Yes.

Q: Now would you look at the last line of that paragraph, Professor? This is the only trap I have got prepared for you today. Would you translate into English the last

P-54

sentence please?

A: Let me read the whole first.

Q: The sentence beginning with the words "Die helfter..."

A: Yes. They are referring to village which had had contact with the partisans and they say half the inhabitants were shot and the other half umgesiedelt to a neighbouring village.

Q: So there you have in the same paragraph two totally different meaning of the word umsiedlung?

A: And the context making it fairly clear.

Q: Otherwise it would have been no use to us, but it is an illustration, is it not, of the pitfalls we have and how easy it is to adopt what Mr Rampton might call a translation of a word, purely because we do not have the context, the surrounding country side, to tell us what this particular word means?

A: There are different meanings to the same word, yes.

Q: So, in fact, if somebody accused you of using the word wrongly and perversely and doing it deliberately, and you did not have the surrounding country side to help you, that would be a bit unfair, would it?

A: It would depend upon the broader context of the accusation.

Q: Would you now please take your expert report? You say your pagination is different from ours?

A: I believe they have my court formatted one here as well.

P-55

Q: Go to page 5.

A: Yes.

Q: First of all, I would ask you to look at your main title, The Evidence For the Implementation of the Final Solution.

A: Yes.

Q: What do you understand by the phrase "Final Solution"?

A: I understand that is a programme to kill the Jews within the Nazi sphere of influence in Europe.

Q: Is that not a perverse translation of that phrase Endlosung?

A: No. I think it is a translation that becomes very clear, in terms of that stage. The word Endlosung does appear with a less lethal meaning earlier, but I think certainly it comes into this meaning and a number of documents have ----

Q: A less lethal meaning in earlier documents. In other words, that does not necessarily mean killing? It can also mean other final solutions?

A: They speak in different ways of an engilticus losung or a total or gazumpt losung. There is a different series of words. By 42 when you get folders, for instance, it will then say this becomes in a sense the accepted word, and I think at that time it also becomes the word that applies to a particular programme, not a general statement that has lots of different meanings.

P-56

Q: Professor Browning, would you accept that in the archives of the German Foreign Office the file title "Endlosung der Judenfrage" goes back to 1936, certainly to 1938?

A: There are certainly documents that predate, but the file that I think is actually called that, I would have check and see what the earliest documents on that are. I do not recall at the moment.

MR JUSTICE GRAY: It is true, is it not, that Endlosung is used at a time when deportation rather than extermination was policy?

A: Yes, at the earlier period there will be a series of words. Sometimes it will be losung, sometimes it will be gazumpt losung, and sometimes total losung and sometimes endlosung.

When we get to the period of the Wannsee conference on, it usually is expressed as Endlösung and you do not get nearly the same mix. That is just my impression. I have not done an actual count of how often that occurs, but my impression is that at that point, when it is referring to a specific programme, that is the word that is used almost consistently.

MR IRVING: In other words, you should really have called the report, this is no real criticism, not evidence for the implementation of the final solution, but evidence for implementation of a killing programme, or a systematic killing programme? Final Solution could have meant something else?

P-57

A: I think I define what I mean by it in the report, so I would say that it is perfectly fine to use the term that I used.

Q: We are not denying the fact that Final Solution does come to mean killing, but it did not always mean that, did it?

A: It will appear in earlier documents when it does not mean killings, yes.

Q: You are familiar with the event reports, are you not?

A: Yes.

Q: You did not quote in your report the passage on the Jewish question from the event report No. 81 dated September 12th 1941. I am just going to quote to you three and a half lines from it. It is the operations of Einsatzkommando 6, and the quotation is as follows. It may be familiar to you. "The gratuitous evacuation of hundreds of thousands of Jews", what would "evacuation" there be?

A: I have not seen the written ----

Q: "The gratuitous evacuation of hundreds of thousands of Jews may be considered to be an indirect success of the work of the security police. As we hear mostly from the other side of the Urals, the Ural mountains, this is a considerable contribution to the solution of the Jewish question in Europe". This is September 1941 and in your opinion are they referring there to a geographical evacuation, or something more sinister?

A: Not seeing the wider context, I think he is probably

P-58

referring to the escape of Jews to the Soviet side, and that these were Jews that were no longer within German control.

Q: "The gratuitous evacuation of hundreds of thousands of Jews may be considered to be an indirect success of the work of the security police", in other words they had fled?

MR JUSTICE GRAY: They did not want to get shot?

A: They are Jews that do not have to be shot because they have left German custody.

MR IRVING: So at this time there was no plan to catch all the Jews you could and kill them?

A: What the reports note as they go further East, there are fewer and fewer Jews in the areas the Germans get because so many have fled, and this is in a sense of a way of saying why his body count has not been maintained, that so many of these are have fled beyond the Soviet lines. We can consider this an indirect success. If the programme then was still expulsion, this would not be an indirect success, it would be a direct success. If it is an indirect success, that implies that it is something other than what the direct process is.

Q: You said something rather interesting there, the fact that his body count had not been maintained. What did you imply by that?

A: Some of the Einsatzgruppen or Einsatzkommandos have a much

P-59

lower count than some of the others?

Q: Did this reflect badly on them, do you think?

A: In the sense that sometimes the commander says, well, the Jews have fled from this area in the sense he is explaining up the line why there is a discrepancy, or why there is an uneven pattern and some of his officers will not be reporting the same numbers as others. He does not go into detail but I would infer from that that he fears that they may be viewed as not zealous enough in the sense he is covering for them and giving an explanation to Berlin as to why some kommandos have much larger numbers than others.

Q: You appreciate what I am getting at here, do you not? The fact that there may have been a tendency to bloat reports or to exaggerate figures, a temptation?

A: There certainly is the possibility of that, but at the same time of course that means they know that Berlin wants big numbers, which would indicate that they perfectly realize they are part of that programme, the purpose of which is to get big numbers, that they report exact numbers when everything we know about how the killings were carried out, no one was sitting with a clicker giving a precise body count. So we would not take these as precise numbers, but they are ball park numbers.

Q: So, when somebody reports from the front to Himmler or to Berlin that 360,000 Jews have been killed in a three month

P-60

period -- you are familiar with the report I am referring to?

A: Yes.

Q: And It is a very precise figure, accurate down to the last digit, we should not expect that to be genuinely accurate down to the last digit?

A: No, because it is based on reports like Pressertoft, which is a round figure of 20,000. So that is a false precision in the report; that it is a ball park figure of the general area, I think is also the case.

Q: They are mind boggling figures, are they not?

A: Indeed.

Q: When you consider -- I do not know what your equivalent stadium in North California is, but Wembley Stadium here, for example, and you imagine shooting all that number of people in that space of two days, it is quite a daunting task.

A: It is a very large figure.

Q: How large were the units that carried out these shooting operations? How big was an Einsatzgruppe?

A: Einsatzgruppen total about 3,000.

Q: Yes. But in each one were they all the same size?

A: No, this is all four together. Einsatzgruppen A was I think the largest at 900, Einsatzgruppen B was probably the smallest at 600.

Q: Their tasks were not just killing people, were they? They

P-61

had tasks?

A: Yes.

Q: Can you specify to the court what the other tasks of the Einsatzgruppen were, apart from

killing people?

A: They were to, well, kill others than Jews. They were to capture Soviet function areas, communist party members and they were to be killed, they were to secure left behind documentation, particularly trying to get NKPD documents or communist government documents, so they were to take likewise what was called all preventative measures against potential enemies.

Q: Rather like CIC after the Second World War?

A: Well to uncover if agents had been left behind the retreating armies.

Q: Rather like the CIC, the Counter Intelligence Corps of the American Army after the Second World War, except for the killing operations, of course?

A: I do not know what the CIC was exactly.

Q: Are you familiar with the Sonderkommando Kunsberg, for example, the operations they carried out raiding Foreign Ministry buildings after the fall of Prague and Belgrade and so on, capturing documents?

A: Securing documents was one function.

Q: Quite an important function, was it not, of the Einsatzgruppen? They had an intelligence gathering function?

P-62

A: They do not refer too often in the documentation. This does not seem to have been a priority, but it was something, when they did it, they boasted about it.

Q: Professor, I disagree with you on that. If you were to read the event reports of the Einsatzgruppen, you will surely find that their killing operations are only one paragraph, and that they have other paragraphs detailing in some detail, describing in some detail, the intelligence gathering operations in which they were involved and other routine police rear area operations?

A: The reports are very long and the killing of Jews is usually one section within that much longer report.

Q: Dealt with in a very callous manner, just 20,000 Jews were shot.

A: It is usually done fairly briefly.

Q: Have you ever tried to do a back of the envelope calculation on the feasibility of these killing operations, given the limited number of personnel who would have been available and the limited number of trucks that they had and the primitive nature of their trucks? Do you remember reading in any of these reports about how their horse drawn carts had broken an axle and that kind of thing?

A: I do not remember a report on a broken axle, but I do remember reports where they deal with manpower problems, so that by late July they have gotten permission to raise

P-63

auxiliary units in the area, that they often refer to the co-operation of the Army in providing people for cordons, that according to the preinvasion agreement between the Army and the SS, the Army was to provide logistical support so, when they needed extra trucks and this kind of thing, the Army was expected to provide them. So that when we say that an Einsatzgruppen operation involved a kommando, that is not the only manpower that is involved. What we have found from the newer documentation from the Soviet Union is the degree to which the Einsatzkommando has since wanted to hog all the credit. Now that we see more documents, we can see that others were involved too.

Q: The Soviet archives have been very important, have they not, the former Soviet archives?

A: They have been important in fleshing out what happened in the Soviet Union. I do not think they have transformed our understanding of what happened elsewhere in Europe a great deal.

Q: I have read your report with enormous interest, because of course I am not a Holocaust expert, but I have shown particular attention to the sources that have been used, the archives in Minsk you refer to?

A: Minsk, Riga, Moscow.

Q: How long have these archives been available to the average run of the mill incorrigible revisionist historian who wants to go and do research in them, do you think? Ten

P-64

twenty, thirty years or quite recently?

A: I have not worked in them. Gerald Fleming, I believe, got into the Riga archives very early on, and he has kindly provided me with my first documents out of these areas. So that it was possible to get into some of them. It was also possible in the Zentralstella in Germany to look at copies of documents that they had gotten from the Soviet Union much earlier.

Q: In Potsdam?

A: No Ludwigsberg outside Stuttgart.

Q: West Germany?

A: Yes. They had gotten what we now see, in a sense the cream of the crop. They had in fact seen many of these documents and brought photocopies back to Ludwigsberg. We had seen a number of the documents that then we found out were either in the secret archives or somewhere else. Historians could now see the whole pack. What you had was the selection in Ludwigsberg of selected documents.

Q: Let me try to zero in what you just said.

MR JUSTICE GRAY: Before you do that, Mr Irving, I am so sorry to interrupt because I am trying not to. It is difficult being interrupted, but I just want to see where we are getting with this. We know that you accept that the Einsatzgruppen killed probably hundreds of thousands.

MR IRVING: We are looking at numbers, now, my Lord.

MR JUSTICE GRAY: Let me make sure I am understanding where we

P-65

are going -- killed hundreds of thousands of Jews. It may well be that what you are suggesting at the moment is that those reports were exaggerated. But surely, for the purposes of this case, what really matters is that going back to Berlin were reports giving the numbers that they gave, because at this stage in the case we are really on how high the knowledge went, and was there a systematic programme in place.

MR IRVING: I am very familiar with what Mr Rampton is trying to get out of this case, my Lord.

MR JUSTICE GRAY: Do not worry about what he is trying to get out of the case. I want to make sure that I know where we going with the cross-examination.

MR IRVING: I will put my cards face up on the table then, which I was hoping not to have to do as early as this in the cross-examination.

MR JUSTICE GRAY: You must in order to answer my question and I am sorry to interrupt.

MR IRVING: We are looking at the August 1 1941 document. That is at the bottom of this particular alley, the document with which your Lordship is familiar.

MR JUSTICE GRAY: That is rather my point. I am sorry to interrupt you. All right, maybe a lot of the Jews were fleeing over the Urals and they were being shot by the Soviets.

MR IRVING: That is not that document. The fleeing Jews and the

P-66

question of the killing capacities, the manpower, the personnel, the trucks base and so on, goes purely to the matter that Richard Evans has raised. Your Lordship will be familiar with the fact that Richard Evans has suggested four criteria for what a Holocaust denier is. A Holocaust denier is somebody who says Hitler did not know; a Holocaust denier is somebody who says the figures were less, and that is what this is about, that particular matter. I am entitled to suggest that the figures have been exaggerated and now unfortunately the Professor knows precisely what I am after.

MR JUSTICE GRAY: All right. If you concede as much as you do concede, I wonder whether there is a great deal of scope for debate on this particular topic.

MR IRVING: The figures are important, my Lord, I do suggest, because there was undoubtedly an appalling massacre on the Eastern Front. I do not deny it. No sensible historian does deny it, rather. I am not going to be shot down by Mr Rampton for suggesting the figures are not as large as they have been made out to be and there is room to suggest that, whatever one has conceded, I rather dispute the word conceded, it is a position I have always adopted, the figures are smaller than have been commonly suggested. I will not pursue this much further.

MR JUSTICE GRAY: No. It is really just to clarify my thinking but thank you for that answer. I appreciate that

P-67

dimension.

MR IRVING: Interesting though all this is, and nothing would please me more than to have a long conversation with Professor Browning, this is the court's time and I am acutely aware of that.

MR JUSTICE GRAY: That is what I am conscious of, too.

MR IRVING: Where was I?

MR JUSTICE GRAY: I am sorry, I interrupted your flow.

A: I believe we were talking about documents that an historian would have had access to in the 1980s as opposed to after 1989.

MR IRVING: Yes. In other words, it should not really be held against a historian if he has not gone and worked in Minsk and Riga and these other places in your view?

A: A number of those key documents in fact were by the 1970s, and in the Zentralsteller some copies were in the Institute in Munich. They are cited in books and at various conferences, and then we find that they were part of a larger file. But many of the key documents were available before 1989.

Q: I understood you to say that the German official or semi-official historical institutes had privileged access to Russian collections which are not immediately made available to other historians?

A: No, not the historical institutes, the German judiciary in the process of trying Germans, most of which took place in

P-68

the 60s and 70s, did have access, and that they in turn at Ludwigsberg allowed historians to come and see their documents.

Q: Like Goldhagen, for example?

A: I worked there a great deal. They have a collection which is a USSR folder which has lots of materials, copies from Ludwigsberg. So I have seen some of these documents sitting in Jerusalem, that once they were out, the Xerox machines worked and copies were now accessible in a number of places.

Q: Can I ask you to look on paragraph 5 or the report paragraph 3.2?

A: 3.2 yes.

Q: You say that the Nazis sought to destroy all the documentary evidence and that is why we are so hard up.

A: Yes, I mean, they certainly -- for instance, we have none of the internal papers of Eichmann's bureau. We have his correspondence in which copies ended up with the Foreign Office and elsewhere, but he seems to have done a very good job in destroying virtually all of his papers, as an example.

There are pockets of Himmler documents that have survived, as you and I both know, but certainly some that did not. And that we have seen orders, for instance, from Heydrich to people that destroyed documents.

Q: What disturbs me is your suggestion in paragraph 3.2, not so much a suggestion as a lament, that we have any amount

P-69

of evidence relating to the shootings, but virtually nothing at all relating to gassings?

A: The number of written documents relating to shootings is far more extensive than the number of documents relating to gassings in Operation Reinhardt. I was not dealing with gassings elsewhere.

Q: You used the useful concept of it not being symmetrical. It is rather lopsided.

A: Yes.

Q: Is there any methodological reason for that in your opinion?

A: Well, I think if we read Globocnik's ----

Q: I mean, assuming the gassings took place on this kind of scale that is now alleged, is there any reason why the documents should not be available on the same scale?

A: Two reasons, I think. First is it seems that there were much more reporting back to Berlin concerning the shootings, that is, we have the structure of these daily reports and then Heydrich formulated them into bi-monthly and monthly reports, and circulating them among up to 100 people on the Verteile, the distribution sheet.

In terms of Operation Reinhardt, we have no evidence of regular reports back of this nature. We do have Globocnik's letter to Himmler in early 1944: "I have destroyed all the documents except those relating to finances. Can we get the audit done so I can destroy

P-70

those too?"

Q: Yes, I am familiar with that document. Can you suggest any logical reason why they would have destroyed one category of documents but not the others? After all, they were in the killing business, you tell us, and Jews are the victims, so why should they have been more methodical in their destruction of the gassing documents than the shooting documents?

A: I think they probably produced many fewer documents relating to the three camps that were centralised under Globocnik in Lublin, while the shooting we have in a sense both the reports that go back to Berlin and things like the Brest-litovsk document, individual police reports that have

survived in pockets, but certainly nothing comprehensive like the Einsatzgruppen reports.

MR JUSTICE GRAY: Professor Browning, I am not sure you have quite answered Mr Irving's question.

A: So that more shooting documents will survive because shooting took place in a decentralized way, and so you will have pockets of documents that survive in this area or that area. But given that the Operation Reinhardt activities were centralized, there would not be local documents about them at this police station or that police station, some of which would have slipped through and not been destroyed. So I think you have a much more centralised document base which was then systematically

P-71

destroyed and you do not have as many strays that managed to survive by inadvertence.

MR IRVING: I am not sure that it is helpful that you refer to Operation Reinhardt, or perhaps you ought to define what you mean by Operation Reinhardt at this stage?

A: I would take Globocnik's own definition which was that it was the camps, the deportation from the gettoes to the camps and the collection and use of the materials collected and the use of Jewish labour. I believe there those are four functions, if my memory serves me right.

Q: But, of course, there is a function that you have not mentioned, in other words, the killing was not specified as a function of Operation Reinhardt.

A: Well, he talks about the camps, and it is my opinion, as you clearly know, that those camps were created to kill Jews.

Q: Yes, but these camps were operating on a loose rein, shall we say? They did not need the paperwork?

A: I do not think -- I do not know but I do not suspect once that they were a routine and they were stationary, unlike the police that are reporting back, "We are going from here to here" and have multiple duties of which they report about. Here they have one primary function. They were not moving. You do not report every day, "We are still in Sobibor. We have not moved to somewhere else".

Q: Yes, but you are familiar with the fact that the

P-72

concentration camp commandants made regular reports back to Berlin?

A: But Operation Reinhardt is not under the concentration camp system in Berlin and the economic administrative office. They are under Globocnik and are not part of that chain of command and report.

Q: Whom did Globocnik come under?

A: Globocnik technically comes under Kruger who -- Globocnik is the SS and police leader for Lublin. He is under Kruger who is the higher SS and police leader for the general government ----

Q: That is Friedrich Wilhelm Kruger?

A: Yes, and higher SS and police leaders were appointed personally by Himmler, sent out as his emissaries. In this case we know ----

Q: In parallel to Hans Frank. Hans Frank had a lot of friction with Kruger?

A: No, I mean, Hans Frank is not within the SS or under Himmler. He is appointed by Hitler as the Colonial Governor of the General Government.

Q: So there are two parallel systems operating here; there is the SS police system and there is the colonial government of Hans Frank?

A: There is a civil administration and an SS police structure, yes.

Q: What happened after Kruger was killed in, what, February

P-73

1943 or whenever?

A: I did not believe he was killed. I thought he was replaced.

Q: He was replaced?

A: I do not recollect his fate but I certainly ----

Q: Who replaced him?

A: I would have to look at that. I do not know.

Q: So this killing system, or this camp system, in other words, came under Globocnik, who came Kruger, who came under Himmler direct.

A: Yes, but we do know that Globocnik often was in direct contact with Himmler and got special tasks from Himmler. So it may well have been that there is only a link from Globocnik directly to Himmler. Kruger may know what is going on, but may not be getting -- this is speculation on my part because we do not have any of that kind of communication.

Q: Yes. What was Globocnik's fate during the war? Did he fall into disfavour?

A: He had been, earlier before the war, the Gauleichter in Vienna, I believe, had been caught up in the financial scandal. He was then used by Himmler in Lublin until the fall of '43. After this was done, he, like many of the others, were sent to fight partisans in Yugoslavia and he is replaced.

Q: Yes. But was he not replaced as part of a financial

P-74

scandal?

A: No, I do not believe that we have definitive evidence on that at all.

Q: To what extent did the loot play an important part in the considerations of the SS, if I can put it like that, their decision to kill thousands, hundreds of thousands, of Jews, that they were eager to get their hands on their property?

A: I do not believe that is a major factor at all, but it is a concern to get the loot as a by-product of the killing, you will -- that is, I believe they got to the loot because they had killed the Jews. They did not kill the Jews in order to get to the loot.

MR JUSTICE GRAY: Can I go back to a question asked by Mr Irving earlier on and ask it in a slightly different form? If Berlin was interested in getting reports of the shootings, the numbers of the various categories killed, why (and I think this is really the thrust of his question) should they not have been interested in similar statistics in relation to gassing at the various camps?

A: I cannot give you an exact answer to that because it is not discussed in the documentation. Heydrich is the one that gets the reports from the police units. Himmler is the one that is getting reports from Globocnik. It may only be they had different ways of operation. I cannot say exactly an answer to your question because I

P-75

simply have not seen documentation that will explain it.

MR IRVING: Can I just hand you this document, Professor, and a copy for his Lordship as well? There is no need to read it. Just look at the general character of it. Are you familiar with these documents in the British archives?

A: I have seen copies of some of them. I have not actually worked in the decrypts in the PRO, no.

Q: Have you had any contact with Professor Richard Brightman?

A: Yes.

Q: Or with his English researcher, a Dr John Fox?

A: I have had no recent contact with John Fox. The last time I saw him was 1992.

Q: Are you familiar with the fact that there are in the British archives now many tens of thousands of these intercepts of German SS and police messages?

A: I do not know the number, but I know there are a large number.

Q: Yes. Well, will you accept that that particular page comes from a file of over thousand such pages, just one file, and I do not know how many reports are on that one page, there are about 15 items on that one page, so?

A: Seven.

Q: Would it surprise you to hear that in the British archives we have, I suppose, several hundred thousand intercepted SS and police messages?

A: I would not challenge the figure.

P-76

Q: Do you know from the works of Richard Brightman, like this book here, 'Official Secrets', that we, British, and the Americans also through us, were familiar with the killing operations being conducted by the SS on the Eastern Front?

A: We -- as I understand Brightman's book, we were getting the Police battalion reports which were in a lower code between late July and early September or mid September, which Daluege instructed them to send things by courier and not by radio.

Q: 1941 you are talking about?

A: 1941.

Q: Yes. Is it known to you that the reason why Daluege ordered the code change is because Winston Churchill actually made a speech in 1941 relying on the intercepts, talking for the first time about these appalling atrocities being conducted by the SS?

A: I have no single document that establishes a causal connection but there is a chronological meeting -- chronologically, it is a possible interpretation.

Q: Have you seen intercepted messages passed, intercepted by the British, intercepts by the British of messages passed by Himmler to the Einsatzgruppen chiefs, like Jeckeln or Stahlecker?

A: There is the August 1st telegramme, I think it is -- I do not believe it is a radio message -- in which he instructs them to kill the men and chase the women into the swamps.

P-77

Q: There is that one, but I am still concentrating on just these British intercepts, these tens of thousands of intercepted Nazi SS and police messages. You suggest this was just at police battalion level?

A: The reports on the killings that I read in Brightman were police battalion reports back to Daleuge. Now, whether these -- and he first saw them in the United States which may have gotten part of, I do not know to what percentage of the British intercepts were available to him in the United States and how much he may have included of London records, since I just do not know what he has looked.

Q: But if these tens of thousands of messages contained, shall we say, a random selection of intercepts, there was no methodological reason why it should only be intercepts relating to shootings rather than to anything else, would it surprise you to hear that there are only references in these tens of thousands of messages to shootings and no references whatsoever to gassings?

A: It would not surprise me because we have no intercepts that I know of between Himmler and Globocnik, that this was not the way in which they communicated to the Soviet Union.

Q: Are you familiar with the fact that the British official historians, Sir Frank Hinsley, summarized these and similar messages in the British Official History, this was the first clue that we had that these existed?

P-78

A: I believe he said he looked at a few of them, that he did not study that issue in detail, but that he did write books that were on the British intelligence and referred to these, yes.

Q: Do you know that he read the reports, the daily reports, from the Kommandants of the seven principal concentration camps, Auschwitz, Dachau, Buchenwald, and so on, back to Berlin for a number of months over the winter of 1942 to 1943?

A: I did not know that, but again I would say that Operation Reinhardt was not part of the concentration camp system and would not have been in the same chain of command.

Q: What archeological investigations have been conducted in recent years at any of the camp sites that you are alluding to, like Treblinka, Maidonek, Sobibor and Belzec?

A: At the moment, I understand that they are doing archeological excavations in Belzec, that I do not believe at the moment they are doing them in Sobibor or Treblinka. They have made memorials there. Chelmo, they have created again in the forest where the graves were a series of memorials that represent where the trenches were. Whether that was based on somebody that knew or whether that was just placed there, I just do not know.

Q: So there has been no systematic effort to try to quantify the scale of killing that went on in these camps?

A: Belzec, I believe it is the first time at which they are

P-79

doing, which was the most -- the one that does not have a developed memorial is the one which they are doing at the moment archeological excavation.

Q: Just finally on your paragraph 3.2, you said there that as far as the shootings go, we have a lot of documentary evidence, but for gassings we have to rely on eyewitness and circumstantial evidence.

A: For the three camps of Operation Reinhardt. We do have some documentary evidence concerning Zemblin(?) and the gas vans working with the Einsatzgruppen and documents, a few documents, relating to Chelmo. The documents relating to Operation Reinhardt, I have argued, presents the case that lots of people went here and were never seen again, but the written documents do not specify why they were never seen again. They do not specify a method of killing.

Q: Do the documents specify that they were killed or do we have to conclude that?

A: Well, if 20 miles or 20 kilometres from Treblinka the Kommandant complains that the Jews are not buried well enough and that they have got a pestilential smell 20 kilometres away, it would indicate a large number of Jews had been killed.

Q: Do you find that credible, plausible eyewitness evidence, that people can smell something 20 kilometres away?

A: If the wind was blowing the right way from Treblinka, I

P-80

would think that was very credible.

Q: Do you have no problem with any of the eyewitnesses, with accepting the evidence that they have given, the various eyewitnesses, whether evidence given in court procedures or afterwards, more recently, do you not suspect that they may have been subjected to some kind of duress or bribery or promises of better conditions or promises of an alleviated sentence if they would just sign the document?

A: I think one has to assume there is potential problems with all eyewitnesses, but this is one of the materials we have. It is a kind of source the historians have always used and must be used with care, but I would argue that one does not write it off categorically because it has potential problems.

Q: So, as an historian, it is your duty to weigh evidence then?

A: Yes.

Q: To look at it and say, "This one I accept and that one seems implausible"?

A: Or accept parts of this because he was in a position to have seen this himself. The second part of it may be hearsay and, therefore, it is no more reliable than what somebody else told him. So you can have parts of testimony that have greater evidentiary weight -- I would give them greater evidentiary weight than other parts.

Q: You have to rely on your own integrity and your own

P-81

judgment in deciding what to select and what to omit?

A: Historians are always making decisions about selection of documents. We are in a constant process of selection.

Q: And, obviously, in a constant process of compression too because you start off with an immense shelf of documents you have to compress into a reasonable length of manuscript?

A: Yes. We always have to make decisions about what is more important than something else.

Q: Yes, and you would be indignant if somebody called you perverse or manipulative or if you were accused of distorting because you left out a paragraph that just repeated what the paragraph above had said?

A: It would depend entirely on the context. If I had made a very egregious mistake and was caught out, I guess I would not have a right to be indignant.

Q: Have you ever made mistakes?

A: Of course historians make mistakes, yes.

Q: Indeed. But nobody has accused you of wilfully distorting or manipulating because you have made a mistake?

A: I have been accused of wilfully distorting.

Q: Have you misread words in handwriting sometimes, in German handwriting?

A: I may have. I do not know that anyone has called it to my attention but I certainly have been accused by someone who wished me no good will of manipulating evidence.

P-82

Q: Have you ever read the book by, I think it is, Mr Paget QC who was the Defence counsel of Manstein?

A: No, I have not read that book.

Q: Manstein, of course, was put on trial for war crimes?

A: By the British, yes.

Q: By the British, yes. I cannot ask you about what it contains. The Jager document, the Jager

report now -- I am now on page 7, paragraph 4.4, my Lord -- is this a document from the Moscow archives, was it a Nuremberg document?

A: I believe it is a Riga document, the Jager report.

MR JUSTICE GRAY: Are you on 4.5?

MR IRVING: 4.4, my Lord. We are looking at the Jaeger document which is item 1944. You seem to prefer to work ----

A: I am sorry, it is a Moscow document.

Q: You seem to prefer to work from printed volumes of documents?

A: That will depend. If I am doing a detailed study of something like the Vehrmarkt role in the shootings in Yugoslavia or the Police 101, I work in the original sources.

Q: Original records?

A: In terms of a broader project, I will often avail myself of printed documents because one covers much more territory. For instance, the Goebbels diaries I would use

P-83

in their printed form, and at some point the Frank diaries I have used in printed form, but when they referred in there to things they did not include, and it is important to me, then I go to the microfilms and look at the section that they have omitted. Again, an historian makes judgments about how best to spend the time.

Q: Hold it there for a minute. You refer to the diaries of Hans Frank. Hans Frank, of course, at a conference in Cracau in December 1941, I think it was ----

A: December 16th.

Q: --- December 16th, he makes a pretty lurid statement about, "What do the people in Berlin think we are doing? We say liquidate them yourselves". Do you remember that passage roughly?

A: I certainly remember that passage.

Q: Yes. Was there something left out of that passage? There was three dots in the middle of that passage. There is no need to look it up. You say things were left out of the printed texts?

A: No, in the published ----

Q: Published version?

A: --- published version, they take blocks of things and then they will have in brackets, they will say, "At this meeting to discuss these topics" or something of that sort.

Q: Yes. Did they leave things out in a tendentious way, do

P-84

you think?

A: Usually, they leave out topics they think were not of general importance. For instance, when I was looking at the issue of the public health officials in the general government and the editors, apparently, made a decision that was not a topic of general interest, it was a particular interest of mine, so then I went to the microfilms and read a section in the original because it was a topic ----

Q: We are at the mercy ----

A: --- that was important to me.

Q: --- of our editors, are we not?

A: No. No editor has told me I could not include something.

Q: But, I mean, in a volume like that of printed documents, the editor has to have very comprehensive knowledge to be able to make the right choices of what to leave in and what to take out?

A: A bad editor would certainly render a collection of documents much less worthwhile than a

good editor.

Q: Yes. Can we now turn to paragraph 4.5? This brings us to the interesting document, my Lord, of August 1st 1941?

MR JUSTICE GRAY: I think we ought to look at that document, if I may suggest it?

MR RAMPTON: Your Lordship has got ----

MR JUSTICE GRAY: I know where it is. I have just been looking. It is the back of L, is it not?

P-85

MR RAMPTON: There is a file.

MR JUSTICE GRAY: Has Mr Irving got the clip that you are referring to?

MR IRVING: I have footnote 6 here which is the printed version of it.

MR RAMPTON: We have taken the original out of Dr Longerich documents and put it in here. It is 19A in this file at page ----

MR JUSTICE GRAY: Yes, I have it.

MR RAMPTON: --- 19A.

MR JUSTICE GRAY: Mr Irving, have you got this? It is probably quite useful to use this.

MR IRVING: I am looking to see how original it is. I have sent a fax to Germany last night to ask for the original facsimile, but I do not think they are going to co-operate with me.

MR JUSTICE GRAY: This is as good as we have got at the moment. It is Abschrift but we have not got anything else, have we?

MR RAMPTON: The printed one is 19, my Lord.

MR IRVING: This is a pretty important document. We have all agreed in this courtroom, I think. This is August 1st 1941, Muller to the Einsatzgruppen?

A: Yes.

Q: A, B, C and D. (To the witness): Can you translate the line "betrifft"?

P-86

A: Concerning or subject?

Q: Yes. Just translate that line, please.

A: "The procuring of visual materials".

Q: "The procuring of visual materials". I will translate the rest of the paragraph and interrupt me if you disagree. "The Fuhrer is to be provided with or to be, there are to be submitted to the Fuhrer from here on a current basis reports on the work of the Einsatzgruppen in the East. For this purpose, particularly interesting visual materials like photographs, placards, leaflets and other documents are needed. In so far as such material falls into your hands or can be obtained, I ask it to be transferred to here as rapidly as possible."

Would you read that as referring specifically to the killing operations of the Einsatzgruppen?

A: I would say the first sentence refers to the current reports on the work of the Einsatzgruppen, and I think the likeliest, most plausible, interpretation is that is referring to the Einsatzgruppen reports, and then for the purpose, in a sense, of adding something to that, it would be especially interesting to get visual material.

MR JUSTICE GRAY: Of people being shot?

A: Nothing -- pardon?

Q: Of people being shot?

A: No. No, it says ----

Q: Then what?

P-87

A: It says want photos, placards.

Q: Of what though?

MR IRVING: Other documents?

A: Yes, they want documents, they want leaflets, they want placards. They do not say pictures of what, pictures relating to what the Einsatzgruppen are doing, presumably, or captured Soviet pictures. We do not know.

Q: But the reference of this document, the subject matter, is visual materials

A: But "in connection", that is for the purpose of keeping of the regular reports going to the Fuhrer, they would like -- in a sense, it implies already there is an ongoing process of the Fuhrer receiving reports and now they want, to sweeten that, they want visual aids to be added. My feeling is this implies a process already underway to which they now wish to add visual materials as well.

MR JUSTICE GRAY: But the first time it says ----

A: It does not say, "You shall begin to send reports to the Fuhrer". It says, "The Fuhrer is", you know ----

Q: "Von hier", though, does that not rather suggest it is something that is starting up afresh?

A: Well, from Berlin, it says the "Fuhrer von hier" which means, of course, Berlin.

Q: It means "physical place". I thought it meant "from here on"?

A: No, it is not "from here on". It is "out from here",

P-88

meaning Heydrich's office in Berlin.

MR JUSTICE GRAY: No, I am with you, I follow.

MR IRVING: My contention is (and correct me if I am wrong) that earlier today we established that the Einsatzgruppen had several tasks of which killing was one, as indicated in their reports?

A: Yes.

Q: One paragraph was the killing and the other paragraphs were the other tasks that they were involved in. Other tasks included the collection of intelligence documents and any material like that?

A: Yes.

Q: And if this message from Muller to the Einsatzgruppen commanders, A, B, C and D, simply says, "Concerning visual materials, the Fuhrer is interested in the tasks of the Einsatzgruppen, he wants to be kept up-to-date on them. Please supply him with pictures, photographs, captured documents and the rest", am I not right in suggesting that this is not referring solely to the killing or possibly even to the killing at all?

A: It is referring to the work of the Einsatzgruppen and, therefore, it does not exclude the killing, but it does not imply the killing is the only thing that is being reported.

Q: Yes.

A: But, basically, it is inclusive if it says the work of the

P-89

Einsatzgruppen and, therefore, killing would be among the things that would be reported on a regular basis to him.

Q: Well, we have another clue, Professor. There is a lot of documents in this bundle, and I am not going to ask you to look through them all, but would you like to hazard a guess on the basis of

your expert knowledge at the security classification of all the documents connected with the Aktion Reinhardt or with the extermination programmes? Would they be Verteilisch (Confidential) or Geheim (Secret) or Geheim Rasara(?) (Top State Secret)?

A: I think some are Geheim -- are GOS, but there are, they vary and I think there are documents that do not have classification as well.

Q: Would you look at the classification on this document and tell us what classification it is?

A: "Geheim".

Q: In other words, a very modest security rating?

A: Yes.

Q: Not a security rating you would associate with a document concerned with the Final Solution?

A: Well, given that the contents going out, that there is nothing in here that stipulates, as you say, "Give us the reports and the photos of killings", there is nothing in the document that would require, as far as I can see, even a "secret".

Q: Except that even intelligence matters would normally rate

P-90

a security rating of secret anyway, would they not, like collecting documents and things like that, am I right?

A: If there is a tendency to overclassify, someone could possibly stamp that on even though, as far as I can see, looking at this, there is no reason to classify the document at all.

Q: In other words, it is a document of janitorial level.

A: No. It is a document that does not reveal anything that if it were seen by others would pose any problem.

MR JUSTICE GRAY: The Germans worked like that, did they, or the Nazis worked like that? If the ultimate topic was going to be secret, they did not introduce the higher security classification from day 1? Do you follow the question I am putting because I suspect maybe here we might operate differently, I do not know.

A: I simply do not know whether individual documents in the same file will ----

Q: That is my point.

A: --- have different, will have varying ones and, of course, we do not...

MR IRVING: Professor, can I ask you to look at the letter register number or the file number just under the word "Eichzigereichts auf Kampf" ----

A: Yes.

Q: And after the letter at the end of that line is a letter G?

P-91

A: Yes.

Q: That indicates the file only has a secret rating?

A: It would certainly indicate that this particular number has a secret rating.

Q: Just above his signature at the bottom of the document, again ----

A: We have the same file number, yes.

Q: We have a similar file number, again with just the letter G. So the whole thing they are talking and writing about is only G Geheim?

A: Yes.

Q: Would you be adventurous enough to hang a hypothesis on a document like that, or would you want to couch your hypothesis in the most guarded language and say this might quite possibly refer to the killing operations, on the other hand the document contains no specific

reference? Would that be the way you would write it as a cautious historian?

A: I would say that it has a reference to the work of the Einsatzgruppen, and that we should interpret this as referring to all of the activities of the Einsatzgruppen. Because we have seen the reports, we know that includes killing, but someone looking at this letter from the outside would not know that.

Q: Yes. Have you any reason to believe that Hitler was shown photographs of the killing operations?

P-92

A: I do not know.

Q: Were there placards connected with the killing operations saying, you are to assemble at such and such a place?

A: There were such placards put up, yes.

MR JUSTICE GRAY: Can you give me an idea? It is really the scale of the thing. These Einsatzgruppen at this time, because we are talking about August 41, you may not be able to answer this, what proportion of their duties did shooting people occupy?

A: As of August 1 they would be just going into the transition of killing adult male Jews of particularly potential leadership classes, towards a policy of systematic extermination. So at this point, if I can use that unfortunate phrase, the body count would still be lower than the documents that come from the fall of 1941. The Jager, report for instance, shows August 15 as the astronomical jump from selected killing to massive killing of women and children. We have another letter from Lithuania, it is not part of this file, that says at August 7th they are shooting all Jews. So this is preceding that point by just a few days.

MR JUSTICE GRAY: So, in a way, that is equivocal. It could mean from the date of this letter the information is necessarily going to include details of the numbers shot because the extermination programme is being accelerated?

A: That would be an interpretation we placed on it, based on

P-93

our inferences from the point of time, the chronology, a possible interpretation.

Q: Yes. The opposite contention would be they have not actually been spending a huge amount of time doing these awful shootings?

A: Most of the shootings are reported in the hundreds at this point as opposed to the thousands and hundreds of thousands.

Q: So it is equivocal?

MR IRVING: Not only that. I think that Professor Browning is right. I believe the first intercepts were mid August onwards, were they not, when they began reporting 30,000 shot?

MR JUSTICE GRAY: That is what he said.

MR IRVING: I draw Professor Browning's attention once more to the subject line of that document. The document is only concerning provision of visual materials?

A: Yes, but the reason for the procurement of visual materials is to supplement the fact that the Fuhrer is receiving regular reports. So we learn from a particular document about the procurement of visual materials, an existing policy of Hitler receiving current reports.

Q: Can you -- I am not an expert on the Reichssicherheitshauptamt and I am not sure how much are you, but can you draw any conclusions from the desk number, shall we say, it is (iv), that was the Gestapo?

P-94

A: Yes.

Q: Then we have A1. Now, Eichmann was A something was he not?

A: It changes over time. At one point I think it is 4B4, that is the most common designation.

Q: That is right. Eichmann was 4B4. So what would 4A1 be? Have you any idea?

A: My guess is that it is the secretary, the administrative centre. This would be his own personal office. I do not have an office plan. One could find that out with an office plan.

Q: A logical question arises from this document. Have you anywhere in any of the archives in which you have worked seen any documents generated by this request, either incoming to Muller from the Eastern Front or going from Berlin to Hitler in consequence of this?

A: I have not seen any collections of photos that are marked as in reference to our order of August 1, these should be sent to the Fuhrer. I have not seen such a thing.

Q: Are there any collections of documents or placards or things relating to shootings on the Eastern Front that were sent to Hitler?

A: I do not ----

Q: Either demonstrably or otherwise in connection with this order?

A: I do not know of any evidence of particular photos or

P-95

placards that were sent.

Q: How many such reports on the work of the Einsatzgruppen were actually sent to Hitler that we know of?

A: We do not know.

Q: Have we seen any at all in the archives?

A: We have seen various ones that are sent to different places but none of them are marked as a copy that was sent to the Fuhrer's headquarters or whatever, no.

Q: Apart from the famous Meldung number 51?

A: Yes.

Q: Of December 1942?

A: Yes.

Q: Which we will come to in chronological sequence. My Lord, do you have any further questions on that August 1st document? It is quite important.

MR JUSTICE GRAY: No. I think you have dealt with it very thoroughly.

A: Can I add something?

MR RAMPTON: Yes of course.

A: This is an example of a document that was available in the West fairly early. Gerald Fleming quotes it in his book which was published I guess in 1982. It is found in the Zentralstelle. This is when they got there. They sent the copy to the Institute. The copy he cites here is the copy in the Bundeschei. So there are at least three copies of this in Germany.

P-96

MR IRVING: Professor, would you agree that it is difficult to form an opinion just on a loose sheet of paper like this? You want to see the file it is in, is that correct?

A: We would always prefer to see the whole file. I do not turn my back on an individual document because it is not everything that I would wish.

Q: Would you also agree that, when you see a document like that, you should not jump up and

down and say, Eureka, this is the philosopher's stone I have been looking for.

A: I would be cautious not to yell Eureka, yes.

Q: So historians in this respect are somewhat different from leading counsel, would you suspect?

MR JUSTICE GRAY: No, Mr Irving. Next question.

MR IRVING: On the question of the body count figures, because of course I am very concerned about the totals that are contained in these documents, is there any paper trail leading to the figures, or are these figures -- which figures are credible because we have seen the supporting paperwork that went into them?

A: We have, for instance, the Jager report that goes in a sense from one Einsatzkommando to Stahlecker and then we have Stahlecker's reports, so we do have the building block there. We do not have a lot of what we would call the lower level papers from the Einsatzkommandos. We have some of the documents from the Gendarme Marie, such as the Brestotoft document that we have looked at.

P-97

Q: How confident can we be that every time one of these reports refers to so many thousand Jews being killed they are actually Jews who are being killed?

A: We have enough cases in which I think other evidence can corroborate that I am fairly confident. That is not in exact numbers but that there was a policy to carry out large executions, and that these are not numbers that are wildly off, or that they are being faked, in the sense of they are not being real executions being under way.

Q: Was there not a tendency among the Nazis just to lump all the people that are killed together as Jews, knowing that this kind of report would be particularly welcomed by the authorities in Berlin?

A: The Jager report shows that he was very careful in fact to identify Jewish men, Jewish women and children, and then other categories. A number of the Einsatzgruppen reports at different times, not in the global figures but for, say, summarizing the past two weeks, we will break down, so many saboteurs, so many communist functionaries, so many mentally ill and so many Jews. The tendency seems to be, at least on some occasions, to indicate that they are being fairly careful about separating and keeping track of their victims by category.

Q: I am going to put to you a passage from the British intelligence summary on these decodes which I have given you just a sample page of. These police decodes were

P-98

analysed very thoroughly during the war years on a current by skilled British operatives. I will read you five lines from the British intelligence summary dated September 12th 1941, which is also referenced by Richard Brightman in his book on page 96 and 219. That is the book on official secrets. The wartime British summary says:

"The execution of 'Jews' is so recurrent a feature of these reports, namely the intercepts, that the figures have been omitted from the situation reports and brought under one heading 3D. Whether all those executed as Jews are indeed such is of course doubtful. The figures are no less conclusive as evidence of a policy of savage intimidation, if not of ultimate extermination".

Would you accept that the wartime British operators who were reading these reports on a daily basis concluded therefore that probably a lot of the people described as Jews were not Jews?

A: They concluded that. I think they concluded that quite erroneously. I think that they had a tendency consistently to underestimate the degree to which this was a priority of the Nazi regime, and that that is a theme in a sense that runs through the whole British response. For instance, they

have earlier, in terms of Jewish refugees fleeing, they say we must help the political refugees but the Jews are "mere racial refugees", and therefore the implication not in danger. The British had a fairly

P-99

consistent record of underestimating the degree of hatred and the degree of priority the Nazis regime had towards the Jews.

MR JUSTICE GRAY: Do you mean deliberately or because they simply did not know what was going on?

A: They simply could not understand that it was a priority for Hitler, but it was so foreign to their own way of thinking that it made no sense. Why would you spend time killing Jewish women and children when you are trying to fight a war? It was outside their realm, the way they understood the world.

MR IRVING: If we go to page 8 in your paragraph 4.1, we are looking at the scale of the killings again, are all the Jews who are being killed, shall we say, native Jews, or do they include German Jews at this time?

A: The cases in which they would include German Jews would be Einsatzgruppen 3, reporting the five transports to Kovno by November 25. That may not be in there yet because that happens on the 25th and 29th. So that one would not include it. Einsatzkommando 2, whether that would include German Jews, I do not know. The others, there would not have been any deportation of German Jews to those areas at that point.

Q: Was there a distinction made at that time in the treatment between the German Jews and the non-German Jews? In other words, the new arrivals and the locals?

P-100

A: Yes, there was. For instance, in Minsk they murdered a group of Russian Jews in order to make room for creation of a ghetto for German Jews, and the transports of German Jews to Minsk, unlike what happened at Kovno, they were not shot upon arrival.

Q: Does this not seem to indicate that there was no systematic plan to murder all the Jews that they could get their hands on?

A: I think what it indicates is that they were not yet ready to do that. The references for instance in Himmler's letter to Greiser is that we want to send them to Lods and they will be sent on next spring.

Q: Pretty haphazard, would you say, this lack of system in what they were doing?

A: I do not think it is haphazard. I think that they were engaged in the first stage. Different historians have interpreted it differently. My own feeling is that, by the fall of 1941, Himmler, Hitler and Heydrich have a fairly clear idea of where they are going now, which is to kill all Jews, but how that will be done, what exemptions will be given to Jews who are still important to the economy, in what order will various countries be approached, what special care must we deal with German Jews because of the possibly domestic repercussions, these issues are still not decided. They are decided over a period of time.

P-101

Q: You slipped in something under the door there. You said this was Hitler, Himmler and Heydrich. Where does "Hitler and" come from? Is this just your own personal belief?

A: Given that they cannot have the Madagascar plan until it goes to there, they cannot march

Jews until it goes to Hitler, they cannot deport Jews until it goes to Hitler, they cannot let Jews out of the Netherlands for money until it goes to Hitler. My inference is that this would go to Hitler too. I do not see how ----

Q: There is a difference between the geographical solutions that Hitler was constantly proposing and what was actually happening when the Jews arrived at their terminus, shall we say. Would it be fair to say that?

A: I would say there are two phases. That is, starting in the summer of 1941, you have the move in early August to killing of all Jews, men, women and children, and that the implementation of systematic killing of Jews other than that really begins in the spring of 1942 with several exceptions. You have the Chelmno gassing beginning in December of 41, and you have the shooting of the six transports of German Jews five at Kovno and one at Riga.

Q: On November 30th, 1941?

A: The last one is the 30th, the other two are 25th and 29th.

Q: In Kovno?

A: In Kovno.

Q: Since we are with those shootings, on what basis did those

P-102

shootings occur? Was that on orders from Berlin, or from Hitler, or was it just random actions by the local commander?

A: This is an area that we have no documents that illuminate it, and so one then looks at the overall. Jager reports it in his Einsatzgruppen report. He clearly thinks that -- my inference from that would be that Jager is reporting something that he thought he was expected to do. We have, as you know, the Himmler intercept of December 4th, saying what happens to the Eastern Jews is on my guidelines, there are repercussions for Jackeln and there are none for under Jager. I would suggest that that would indicate that Jager was following orders.

Q: I will try putting this to you like this, and his Lordship may intervene because I do not have the file in front of me. My Lord, this is the bundle of intercepts that we dealt with about ten days ago, November 30th 1941.

MR JUSTICE GRAY: Yes. That got into E as well.

MR IRVING: Your Lordship has the advantage on me because I do not have the bundle with me. I have searched for it and I am in chaos.

MR JUSTICE GRAY: That is really why I have been trying to insist all along that we identify where documents are going. If anybody on the Defendants side can help, I would be grateful. I think it is in E but it may not be. 173, J?

P-103

MR IRVING: We landed on this topic before I intended but, since we are at it, we might as well take it on the fly.

MR JUSTICE GRAY: Take your own course.

MR IRVING: If I were to show you an intercept of a message from the -- can you find an intercepted message in there from Bremen to Riga?

MR JUSTICE GRAY: Can you help me? Did you say J 173?

MR IRVING: What is called on the top right hand corner?

MS ROGERS: Tab 3.

MR JUSTICE GRAY: Thank you. What are you looking for, Mr Irving?

MR IRVING: There is an intercepted message from Bremen to Riga.

A: This would be November 17th.

Q: Does this describe a train load of Jews being sent to Riga?

A: Yes.

Q: Has that train load apparently been well provisioned with food?

A: Yes. The guidelines for the deportations in the fall, which would have been true of all the transports, not just the ones to Kovno but to Lodsch and Minsk, where Jews were not immediately killed, they were allowed take a fair amount with them. In fact, the Jewish councils were encouraged to provide them, so that this would not be just this train, this would have been standard procedures.

P-104

Q: Would one be correct in assuming, if one finds one or two messages like that in this kind of random sample that the British code breakers got by their method, so there are probably quite a lot of such messages?

A: I do not know about how many messages there were, but we do know that the trains were basically sent out under the same guidelines and the guidelines permitted at that point, unlike in the spring, taking quite a large amount of material with them.

MR JUSTICE GRAY: The Jews provided ----

A: This would have been provided by the Jewish councils to the deportation train.

MR IRVING: And have you in front of there also a message in which there is reference in German to the train being provided not only with Verpflegung but also with Gerat. It is a similar message on 17th or the 19th or the 24th perhaps of November 1941.

A: I am afraid I do not find the file.

MR JUSTICE GRAY: It is page 5.

MR IRVING: Page 5 of that bundle.

MR JUSTICE GRAY: I am not sure we have the German in the file.

MR IRVING: The German text will be there in facsimile.

A: We have a series in English and I am not sure where the German is.

MR JUSTICE GRAY: Gerat is there. It is really a translation question.

P-105

MR IRVING: The question is, if the train is not only taking Verpflegung (food) which is set out, how many tonnes of bread and so on, but they are also taking Gerat with them. What would you understand by that word? What are they taking?

A: Utensils and cooking pots and that sort of thing.

Q: Things for a new life?

A: That they would need to use when they got there.

Q: To use when they got there. So the people who are at the sending end are unaware of what is likely to happen to this train load of Jews at the other end if they are all going to be killed? They think they are going to a new life, in other words not to their death?

MR JUSTICE GRAY: I think you think you got an answer that you did not get. It is important sometimes to make sure that there is no misunderstanding. The translation that was given by Professor Browning was utensils and cooking pots. You then things for a new life, and I am not that that is something that the Professor has agreed with yet, but perhaps he does agree with that.

A: I believe they were allowed to bring tools as well. I am recalling from memory what the Eichmann guidelines to the various police stations creating the transports, that the fall guidelines are remarkably different than the spring ones in terms of how much people were allowed.

MR IRVING: Spring 1942?

P-106

A: Yes. In the fall of 41 which begins with them going to Lodsch and begin with them going to Minsk.

Q: I am indebted to you. You are certainly adding to the court's knowledge and this is helping to flesh out the picture immensely.

A: Were allowed bring a fair amount of luggage.

Q: So these early transports of Jews going to the Eastern Front, they were going effectively to a new life, wretched though it would be?

A: They were going to a temporary stay from which, as Himmler put it, they would be moved on further East the next spring.

Q: Booted on somewhere else?

A: Well, we do not know. He does not say what "further East" means, but he was telling Greiser, do not worry, they will not be there for more than a few months.

Q: So, when the word came back to Hitler's headquarters that the first train load or several train loads had been shot, why would therefore Himmler have had to send a message to Jackeln, saying you have exceeded the guidelines?

A: Since nothing happens to Jager, my interpretation, because the documentation is incomplete, but my interpretation was that Himmler, after sending Jews to Lodsch and to Minsk, was sending them to Kovno, and he tried an experiment, we will shoot those when they arrive.

Q: Who is this?

P-107

A: We do not know, Jager. They are not shot immediately. Jager reports this. In the Einsatzgruppen reports he says very explicitly, "We shot these five transports". He is not trying to hide anything. My guess, and again this is just construing the documents, they found out that this caused more of a sensation than killing Russian Jews, and that, when the six transports left, Himmler says, back off, we will not do this any more, tells Jackeln do not, that message does not arrive in time, the six transport is liquidated. Then Jackeln is brought back and there are no more liquidations until the next spring.

Q: So we know what happened to Jackeln because the messages are there.

A: Yes.

Q: But we do not know what happened to Jager, if anything, because there are no messages to inform us?

A: We have no messages to inform us, but we do know that he reported it quite openly and clearly did not think he was doing something that he should not boast of.

Q: It tells us something ugly about the Nazi mentality, is that correct?

A: No. I think it shows that he thought he was carrying out orders and was doing this according to what he had been told to do, and he was reporting that he had carried out policy.

Q: He then learned that in fact he had upset people?

P-108

A: I do not think Jager learned he had upset people because I think he was doing what he had been told to do. Jackeln caught the flak because the message did not reach him in time, that Himmler decided we were not going to start liquidating German Jews yet. Then, when he calls

Jackeln back, Jackeln's memory of the conversation, in the testimony he gave after the war in the Soviet Union, was that he and Himmler discussed it and Himmler said, "I am trying to decide how we will get rid of the German Jews", and he uses this phrase that occasionally pops up, "shall we send them into the swamps or shall we shoot them"? So he is still uncertain how this can be carried out.

Q: This Jackeln conversation you refer to is in Soviet custody?

A: Yes.

Q: Would he have been under any kind of duress there, do you think? What happened?

A: He may be under duress for certain things. I do not know why someone would want to coerce a statement to the effect that Himmler had not yet made up his mind as to how he was going to get rid of German Jews.

Q: What happened to Jackeln? Did he meet his just desserts?

A: Jackeln was executed.

MR JUSTICE GRAY: If you had to say in a single phrase what it was that upset people about the Riga shootings, what was it?

P-109

A: I think that word spread very quickly. It was a sensation when German Jews were being killed. We know, for instance, that, when Lohse in the Ministry of the Interior hears, he goes to his superior and says, I cannot do this any more, I want another job. We know, for instance, on the day of the 30th, Himmler meets with Dobtell, who has had to travel through the East, and immediately thereafter he sends out to Jackeln, do not liquidate this transport. My feeling is that they were discovering that they had a PR problem, that one had to be more careful. Thereafter, for instance, they decide Theresienstadt will be a ghetto for the elderly Jews and the medal wearing Jews, that they will be more careful about how they deal with German Jews as opposed to non-German Jews.

Q: It is the fact that they are German Jews?

A: Yes.

MR IRVING: Who is making these decisions then?

A: In this case I think it is Himmler because Himmler, again it is just a guess, is going to see Hitler in two hours and that he wants to be able to say, we have taken care of it, it is settled, we are not going to have problems with this.

Q: He expects to take some kind of flak now from Hitler for what happened?

A: I do not think he is going to take flak. I think he is going to assure Hitler that the PR problem is solved, at

P-110

this delicate part of the war there will not be reports spreading around Germany of killing German Jews.

Q: You are familiar with the telephone call that went from Himmler to Heydrich on November 30th at 1.30 pm?

A: Yes.

Q: To Heydrich, transport of Jews from Berlin, kindly liquidieren?

A: Yes.

Q: What is the spin that you would put on that particular message, do you think? How would you interpret that? What happened?

A: My interpretation, and again because we do not have the full documentation, it is an

interpretation.

Q: Tantalising, is it not?

A: Yes. If one has to send a message, do not liquidate, that, beginning with the Kovno shootings, Himmler in fact had said, we will begin shooting these transports. The Kovno operation backfired. He therefore, before he sees Hitler, takes measures that they will temporarily hold that in abeyance and sends that message out. You do not send it out unless you think you have to countermand something, so Jackeln, having had Jager kill five transports in Kovno, was prepared and ready to do the same thing with the incoming transport to Riga.

MR JUSTICE GRAY: Mr Irving, I am going to interrupt you. I think this is a document that one needs to take a bit

P-111

slowly, and I am going to suggest we do it at 2 o'clock.

MR IRVING: Can I just enquire whether Jager was a subordinate of Jackeln?

A: Jager is the head of Einsatzkommando 3, which is under Stahlecker of Einsatzgruppen A, but all SS units in the north would have been under Jackeln, who is the man to co-ordinate the operations of the different SS formations Einsatzgruppen Gendarmerie police battalions.

MR JUSTICE GRAY: Shall we look at the document----

MR IRVING: My Lord, am I doing this right, do you think? Am I asking the right questions or would you prefer me to be terser?

MR JUSTICE GRAY: If I may say so, it is cross-examination being conducted absolutely appropriately, but I would like to look at that document because I think it is an important one.

MR IRVING: We will have it out, thank you.

MR JUSTICE GRAY: 2 o'clock.

**(Luncheon adjournment).
(2.00 p.m.)**

PROFESSOR BROWNING, recalled.
Cross-Examined by **MR IRVING,** continued.

MR JUSTICE GRAY: Yes, Mr Irving?

MR IRVING: My Lord, the document is in bundle J1.

MR JUSTICE GRAY: Yes.

MR IRVING: At tab 3, pages 11 and 12.

P-112

MR JUSTICE GRAY: Thank you very much.

MR IRVING: This is the page from Himmler's telephone log November 30th 1941. Do you recognize that page? Have you ever looked at that either that page or the handwritten page?

A: I have seen the handwritten page. This is the first time I have seen the English one.

Q: Yes. Right, does it appear to be a page in Himmler's handwriting?

A: It is consistent with the other writing in the log. I am not sure that I can recognize Himmler's handwriting.

Q: It is very difficult handwriting, is it not? Would you agree? Have you had difficulty reading Himmler's handwriting yourself?

A: I have difficulty with all German handwriting.

Q: If you had made a mistake in reading handwriting like a letter E or an A, would you consider

this to be wilful?

MR JUSTICE GRAY: I am not really sure that that is a question he can answer.

MR IRVING: Very well.

MR JUSTICE GRAY: I think that is a matter of argument and comment, but not for this witness.

MR IRVING: You see that the first indication is that he is making telephone calls "aus dem Zug", from the train, is that correct?

A: At the top, yes.

P-113

Q: And that he is going to the Wolfsschanze. Can you tell the court what the Wolfsschanze was?

A: That would be Hitler's headquarters.

Q: The Wolf's Lair, is that correct?

A: Yes.

Q: At 1.30 p.m. he is apparently in the bunker because he is making a telephone call "aus dem Bunker"?

A: Yes.

Q: What does "aus dem bunker" mean?

A: "From the bunker".

Q: "From the bunker", and he telephones on the left at 13.30 -- who does he telephone?

A: To Heydrich.

Q: Heydrich?

A: His deputy in Prague.

Q: His deputy in Prague. What function did Heydrich have at that time apart from his function in Prague?

A: He was the head of the Reichs security main office which included the security police and the criminal police in the security service.

Q: So that was the executive arm of the SS, was it, I suppose?

A: It was one of the two police arms, the ordinary police under Daleuge, the political and basic secret police, we would call it, under Heydrich.

Q: The ordinary police under Daleuge?

P-114

A: Yes.

Q: He telephones Heydrich and the content of the telephone conversation are the four lines on the right column?

A: Yes.

Q: And the first one is Verhaftung Dr Jekelius.

A: Yes.

Q: So far as we can read it. The second one is "Angebli[icher] Sohn Molotow", "apparent son of Molotow", is that correct?

A: Or "alleged son of Molotow".

Q: "Alleged son of Molotow". Then can you read the next two lines, please?

A: "Judentransport aus Berlin. Keine Liquidierung".

Q: You are reading the handwriting?

A: Yes, I am looking at the handwriting right here.

Q: Do we know with a reasonable degree of probability what transport of Jews from Berlin was

concerned, where it was going?

A: This was going to Riga. The first transport to Riga.

Q: Reference to a train load of Jews?

A: Yes.

Q: Stopping you there for a moment, Professor: if you knew nothing of the surrounding countryside of documentation at all, would any other interpretation of that line or those lines be possible without our 20:20 hindsight?

A: It would be an instruction not to, well, as I look at it,

P-115

it would be an instruction not to liquidate that transport from Berlin.

Q: Is there any other way which ----

A: Which I would also then say strongly indicates there is a prior policy that this has to ----

Q: That liquidation is in the air, so to speak?

A: Well, that, in fact, it had been ordered and now it has to be countermanded is a possible -- I would say -- that one, I would say, is the likely interpretation.

Q: That liquidation of Jews or German Jews or that liquidation of transports of Jews was in the air or that liquidation of Jews at the other end was in the air? We cannot say or can we?

A: Well, if it is "Judentransport aus Berlin Keine Liquidierung", it would imply that previous transports were being liquidated. In this case we know that five to Kovno were from documents that were also available at the time, the Einsatzgruppen report in which it is reported that those five transports had been liquidated in Kovno.

Q: I appreciate it is difficult to answer these questions from memory, but do you recall if there had been transports from Berlin to the East before this one? Was this the first or?

A: No, there is a group of transports first that goes to Louche(?) and then there is a group of transports that goes to Minsk. Neither of those were liquidated. Then

P-116

the third set of transports goes to Kovno. Those five are liquidated. This is the first train of the fourth batch, the one that is going to Riga.

Q: The ones that went to Kovno, what date were they?

A: I believe they were the 25th and 29th.

Q: 25th and 29th?

A: That is my memory.

Q: Was that the date they departed or the date they arrived?

A: I believe that is when the Einsatzgruppen reports them having been liquidated. Those would be arrival date.

Q: Would that fact have been known in Berlin at that time, do you think? First of all, in Berlin, would that fact of the liquidation have been known in Berlin?

A: My guess is it was ordered in Berlin, that it would not have happened without instruction from Berlin, so, yes, it would have been known in Berlin.

Q: Notwithstanding that the trains had been properly provided with all the provisions for starting a new life?

A: Yes, because it was standard operating procedure for all the four transports, that if one at a certain point switched what was going to happen at the other end, the process of preparing the transports would not necessarily have been immediately changed. So that you would have had a situation where the people preparing the transports (and this had to be done days, if not weeks, in

advance) would have been proceeding by the normal guidelines while the

P-117

order to do something at the other end could have been given almost instantaneously.

Q: By the people on the spot?

A: No, by Berlin, not necessarily from on the spot.

MR JUSTICE GRAY: Were the Kovno, the Jews shot in Kovno German Jews?

A: Those were German Jews, yes. Five transports of German Jews.

MR IRVING: You mentioned it was standard operating procedure. How do we know that? Are there any documentations or is this presumption on your part?

A: It is inference from two facts. One is that it is reported openly in the Einsatzgruppen report, so that it certainly is no indication that it was done against orders or that he had any inclination that reporting this might get him in trouble; and from this the fact that the six transports, keine liquidierung, would indicate that he would not have said this if he had no idea what had happened in Kovno if there was no standing policy at that time to be killing Jews, and that this would indicate that he was reversing a policy, and I would infer that that policy began with Kovno after Louche and Minsk had sent without killing.

Q: Would the policy be described in German as "Richtlinien" guidelines?

A: That is possible.

P-118

Q: So when Himmler sends a message to Jeckeln on December 1st (as we know he did now from the intercepts) saying, "Your action in Riga has overstepped the guidelines", then in what way had that overstepped the guidelines if the guidelines were, as you have just presumed, that they were going to be liquidated when they arrived? Surely, exactly the opposite is the inference to be drawn from Himmler's messages?

A: No. If, in fact, you were not to be doing -- if you were supposed to be taking your guidelines from Berlin and he has sent a message "Keine Liquidierung", and it was liquidated, he is saying, "In principle, that what happens in the East happens under my guidelines". If there is not to be local decisions about who is killed or is not killed ----

Q: Is not a more reasonable assumption the following, that when Berlin or when Hitler's headquarters learned that the earlier train loads of Jews to Kovno had been liquidated, an urgent message was sent when the fifth train went on 30th November, saying, "Not to be liquidated" because it was realized at headquarters that things were going too far. Is that not an equally reasonable presumption on the balance of probabilities?

A: Not an equally reasonable presumption because otherwise, if that were the case, Jager would not have reported it in the way he did in Einsatzgruppen reports, making it clear

P-119

that he thought he had been following what was expected.

Q: But then, of course, the message came "not to be liquidated", so Jager had obviously got it wrong?

A: No, not Jager. Jeckeln -- the policy of killing the Kovno Jews, I think, was approved from Berlin; that they then decided to reverse that with the situation, the sensation of killing German Jews was more delicate than they had anticipated and, therefore, they temporarily backed off, and then we have the Jeckeln/Himmler conversation, "I have not yet decided how we shall kill them",

but this was, I would say it was a trial balloon and it turned out to be too sensitive an issue at that point.

Q: A trial balloon floated by the people on the Eastern Front?

A: No, by Himmler.

Q: Floated by Himmler?

A: Yes.

Q: Just to remind the court of the hierarchy. Jager is, so far as we are concerned, on the bottom rung. Above him comes Stahlecker, as far as the killing operations goes, and although in a different headquarters, Jeckeln is the one who calls the shots?

A: Of course, everything is not quite that neat in Nazi Germany in the sense that Stahlecker could report directly to Heydrich because the Einsatzgruppen had been sent out by him. Jeckeln would report directly to Himmler because

P-120

the SS and police leaders had been sent out by him. You get sometimes straight lines and sometimes crossed lines in terms of this, but Jeckeln is of a higher rank than Stahlecker.

Q: But, fortunately, for the purposes of this action, we are only really concerned with what happens from Himmler downwards. So although it is a terrible tangle of guidelines and crossed lines below Himmler and below Jeckeln, above Himmler it becomes relatively plain because above Himmler there is just Hitler?

A: Yes.

Q: Am I right in presuming that we have nothing to indicate any kind of systematic link between Hitler and Himmler apart from inferences?

A: That is where there is no documentation and one acts from inferences and circumstantial evidence.

Q: Thank you very much. Does your Lordship wish to ask any more questions on that?

MR JUSTICE GRAY: Yes, just on that last answer. When you say there is no documentation, are you excluding from consideration (and it may be it is not relevant) the notes that Himmler made on the---

MR RAMPTON: December 18th.

MR JUSTICE GRAY: --- agendas? Yes.

MR IRVING: Shall we take December 18th?

A: Yes. No documentation would be too strong. We do not

P-121

have regular documentation, but we have the diary now that shows the December 18th meeting that they discussed this.

MR JUSTICE GRAY: That is what puzzled me about your answer.

A: I am sorry. I would stand corrected on that. You are perfectly right.

MR IRVING: Professor, believe me, I do not want to stampede you into giving an ill-considered answer because it does not help the court one bit. So let us now move on to the middle of December, shall we say? You are familiar with the entry in the Goebbels diary of, I believe, December 13th relating to a speech that Hitler had made to the Gauleiters?

A: Yes.

Q: Was this speech by Hitler to the Gauleiters which was, in fact, made the previous day, December 12th 1941, in any way different from the old familiar Adolf Hitler gramophone record (as I always call it) in which he harked back to his prewar speech?

A: It does seem to be more than just I had predicted this in the sense that ----

Q: And now it is happening?

A: Now it is happening now. There is a greater presentationist element in it, I think -- I would have look at the text to point out.

MR JUSTICE GRAY: Can we find it? I have lost it because everything is in such a scattered ---

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P-122

MR IRVING: It would be in Professor Evans' report, I think, my Lord.

MR RAMPTON: My Lord, it is in the file, this new file, at 60 to 67.

MR JUSTICE GRAY: When you say "this new file"?

MR RAMPTON: Well, the Browning file.

MR IRVING: Page 67?

A: The Browning file is L1?

MR RAMPTON: Yes, amongst other things.

A: And which is the page?

MR RAMPTON: 60 onwards, 60 to 67.

A: Yes.

MR IRVING: Page 64 that we are interested in.

MR JUSTICE GRAY: Thank you very much.

MR IRVING: In the afternoon the Fuhrer speaks to the Gauleiters.

A: Yes, I have it now.

Q: That is where the reference to Hitler's speech begins, I believe?

MR JUSTICE GRAY: Do we have this in English or not?

MR RAMPTON: It is ----

MR IRVING: Then on page 66 is the passage that the Defence relies on, I believe.

MR RAMPTON: Yes, but it is in English, my Lord, I think a large part of it is in Evans' report, but as I do not have that here, I cannot tell your Lordship exactly where to

P-123

find it.

MR IRVING: Do you have that passage Professor? Page 66 or 498 of the printed text? It is the final paragraph: "With reference to the Jewish problem, the Fuhrer has decided to make tabula rasa" or a clean table. "He prophesized to the Jews that if they would bring about World War once more, then they would experience their own destruction and this was not just an empty phrase". That is probably all we need to read of that.

A: Yes. If one compares it, say, to Goebbels in August and they talk about the Fuhrer had prophesized, "The Russian Jews are paying now, the others, they will pay later" there is still a prophecy element. Here it is no longer what will happen in the future, but it is cast as if, when they said, "The Fuhrer has decided", it is cast as if things have already been decided, not as if there is a process of decision going on.

So, in that sense, it is not the same gramophone record because the August still has a future looking element. This one, everything is orientated towards or at least has the tone that all decisions have been made.

MR JUSTICE GRAY: I am so sorry. The documents in the shape they are in, I do not know, there are pages of German and there is no indication that I can see of what this is.

MR IRVING: My Lord, it is page 498 ----

MR JUSTICE GRAY: No, I have the page, but is this from?

P-124

MR IRVING: It is the final paragraph on that page.

MR JUSTICE GRAY: Yes, I know, but what is the whole of the page and, indeed, what are the whole of the preceding six pages?

MR IRVING: It is the Goebbels diary of December 13th 1941.

MR JUSTICE GRAY: It is Goebbels diary. I see.

A: Yes, and the question was, did I find this a repetition of the same kind of speech Hitler had made before referring to his prophecy, and I was recalling a document we do not have before us which was a Goebbels entry from August in which I pointed out there was still "and someone will pay in the future", well, here it is, it has been decided. So I was disagreeing with Mr Irving that it was the same old gramophone record.

MR IRVING: Our problem is that the August Goebbels entry is not before the court and has not been submitted to the court either in the bundles or in the experts' reports, so we cannot really rely upon that.

MR RAMPTON: If your Lordship would like a translation, it is to be found on page 337 at paragraph 8 of the Evans' report.

MR JUSTICE GRAY: Thank you very much.

MR IRVING: I am not going to ask you about the Hans Frank speech ----

MR JUSTICE GRAY: Do you mind pausing a second just whilst I catch up?

P-125

MR RAMPTON: The German is set out in note 46 at the bottom of the page.

MR JUSTICE GRAY: I have the German all right, yes. You interpret that, Professor, as being a reference to a decision which has been taken and it is a decision systematically to exterminate?

A: The question that Mr Irving had asked was, did I find this a repetition of the frequent references to his prophecy and "Was it the same old gramophone record?" was his phrase. I said, no, I did not think so because between a previous Goebbels entry describing a Hitler reference to the prophecy and this one, I have said there is a change of tone and a change of vocabulary. So I disagreed. I said this does not, this is not the same kind of reference to something in the future. And so I happen to think that it is the point at which Hitler makes clear that even though the war will now go on longer, that, nonetheless, they will proceed with the extermination. Up until that point they used two phrases "after the war" and "next spring". After Pearl Harbour, one has to clarify which of those two it will be and, in my opinion, this is the point at which Hitler says it will be next spring even though it will no longer be after the war.

MR JUSTICE GRAY: Thank you very much.

MR IRVING: Professor, I will now have to bore you by asking you to look at the actual German used. Is this German

P-126

passage in the subjunctive in German, indicating reported speech or could it be Goebbels himself writing his own words here, so to speak?

A: It is not in subjunctive, but I do not know that that would exclude that he is writing an easier --
--

Q: Let me put it this way around: if in the second line he had written "Er hat den Juden

prophezeit" but "er habe den Juden prophezeit", then it would be beyond doubt, would it not, that he was quoting Hitler?

A: That would indicate that he was paraphrasing very closely, but this would not exclude the possibility, and indeed I think that is what it is, is a, you know, writing down what Hitler had said.

Q: Are you familiar with reading the Goebbels diaries in English or in German as a source? Not scientifically familiar, but have you used them quite a lot.

A: I have used them, but I have not read through all of them. I do not know the entire corpus but I have used them.

Q: Would you agree that it is sometimes difficult to distinguish when Goebbels is referring to what somebody has told him and when his only little benevolent mind takes over?

A: I do not think I could answer that.

MR RAMPTON: My Lord, may I interrupt? This might be a convenient moment. Mr Irving said just now that the

P-127

earlier entry of 19th August 1941 is not in the documents. It is twice in the Evans' report. It is at page 410 at paragraph 7.

MR JUSTICE GRAY: But not in this J1?

MR RAMPTON: No.

MR IRVING: I am indebted to you.

MR RAMPTON: Perhaps I should read it out.

MR JUSTICE GRAY: Hang on. If we are going to have to find it ----

MR RAMPTON: Yes, page 410 of Evans, my Lord. The witness's memory is, fortunately, very accurate, but it is perhaps worth just looking at. This is Evans' translation on 19th August 1941: "We speak about the Jewish problem. The Fuhrer is convinced that his former prophecy in the Reichstag, that, if Jewry succeeded once more in provoking a world war, it would end with the annihilation of the Jews, is being confirmed. It is being rendered true in these weeks and months with a certainty that seems almost uncanny. In the East the Jews have to pay the price; in Germany they have paid it already in part and in future they will have to pay yet more. Their last refuge remains North America; and there they will also to pay some time, sooner or later".

MR JUSTICE GRAY: Yes.

MR RAMPTON: I am sorry that Professor Browning has not got that in front of him.

P-128

MR JUSTICE GRAY: Thank you very much.

MR IRVING: The passage is, in fact, also in the Goebbels biography. Unless your Lordship feels it necessary, I would prefer not to deal with the Hans Frank meeting at this point.

MR JUSTICE GRAY: Take your own course.

MR IRVING: Yes. We dealt with it pretty exhaustively I think already in my cross-examination, and I am not sure that unless the witness has specific points he wishes to make about it, the Cabinet meeting in Cracau, you will remember, on December 16th where Hans Frank referred to, "What does Berlin imagine? Do they imagine we are housing the Jews in housing estates on the Eastern provinces?"

A: I would only add on that, that earlier in the entry before he gets to that speech, he refers to his visit with Hitler.

Q: Yes.

A: And whether that refers to the Gauleiter meeting or the possibility that he had a separate private talk with Hitler, we do not know, but "besuch bei", you know, "von Fuhrer" would indicate a strong possibility that he met with Hitler privately, as he usually did when he came back to Berlin, in which case then he went off and gave this speech, it was not just listening to the Gauleiter but after a conference, possibly after a conference, with

P-129

Hitler as well.

Q: Yes. But, as you are familiar, you say with the Hans Frank diary, both in the printed version and on the microfilm, will you agree that there is no diary entry relating to a separate meeting with Hitler in December 1941?

A: No. He reports on the 16th that he had a visit with the Fuhrer.

Q: So his subsequent remarks may or may not have been an allusion to what he learned from Hitler's private meeting? Is this the point you are trying to make?

A: I am saying there is the possibility that, in addition to witnessing the talk that Goebbels records in his diary, that he also had a private meeting with Hitler.

Q: Yes.

A: But we cannot prove that definitively.

Q: Yes. Will you turn to page 77 of this little bundle, please?

A: This is?

MR JUSTICE GRAY: I think we are back on J1.

MR IRVING: Back on J1.

MR JUSTICE GRAY: It is another untranslated German document.

MR IRVING: Well, my Lord ----

A: I have three here. I am not sure which one we are dealing with.

MR IRVING: In my little bundle, which is the one with the

P-130

intercepts in, your Lordship will probably find it translated.

A: J1?

MR JUSTICE GRAY: L1. It could scarcely be more unsatisfactory.

A: Yes, I have 77.

MR IRVING: Do you have the text?

MR JUSTICE GRAY: I am afraid I have not yet. Sorry.

A: I have the German. I do not have the...

MR IRVING: The English translation.

A: Yes, but that is all right.

Q: But you have the transcript?

MR JUSTICE GRAY: I am sorry, where have we put your documents, Mr Irving? Do you know? Was it E?

MR IRVING: E.

MR JUSTICE GRAY: Does anybody on the Defence side know? Frankly, this is so inconvenient and time consuming.

MR RAMPTON: Yes, I quite agree. I do not know what is even being referred to actually.

MR IRVING: The little clip of documents on decodes. I think it was called "Himmler".

MR RAMPTON: I do not have a J file, as you know perfectly well. J1, tab 3, page 23, my Lord. There is no English. It is some Himmler writing, my Lord. It is the entry of the 18th December

1941 where Himmler writes under "Fuhrer": "Als partisanen auszurotten."

P-131

MR IRVING: Have you found it in German?

A: Yes.

MR JUSTICE GRAY: Sorry.

MR IRVING: Can you read the words either in the ----

MR RAMPTON: Mr Irving, I think you had better wait until the Judge finds it.

MR JUSTICE GRAY: I fear what may have happened is that, unless I have put it back in the wrong place, my J1 is -- J1, tab 3, page, sorry, Mr Irving?

MR RAMPTON: My Lord, page 23.

MR JUSTICE GRAY: Yes.

MR IRVING: Can you read the first word?

A: It would be "Fuhrer Hauptquartier Wolfsschanze", 18th day of the 12th month of '41 at 4 o'clock in the afternoon, "Fuhrer, Judenfrage".

Q: Then on the left is "Judenfrage".

A: "Als partisanen auszurotten".

Q: How would you translate those two things, first of all, the "Judenfrage"?

A: "Judenfrage" I would translate as meaning a discussion on the Jewish question. It would be one word as the topic of the discussion and "als partisanen" and "auszurotten" would be a note that he had made to remind him of what the substance or conclusions of that talk had been.

Q: Yes. The handwriting is different, is it not? I think we are agreed on both sides that this is the conclusion, that

P-132

they have come to the conclusion "als partisanen" and "auszurotten".

A: Yes.

Q: How would you translate that?

A: "To be destroyed as partisans", depending how we translate "auszurotten" which has multiple meanings, but I would say to exterminate or to destroy as partisans.

Q: "As partisans" or "like partisans"? I hear groans from the public gallery, but, in fact, this is an important point.

A: Yes. No, it is a good point and I think, in fact, I have translated it as partisans. In German it could be ----

Q: In other words, it is an equity between "Juden" and "partisanen" and not a comparison which would be "vie", not "als". If it had said "vie partisanen auszurotten", that would be a different meaning, would it not?

A: "Vie" would be in the same way.

Q: In the same way as?

A: Yes.

Q: But it does not say that, does it?

A: It does not use vie.

Q: It says "als partisanen", so the Jews who are being referred to here are to be liquidated as the partisans they are?

A: No, I do not believe that is necessarily----

MR JUSTICE GRAY: Mr Irving, I am extremely sorry to

interrupt. I am still trying to find this. I have J1, tab 3. There are two pages 23, neither of which appears to be the document you are asking about.

MR RAMPTON: That is because the one on the bottom of the page, which is Mr Irving's page number, has become obliterated. Try a little printed 293, can I suggest?

MR RAMPTON: It is the one after 22, which is legible.

MR JUSTICE GRAY: Which nobody has bothered to transcribe, is that the problem?

MR RAMPTON: I do not know why.

MR IRVING: Transcribe or translate?

MR JUSTICE GRAY: Transcribe, or indeed translate.

MR IRVING: In my little clip it is transcribed, my Lord.

MR JUSTICE GRAY: I wonder why I do not have that advantage?

MR IRVING: That would be in the same one as my SS police decodes, I think, my Lord.

MR JUSTICE GRAY: Is this translated anywhere or indeed transcribed anywhere?

MR RAMPTON: Yes. I will find it in the bundle. Page 11 of Professor Browning's report, my Lord. It is also in Longerich.

MR IRVING: Shall I wind back my argument a little bit?

MR JUSTICE GRAY: I am afraid you will have to. I am sorry you are having to do it. It is increasingly frustrating, having to deal with the documents.

MR IRVING: The only reason for doing this is because

I apprehend that both the defence and also opposing historians pin a lot of faith on this document.

MR JUSTICE GRAY: Yes. It is a very important document, which is why one would like to have it in an easier form.

MR IRVING: We have only four words to go by, Judenfrager, als Partisanen and auszuotten. I am not going to argue about the meaning of the word auszuotten there. It is quite plain. But I am going to argue about the significance of the word als. Quite clearly the intention here is that these Jews are to be liquidated as partisans and not like partisans. If it was to be like partisans, the word would be wie Partisanen auszuotten?

A: And as partisan is how I have interpreted it, that this is a convention, or the way in which the killing will be organised or justified or disguised.

Q: Professor, this is a later stage of the argument. First of all, I want to establish this stepping stone in my argument. To make the point, to hammer home what I mean by this rather subtle difference, I eat an orange like a tangerine, you use the word wie. We now have Hitler as Fuhrer, as is als. One is the equation. The other one is a comparison?

MR JUSTICE GRAY: Yes, I have the point. It is a perfectly comprehensible point. What is the answer?

MR IRVING: Yes. Your answer again, Professor?

A: As I said, it was agreed, the annihilation or

extermination of the Jews would take place, they would be annihilated as if they were partisans, as partisans, that will be the conventional way in which they speak about it or the guise under which it will be done.

Q: But then the correct German would be wie and not als?

A: No. If you were going to kill them, the operation, we all use the same operational methods against them, but they did not because they killed women and children, partisans they did not, so it is not we will do it in the same way, but we will kill the one as if they were the other, as the cover under which to kill the other.

MR JUSTICE GRAY: The point that is being put is that als does not mean as if. There is another German expression for that. Not just vie, there is another one as well, I think.

A: I think vie would be, we will kill them in the same way as we kill partisans. It applies to an identical method. The als I would interpret as the justification for it or the cause for it.

MR IRVING: Perhaps I could put in two different ways? This is like when you have a dictionary which gives two or three different meanings of the word in different orders of likelihood, and the one that I give is the primary meaning, but there is a possible secondary meaning which is the one you are offering?

A: I do not know in which order they came in the dictionary

P-136

so I cannot say which is first or second.

Q: I know which order they come in the German language, and this is that als means as direct equivalence, whereas vie means like, which is not direct equivalence.

A: I have translated as. We will both agree we are using the primary----

Q: You were using the correct translation and I am drawing attention to the significance of that. They are to be liquidated as the partisans that they are, and that is the meaning?

A: That is adding a whole series of phrases that is the birth of your imagination. There is nothing in here.

Q: The burden of the word as or als, whether we like it or not, and if we are going to make this a key document of our argument, it is dangerous to try and suggest that, well, the secondary meaning is probably the one I am looking for because that is the one that fits in with my theory.

A: I have used the primary word. It is you who are inventing a whole series of words that do not exist on the page, and that is the sheerest fantasy in which I do not share.

Q: I do not want to labour the point, but als is definitely an equivalence rather than a comparison, is it not?

A: I have translated it that way, but I did not add a whole further series of words which you have chosen to add which have no documentary basis.

P-137

Q: Can we go now to page 11 of your report, which is the same page that this document comes from, and look at paragraph 4.1.7?

A: Yes.

Q: Page 11 of your report. Paragraph 4.1.7?

A: Correct. I have got it.

Q: This brings us to the famous Meldung No. 51, the report number 51 by Himmler to Hitler.

MR JUSTICE GRAY: Can we try to see if we can locate it unless you think it is not necessary?

MR IRVING: I do not think it is necessary, my Lord, I am just going to deal with the meaning of the word vorgelegt. As you correctly point out in this paragraph, this report was, as you say, submitted on 31st December 1942, and the word submitted in the German document was vorgelegt. Is that right?

A: That is how I translated it, yes.

Q: That is correct, and the initial that went with it was Hitler's adjutant Pfeifer. Am I correct?

A: When it comes to Hitler's Adjutants' initials I would defer to your recognition of that. I am not an expert in the initials of his Adjutants.

Q: I am not sure that Mr Rampton would be happy to have you deferring to me in any matter of expertise?

MR JUSTICE GRAY: I would be happier to have the document in front of me. Does anybody have any idea where it is?

P-138

MR RAMPTON: It is here. I am just trying to find it. It is L1, tab 7, page 140. In fact, I would recommend even going back as far as page 138, where we see it in a prior incarnation before it got reformed into the Hitler legible large type on page 140.

MR IRVING: I am quite happy to do that. This is one of the few examples, is it not, Professor, where we have a bit of a paper trail, do we not?

A: Yes.

MR RAMPTON: I hope the Professor can find it.

MR IRVING: In the thick bundle. Have you found it?

A: Yes I have both.

Q: Both the preceding document, as Mr Rampton has rightly pointed out, containing the same figures, and the large large typeface version on page 140. I am just referring to this top line where it says Vorgelegt and then the date and then the initial PH for Pfeiffer.

A: Yes.

Q: I am not going to make anything about the initial. If you had seen a preceding document, report No. 50, which is not in this file, and if it had got the word Vorgelegt on it twice, with two successive dates on it, Vorgelegt on 29th December and Vorgelegt on 30th December, what would that tell you?

A: That he had brought it back a second time.

Q: Why had he had to bring it back twice?

P-139

A: I have no idea.

Q: What is the logical reason why he would have had to bring it first one day and then put it on Hitler's breakfast tray again the following day?

A: It could be either that he had not read it or that he wanted to see it again.

Q: So the fact that word Vorgelegt is on a document does not necessarily mean that it had been read?

A: It does not prove that it had been read, because there is no Hitler initial that says "read by", which you sometimes see.

Q: Have you seen any documents anywhere in the archives where we can tell that Hitler has read a document? Would it have a different notation on it?

A: I do not know.

Q: Are you familiar with the notation Fuhrer hauptkentness, or something like that? F hauptkentness?

A: Yes.

Q: And there is no such reference on this particular document?

A: No. That does not have such a reference.

Q: would I be, on the balance of probabilities, right in saying, although it is likely that the document was submitted to Hitler, it is not proven that it was read by Hitler, this particular

document we are looking at?

A: One can say that we have very strong evidence that it was

P-140

submitted, but we do not know for certain that he read it.

Q: Do you know what else was happening at Hitler's headquarters around that time, what was happening to his war?

A: Well, of course, he was worrying about Stalingrad.

Q: He was worrying about Stalingrad, yes, thank you very much. Moving on to page 12, paragraph 4.2.1, this is the document from the Moscow archives, is it not, instructing the local SS units to assist the local anti-Semites in starting their own pogroms and keeping out of it themselves?

A: To instigate the pogroms without leaving their own footprints.

Q: It is a remarkable document, is it not? Has this just recently come into our possession, or has it been around for many decades?

A: The earliest to which I saw reference was when Helmut Krausnik refers to it in his big work on the Einsatzgruppen which was published, I believe, in 1979 and then it was subject to considerable debate between himself and Alfred Streim at the conference in 1982. So it has been a document that has been referred to among historians for now 20 years.

Q: Can you in three lines sketch for the court the nature of the debate?

A: The nature of the debate was whether there had been an

P-141

order to the Einsatzgruppen prior to the invasion of the Soviet Union to kill all Jews, or whether that order came later, and the question was, was gedrangtform or compressed form a quick way of referring to a comprehensive order which was what Helmut Krausnik argued, or do we take the order more literally and, when Heydrich says they will kill all Jews in state and party positions, to see that as a beginning of the campaign to kill Jewish leadership but not yet a comprehensive order to kill all Jews, women and children included. That was the nature of the debate.

Q: If you were to give an overview of the killing programme during 1941 on the Eastern Front, would be it correct to say that initially the victims were Jewish males of an able-bodied military age?

A: The first victims were Jews that were considered in leadership positions, or Jewish males in general. Sometimes they would be anyone from 16 and 55, sometimes it would be they want the lawyers and the doctors, not the doctors, they would usually be spared, bring us the leadership of the town. So that it was a selective killing and not a total killing, I argued, until August 41.

Q: Were there military reasons for carrying out these operations or purely ideological at that stage?

A: My feeling was that this was more ideological than

P-142

military, that these people do not present a military threat to the Germans of any significant kind, and that this was part of Heydrich's preventative war to take away the leadership of the Jewish community, and that this was a police purge, we might say, and not a strictly military operation.

Q: Are you saying that they presented no threat to the Germans of any military kind?

A: No significant threat. I do not think the 50 year old Rabbi represents a military threat to the

Germans and he would be the kind of person.

Q: I am older than 50 and I would certainly be capable of pointing a gun at someone.

A: If you had a gun, and they did not have guns. Capable of it, but the fact is that there is very little record that Jewish resistance was a cause of the German action, that it should be out here very, very early. The orders given -- put it this way. The July 2nd document refers to the verbal conversation Heydrich had with his Einsatzgruppen leaders before the invasion, and then on July 2nd he sends in compressed form a summary of that to the higher SS and police leaders. So that the orders to kill Jews and state and party positions precedes the invasion and is not the result of any actions by Jewish communities that could be construed as resistance justifying military repression. It is a pre-emptive measure decided on prior to invasion.

P-143

Q: Is it not right to say that the event reports the Erreichnichtsmeldung August 1941 onwards primarily referred to the emergence of partisan activity which is being led or supported by the Jews?

A: There are frequent references to Jews as if Jews and Bolshevich Jews and partisans are the same thing. But, if one goes down a lower level to people who are reporting on partisans for the purpose of what counter measures one may take, what I have seen of these is that it is not until the summer of 42, and the reference is Jews are fleeing to the forest and joining the partisans because of our ghetto liquidation campaign. The Germans are creating a Jewish partisan danger because these people are fleeing the death that awaits them if they do not.

MR JUSTICE GRAY: Mr Irving, I am sorry, I am going to have to interrupt you again. I am sorry to do so. We have had quite a lot of evidence about a document which I have eventually tracked down. There seem to be two versions of it, both in German, and I do not know where, if anywhere, I find an English version.

MR IRVING: Which document is this, my Lord?

MR JUSTICE GRAY: This is what he has just been talking about, the July 2nd 1941 document.

MR RAMPTON: The key part of the document is on page 11 of Professor Browning's report.

MR JUSTICE GRAY: I do not think that is really enough. Is

P-144

that it as far as a translation goes?

MR RAMPTON: The key part is in paragraphs 4.16 and 4.17. It is also set out in full in Longerich and Evans.

MR JUSTICE GRAY: In full in Longerich?

MR RAMPTON: Longerich 2, page 67.

MR JUSTICE GRAY: What would help me, rather than just having wedges of German text, is some sort of cross-reference. There really is not time for me to plough my own way through, with my inadequate German, to find the passages that matter so, if I could be provided with a cross-reference for where I find a translation, I would be very grateful.

MR RAMPTON: Yes. With these documents it is fairly straightforward because the footnote reference is at the bottom right hand corner of the page. These are all Browning documents. Therefore, if one uses the footnote reference, one can go straight to the relevant passage in Browning. It is more difficult with the Evans report but this is quite straightforward. If one looks, one sees that it is footnote 28 in this particular case, and one finds it therefore. That is how I found it in Browning. One finds it then on page 11.

MR JUSTICE GRAY: Longerich or Browning?

MR RAMPTON: No, Browning, my Lord. Footnote 28 follows this sentence, "On a separate line for Jews executed is listed 3,663,211", which is what the document says.

P-145

A: If I am not mistaken.

MR JUSTICE GRAY: I must be being stupid. You have just referred me to footnote 28 in Browning.

MR RAMPTON: Yes, which is on page 11.

MR JUSTICE GRAY: How does that help me get an English translation?

MR RAMPTON: Because it is translated in part at the top of the page, reports to the Fuhrer.

A: My Lord, I believe we have moved on to a new document, which is the July 2nd.

MR JUSTICE GRAY: That is what I thought I was asking about.

MR RAMPTON: I am so sorry, I thought we were still in December 42.

MR JUSTICE GRAY: No. We have had quite a lot of evidence about the July 2nd 1941 document, which is why I said I really must see what is actually said.

MR RAMPTON: Browning, page 12.

MR JUSTICE GRAY: Page 12?

MR RAMPTON: Your Lordship will find a cross-reference index at the front of this bundle of Browning documents. Every single document that is referred to in the index has its footnote number behind it.

MR JUSTICE GRAY: I follow that, but what I am looking for is an English translation, and which I do not think is an unreasonable request because this is a document that is quite important.

P-146

MR IRVING: My Lord, while they are looking, I hesitate to indulge in one-upmanship, but I have translated the next document I am going to give to your Lordship.

MR JUSTICE GRAY: That would be helpful. This does not apply to all documents. I do not think I am being unreasonable. Where it is quite important I think I ought to be provided with an English text.

MR IRVING: I have also translated the Funfach letters for your Lordship from the Dresden argument.

MR JUSTICE GRAY: Wait until we get to the next document because I really do want to find out where, if anywhere, a document which I think both sides attach importance to is to be found. I am afraid I am not really understanding the footnote cross-references. Am I going to be provided with them or not? That was a question.

MR RAMPTON: I am so sorry, I did not hear it as a question.

MR JUSTICE GRAY: I will say again. I think that the document of July 2nd 1941 is quite an important document. I have seen extracts referred to in paragraph 421 of Browning and I have seen a footnote in Browning but, as far as I have been able to find out, there is only the German text and I am suggesting that, if there is an English text, I would like to see it.

MR RAMPTON: All that the experts feel is important about this document is set out in their report.

MR JUSTICE GRAY: Well, I am not sure that can be entirely

P-147

right because we have had a great deal of evidence from the witness about it which is not

contained in the report. That is not a criticism of the witness at all, but is this an important document?

MR RAMPTON: I am sorry. I agree it is an important document but I have to say only in the respects which the witnesses, both of them, Longerich and Browning, have noticed in their reports, which to this effect, if I have understood what this discussion is about, to this effect. The hand of the SS was to be hidden in the instigation of pogroms. It is there, if I am on the right document.

MR IRVING: My Lord I will prepare a translation of that document overnight, the relevant parts.

MR JUSTICE GRAY: If you would. It does not appear that we are going to get it from the Defendants.

MR RAMPTON: I will do it, my Lord. If it is a document that it turns out we rely on for some purpose beyond that which appears in the expert reports, of course, then we must have it translated. But if, for our purposes, it is sufficiently represented and translated in the expert reports, then I do have to say we cannot go through these bundles translating everything that anybody might want to look at. For one thing, it takes too long and for another it is very expensive.

MR JUSTICE GRAY: Why I am being provided with wedges of paper consisting of pretty incomprehensible extracts, often not

P-148

giving any indication where they come from? I just do not follow the object of the exercise.

MR RAMPTON: When the expert reports were prepared, we asked the experts, as one would expect, to prepare lists and bundles of the sources for what they say.

MR JUSTICE GRAY: This is what we have all around the walls.

MR RAMPTON: That is what this is. Should there be some important document which requires to be translated in full as we have done in some cases, why then we shall do it. But I do not see this as being such a document for my part ----

MR JUSTICE GRAY: Thank you very much. We will move on in that case.

MR IRVING: Witness, we were discussing the question of whether the Nazis were just killing the able-bodied, military aged Jews whom they captured or whether the killing was being extended to include also the women and the children. We talked about a 50 year-old Jew as an example. Can I ask you to turn to -- there is a document dated August 6th 1941, which is referred to on page 15 of your report. It is footnote 42 is the document.

A: Footnote 42, yes.

Q: Page 20 of the little bundle, apparently.

MR RAMPTON: Might I again, your Lordship, intervene here to explain exactly what I mean -- I do not mean to be troublesome or difficult -- in relation to this document.

P-149

I know this document, something about it. It is well-described in Professor Browning's report, what it is. The only bit which actually really matters is the piece of manuscript right at the end of the document which appears on the its third page.

MR IRVING: Mr Rampton, do you mind if I tell his Lordship what matters about the document.

MR RAMPTON: Well, if you want to tell his Lordship ----

MR JUSTICE GRAY: No, to be fair to him, I have been being critical and he is just trying to be helpful and show me what ----

MR IRVING: On its way to your Lordship is a translation of the entire document.

MR JUSTICE GRAY: I am going to put that into this tab of J. Do you include the manuscript, Mr Irving?

MR IRVING: Yes, that is the final paragraph on the page.

MR RAMPTON: In that case, I think we should have a copy of the translation.

MR JUSTICE GRAY: Have you not got one?

MR RAMPTON: No.

MR IRVING: It was done at a relatively early hour this morning and I am afraid ---

MR RAMPTON: That is not a criticism. I think we should have it is all I am saying.

MR IRVING: Yes, but I will refer to the passages in the German text and ----

P-150

MR JUSTICE GRAY: I think I am going to keep this for the moment.

MR RAMPTON: Yes.

MR JUSTICE GRAY: But we will read it out to you.

MR RAMPTON: Yes, of course.

MR IRVING: Do you recognize this document?

A: I want to make sure we are talking about the same one. This is the Stahlecker to Jager of August 6th 1941.

Q: August 6th 1941.

A: The [German - document not provided].

Q: Yes.

A: Yes. This is a document that is Gerald Fleming sent me a copy of that he had gotten in Riga.

Q: In Riga.

MR RAMPTON: My Lord, that is page 15, paragraph 4.2.6 of Professor Browning report.

MR IRVING: Are you familiar with an author Eser Guilis(?)

A: Yes, the man who writes on the Final Solution in Latvia, Andrew Eser-Guilis.

Q: This is his kind of area, is it not?

A: It is an area he has written a book on, yes.

Q: In this document, if I may summarize in advance, is it correct to say that quite clearly the people who are writing this draft are planning for the Jews to survive in gettoes, August 6th 1941?

A: The civil administration is preparing a set of guidelines

P-151

that implies the ghettoization of Jews and that is to which Stahlecker is objecting, that they should not be dealt with here as in Poland, that here they are a greater danger.

Q: Yes, and if you can turn to page 2 of the document, the second line of the second paragraph, I will translate it. Roughly it says: "This draft evidently plans the steps suggested under paragraph 5 for the umsiedlung of the Jews, the resettlement of the Jews, not as an immediate step, but is to be regarded as a later, gradual development"?

A: That is the civil administration guidelines to which he is objecting, yes.

Q: And the idea is that they are going to keep the Jews, if they fall into the Nazis hands, in separate camps, keeping the sexes apart so they are not going to get -- they are not going to increase? They are going to keep them alive but so that they will gradually die out, effectively, as a race. This was the plan in that?

A: This is what he is referring to as the civil administration guidelines that he is criticising, that

they envisage marking forced labour ghettoization and he is telling Jager that these are not acceptable.

Q: And if you turn to the final page, there are four proposals listed there, one of which, the first one, is an almost 100 per cent immediate cleansing of the entire

P-152

Ostland of the Jews?

A: Yes.

Q: The second proposal is preventing them from procreating, from multiplying?

A: Correct.

Q: The third proposal is the possibility of the intensive exploitation of Jewish manpower which, of course, you cannot do if you are killing them. And the fourth one ----

A: You cannot do it by killing all, but you can do it if you separate out skilled workers and kill most.

Q: The fourth one is a considerable alleviation of the later transporting away of the Jews into a Jewish reservation somewhere outside of Europe?

A: Yes.

Q: So all of these are a much more modest form of the Final Solution, are they not, not involving killing, being proposed here by the man who drafted the document?

A: He lists those as four possibilities. We know, of course, from two things down below he says this all touches on orders and Jager, within a week, is killing all women and children and ----

Q: You are ----

A: --- Stahlecker's own report later ----

Q: You are rushing ahead.

MR JUSTICE GRAY: You are rushing ahead. Just pause a minute.

P-153

MR IRVING: My Lord, I am only relying on this document purely to show that whoever drafted the document (and the Professor will tell us in a moment who it was) the draft, the typescript draft, is making certain proposals of a very general and non-lethal form for the treatment of the Jewish problem in the occupied Russian areas.

MR JUSTICE GRAY: Yes.

MR IRVING: And that there is then a very important handwritten comment by Stahlecker on which I rely. I will read out the handwritten comment in German first. "Ich halte es ... (reading to the words in German - document not provided)... Stahlecker". Does Stahlecker in that rather complicated final paragraph, that postscript by him, his comment, does he refer to the fact that this conflicts with oral orders ----

A: I think he is saying ----

Q: --- which have been given by a superior agency to him?

A: Yes, as I interpret it, he is saying the guidelines prepared by the local civil administration ----

Q: Which is the typed guidelines here?

A: No, no. This is his critique of the typed guidelines. The typed guidelines are a different document. This is his letter to Jager who is to talk to the people who have drawn up the guidelines, and that this is his rejection of those guidelines. He says there should not be any guidelines until we have discussed this orally,

P-154

particularly as they touch upon oral orders that from the, you know, that cannot be put in writing.

Q: All orders from a von hochster Stelle?

A: Yes, from above.

Q: Not just from above.

A: Or from a higher ----

Q: A higher plain. Have you ever heard Adolf Hitler referred to as a higher plain in documents?

A: No, it would be highest.

Q: I beg your pardon?

A: He would be highest.

Q: Thank you very much. That is the answer I wanted. I know it is not very helpful for the Defence, but the correct answer is of course it would be von hochster Stelle, would it not?

MR RAMPTON: I am sorry to intervene, I am not saying this is disorderly cross-examination.

MR JUSTICE GRAY: It is far from being that. I think it is extremely orderly.

MR RAMPTON: I agree, but it seems to be heading in what I regard as a impermissible direction. On 17th January, this is the fourth day of the trial, page 94, the cross-examination went like this, line 8: "This is evidence that Hitler gave authority" ----

MR JUSTICE GRAY: If you want me to follow, the page?

MR RAMPTON: Day 4, my Lord, page 94. This is why I intervene

P-155

now, because I expressed a fear this morning that this is what was going to happen.

MR JUSTICE GRAY: Yes. Page 94.

MR RAMPTON: Page 94, my Lord, lines 7 to 16. I will read it out in case Mr Irving has not got his transcript here. I will start at line 8, if I may: "This is evidence that Hitler gave authority for the massacre at least2.

MR IRVING: Who is speaking?

MR JUSTICE GRAY: You.

MR RAMPTON: I. "This is evidence that Hitler gave authority for the massacre at least", interruption by Mr Irving, "of Jews". I finish the question because I meant to be precise: "Of Jews in the East?" Answer: "Yes". Question: "Yes". Then there is something about Longerich. Mr Irving says: "I do not think there is any dispute between the parties on this".

MR JUSTICE GRAY: I am just wanting to see the document that is being discussed.

MR RAMPTON: My Lord, that may not matter, may it, with respect, in the light of what I have just said? Als partisan als and auszurotten is what I was asking questions about.

MR IRVING: Have we not moved on from that document?

MR RAMPTON: No. With respect, my question was this: "This is evidence that Hitler gave authority for the massacre of Jews in the East?" "Yes. I do not think there is any

P-156

dispute between the parties on this."

MR IRVING: That is absolutely right, but the question is, my Lord, under what title the Jews were being killed, whether they were being killed in this connection as Jews or as partisans.

MR RAMPTON: "The massacre of the Jews in the East? Yes".

MR IRVING: Yes.

MR RAMPTON: With Hitler's authority.

MR IRVING: Both statements are obviously correct. I am very sorry you interrupted me at the point where I was making this very important point about con hochster Stelle, from the highest

level.

MR JUSTICE GRAY: Do not worry about that. If Mr Rampton is right, and at the movement it appears to me that he may well be, you would appear to have conceded quite generally that Hitler did indeed give authority for the massacre of Jews in the East. That, after all, is what you are presently cross-examining Professor Browning about.

MR IRVING: I do hesitate to cavil about words, but whether he gave authority for the massacre of Jews or of the Jews is what would be the issue here.

MR JUSTICE GRAY: I am not going to hold you to what you said in the course of cross-examination, but I think it is right to observe that you are, I think, shifting your ground because you did appear to concede without any qualification that it was Hitler who gave the authority

P-157

for the massacre of the Jews in the East quite generally.

MR IRVING: My Lord, I do not have the text in front of me.

MR JUSTICE GRAY: No.

MR IRVING: But from what was read out it appears that it was an exchange rather than a considered statement.

MR JUSTICE GRAY: That is true.

MR IRVING: With interruptions and "yes" and "yes".

MR JUSTICE GRAY: I am not going, as I say, to pin you down by reference to an answer you gave in the course of an exchange. So carry on, but I think it is fair to say Mr Rampton's intervention was well-founded.

MR IRVING: So I will just have to wind back about 30 seconds, so to speak. We were looking at the handwritten footnote by Stahlecker. He is referring to orders that have been given from a higher level to the Security Police, which are being affected by this new draft.

My question to you was, can von hochster Stelle or from a higher level ever refer to an order from Hitler? Your reply was, I think you said it would be from the highest level if it was a reference to Hitler?

A: If he was getting a direct order, this is an order that comes from higher authority.

Q: At which point Mr Rampton decided to interrupt.

MR RAMPTON: Yes, and there was a very good reason for it, if I may say so. I do not want to spend a lot of time in this court at my clients' expense listening to

P-158

cross-examination that leads nowhere.

MR JUSTICE GRAY: I think the position, and you can correct me, Mr Irving, if I am wrong about this, is that you have made the concession, and I think that is the right word, that Hitler gave authority for massacre of Jews in the East. That does not prevent you from saying when you are confronted with this document Stahlecker note that as far as this document, Stahlecker's note, that as far as that document goes, that is talking about orders from an authority other than Hitler.

MR IRVING: My Lord, it will come as no surprise to you, I am sure, to realize by now that it is not going to be easy to untangle the thicket of conflicting authorities and responsibilities that led to this appalling crime on the Eastern Front, and we are not going to find any simple chain of command.

MR JUSTICE GRAY: No.

MR IRVING: Or any simple written order, and that there will be apparent contradictions where people at one area are acting in one way and there is someone else acting in another way. We

have to look for clues as to where people's intentions lie.

MR JUSTICE GRAY: Yes.

MR IRVING: So that is the only use I wish to make of that particular document.

A: Can I add something to that?

P-159

Q: Sure.

A: If we look at Stahlecker's report of October 15, 1941, which is page 23, paragraph 4.3.10, of those four solutions that he lists he clearly embraces the first and claims, and I quote: "It was expected from the start that the Jewish problem would not be solved solely through pogroms. On the other hand, the goal of the Security Police cleansing work according to basic orders was the most complete removal possible of the Jews. Extensive executions in the cities and flat lands were therefore carried out through special units." In that sense of these four we have another document that shows Stahlecker purely understood his task as to be the first of those four options.

Q: Yes, but our problem is and our problem has been for some weeks in this courtroom, Professor, to try to establish the exact chain of command from the very highest level downwards. We are all agreed at the complicity of Himmler and Heydrich and Stahlecker and Jaeger and all the others, but there is a final bridge that we cannot build yet and it is a very difficult bridge to build.

I am going to ask you to go back to page 14 now, if I may, to paragraph 4.2.4. This is another document which I am sure you are very familiar with, August 12th, 1941, the order to drive the Jewish women into the swamps apparently issued by Himmler. Driving people into the

P-160

swamps, is that a familiar kind of phrase at this time?

A: I have seen it in three documents. This is the first one and then there is the Hitler table talk, and then there is the citation by Jackelm saying that Himmler used the phrase with him after the early December meetings. So I have come across that phrase now three times in this stretch of five or six months.

Q: Is it just a turn of phrase or do they mean it literally, do you think?

A: Well, I think the indication here ----

Q: Is it a dangerous turn of phrase?

A: It is used in ways I think that have a very, to use your term, a lethal connotation, that it seems to have become one of the slang words for making sure that Jews die. In the first one we see clearly by the response that driving Jews in the swamps meant that they were supposed to drown, because the man replies back: "Driving women and children into the swamps did not have the intended success because the swamps were not so deep that a sinking under could occur". So at least to the recipient it was clear that driving Jews into the swamps was a way in which they would perish.

Q: This is the Magill document?

A: This is the Magill document.

Q: Footnote No. 40.

A: Yes.

P-161

Q: That document, of course, comes from a different archive, does it not, somewhere in

Czechoslovakia?

A: That I believe is the Prague military archive.

Q: The Prague military archive?

A: Yes.

Q: Do you have that document in front of you, please? It is footnote 40.

MR JUSTICE GRAY: Page 23.

MR IRVING: Page 23. It is only a minor point I am going to make on that. In the second paragraph of that it is evident that the local Ukrainian and white Russian population were helping the Nazi invaders by telling them where the partisans were hiding. Is that correct? Reporting that there was bandits around and helping them to find them so that they could be shot?

A: Yes.

Q: So this was partisan country?

A: Well, of course they use the term Banden and it may or may not mean a real partisan unit at this stage of the war. It most likely means strengthening Russian soldiers that are, as they say, room driven, they are wandering around the swamp because they have been cut off.

Q: What period does this report cover?

A: This is early August 1941.

Q: How many days?

A: Well, that would be less than two months into Barbarossa.

P-162

Oh, I am sorry, it covers July 27th to 11th August 1941.

Q: Two weeks then, is it not? How big was this reitenabteilung, a mounted, what, brigade, mounted detachment literally?

A: Yes.

Q: How many men?

A: I believe this is one regiment within the brigade. I think there were two cavalry regiments and this is the second.

Q: Well, it says that it is the mounted ----

A: Mounted police of the cavalry regiment two, you are right. So this is a group, yes, a mounted group.

Q: It is a brigade.

A: What the size of an abteilung is. I do not know.

Q: It varies, does it not, from unit to unit?

A: Yes.

Q: Would you turn to the final page, please, page 4, the third paragraph from the end. Does it give a figure there for the gesamtzahl, the overall total?

A: It says 6,526 of plunderers.

Q: Plunderers have been shot by this unit?

A: Yes.

Q: In that two-week period. Do you consider that to be a plausible figure for a relatively small unit? I am just enquiring.

A: Yes.

P-163

Q: Still on paragraph 4.2.5 ----

MR JUSTICE GRAY: Before we leave that document, which is four pages of rather dense

German text, is there anywhere, presumably there is somewhere, a reference to all Jews being shot, sorry, the intended result or the intended success not having been achieved?

MR RAMPTON: The top of the last page, my Lord.

MR JUSTICE GRAY: The top of the last page.

A: That is the non-success.

MR RAMPTON: Failure.

A: Yes. Was your question, is there another document that says what happened?

MR JUSTICE GRAY: No. I expressed it rather badly. I have been told that there was somewhere in this document a passage which says, "We did not have the success we had hoped with driving the women into the swamp", and Mr Rampton has identified it. It is the top of page 26 of this clip. Yes. Thank you.

MR IRVING: Which does appear to be a direct response to the telegram, does it not, the order?

A: Yes.

Q: A remarkable -- it does not often happen in the archives, does it, two archives?

A: That you will have a meeting of documents from two different archives, yes.

Q: If you would now go back to 4.2.5, please, the only reason

P-164

to look at this is because on line 5 of that paragraph you mention the higher SS and police leader von dem Bach-Zelewski?

A: Yes.

Q: Von dem Bach-Zelewski. He was one of the major war criminals, am I right?

A: He is the counterpart of Jackelm in the North, Bach-Zelewski in the middle, and he was certainly considered by many to be a war criminal.

Q: How many scalps did he have, do you think, by the time the war ended, tens of thousands on his belt? I mean how many lives did he have on his conscious, that man, when the war ended as a mass murderer?

A: My guess is that it was quite a few.

Q: Quite few tens of thousands, hundreds of thousands?

A: Yes.

Q: What happened to him after the war? Was he executed?

A: No. He was tried in a court in Munich and as I ----

Q: When?

A: In the 1960s I believe.

Q: In the 1960s? So he survived 15 years in relative comfort being used in any way by the Allies as a witness?

A: He appeared as a witness I believe in the Wolff trial. I do not know what other trials he may have appeared as a witness.

Q: Is this not an extraordinary state of affairs, in your

P-165

opinion?

A: It would not be the first miscarriage of justice in Germany in which people should have been tried and were not.

Q: This is, in my view, or would you agree, a particular egregious example of somebody who should have been hanged relatively early on who somehow escaped the hangman's noose, would you agree?

A: I think he certainly should have been brought to trial much earlier, and his verdict should have been much more severe.

Q: He made a number of witness statements on behalf of the Americans and the British and the other Allies after the war, did he?

A: I am not sure on that. I could not answer that.

Q: Well, you say he testified at Nuremberg?

A: He testified at the Karl Wolff trial and also in Bavaria.

Q: How much credence do you think you could attach to the evidence of a witness like that?

A: It would depend upon looking at what he was saying and in what context and what corroboration. I would not make a blanket statement. Here again it would be a case where there is a witness and you would want to look very carefully at the particular testimony in question, but this would be one to be approached with caution. He did send apparently his doctored and sanitized diary to the

P-166

Bundesarchiv all nicely typed up and all references to things that you have referred to, that he probably has many hundreds of thousands on his conscious nicely deleted.

Q: Does this kind of happen in the archives, that documents turn up in the archives that have been sanitized in some way?

A: If they are submitted by the private party himself, as in this case, I suppose it is not necessarily uncommon. I think there was a feeling that maybe Sper had done the same thing.

Q: I know Sper did the same thing. Would you not agree that in a case of a man like Bach-Zelewski who you know and I know and the world knew was a mass murderer who had somehow managed to survive like Scheherazade by singing or by telling tales, that is the kind of evidence that you should drive a very wide circle around and not under any circumstances use?

A: I would not say not to use under any circumstances. It would depend upon what he was saying and whether it had other kinds of corroboration. He might be saying something that other witnesses would confirm.

Q: I mention this just as a particularly gross example, because are there any other names that would occur to you of witnesses where you think, well, it is funny that he got off so lightly? Are there any other names in

P-167

connection with the Holocaust where witnesses have been ----

A: I think Wolff got off fairly lightly.

Q: Karl Wolff?

A: Yes.

Q: Because he was an accomplice or he was -- what would his particular crime have been, to your knowledge?

A: Certainly in facilitating of the procuring of trains for Operation Reinhard, that was one key document.

Q: Yes. He survived, but are you familiar that in the case of Karl Wolff -- no, I cannot lead evidence on that obviously. What about Wilhelm Hoertel, Eichmann's liaison in the Balkans, shall we say?

A: I am not aware that Hoertel was involved in the deportation the way Sedonika or someone else. I do not know of any situation in which Hoertel knew Eichmann, but I do not believe he worked for him or was instrumental in the Final Solution.

Q: I will put to you two facts in connection with Hoertel. Is he one of the sources for our overall figure of the total on the Holocaust, the total number of victims?

A: He is the person who gave such a figure. I do not think that that is why historians come to the numbers that they do.

Q: Where did he get his figure from?

P-168

A: He claimed he got it from Eichmann.

Q: He claimed he got it from Eichmann. Was Hoertel prosecuted at all in any way at the end of the war for his role as a member of the Gestapo?

A: I do not know, but I have certainly not come across him as having been involved in the Final Solution. But there are many people ----

Q: Did he give evidence in Nuremberg on behalf of the Allies?

A: That again I cannot say.

Q: Will you go to page 16 of your report, please, paragraph 4.2.8? Can we have a look at the source document for that one, please?

MR JUSTICE GRAY: Is it page 78?

MR IRVING: I beg your pardon?

MR JUSTICE GRAY: I am not sure it is, but it might be.

MR IRVING: Yes. Your Lordship is way ahead of us. Would you go to page 2 of that transcript which again is unfortunately in German, but I wanted to draw your attention to the bottom three lines. Am I right in saying it says that two categories of Jews are to be distinguished from each other?

A: Yes. This is a document I believe that relates to Minsk and the other heading a Russian Jewish ghetto and a German Jewish ghetto, that they had a very strict separation in Minsk.

Q: Yes, and that these Jews, the Nazis had to distinguish

P-169

between these two categories of Jews ----

A: In this case ----

Q: --- once they began the killings when the ground thawed?

A: I am not sure if I understand the question.

Q: Well, the question is that they made once again a distinction between killing Russian Jews and the treatment of German Jews at this Minsk conference?

A: They made a distinction between them, but they are virtually all killed within six months. So it is a distinction that delayed the executions not a very great time.

MR JUSTICE GRAY: What is the point of the distinction in that case?

A: They are kept in different ghettos at the moment is one thing, and I believe, as you see from document, I think they consider the work skills of the German Jews would be viewed as higher and therefore would be kept longer. It goes on to say that Russian Jews, the following paragraph, after separation, it says: "Russian Jews are of a stubborn nature and unwilling to work. The German Jews work with much more vigour and they believe after victory that they will return to the old Reich". This is the result of having sent these people with in the fall with all of their Gerat, their utensils and suitcases and whatever else.

Q: You quote in your report a passage about a complete

P-170

liquidation of the Jews not possible to due to the frost.

MR RAMPTON: It is the bottom of page 2, my Lord, above the little letters (a) and (b).

MR JUSTICE GRAY: I see.

A: Yes, the quote I made ends, and then they say there are two categories to distinguish German and Russian, and then they explain that the German Jews are much better workers than the Russian Jews, and that is a reason why there would be differentiated treatment.

MR RAMPTON: My Lord, again this may be a document which it would repay having rather more translated of.

MR JUSTICE GRAY: I think in view of the point Mr Irving has just made, that would probably be right.

MR RAMPTON: I think that must be right.

MR JUSTICE GRAY: Thank you very much.

MR IRVING: We now come to a rather sensitive area which your Lordship may feel is not relevant, and this is the question to what extent did the local population participate in or even instigate the killings of Jews on the Eastern Front, the Russian front and in the Baltic countries, and to what extent were they themselves murderers? In other words, what percentage of the killings were their responsibility and what percentage went on to the Nazis?

A: That is the question you would like my affirmation on?

Q: Yes.

P-171

A: In terms of the pogroms that is something that was a brief phenomenon in the very opening days of the war, sometimes instigated by the Germans, sometimes starting spontaneously.

Q: Are we talking about the Eastern Front or the Baltic countries?

A: Both. Baltic countries is part I would say of the Eastern Front. More success, I guess more pogroms in some parts of the Ukraine and Lithuania than -- here I do not know the detail of where the pogroms occurred, but clearly they were supported and instigated by the Germans. How many were spontaneous would take a research that I have not gone into. What is more important is that by late July Himmler has approved the formation of auxiliary police units, that these police units reach about 30,000 by the end of 1941, about 300,000 by the end of 1942, and comprise one of the major manpower sources for why a small number of Einsatzgruppen ----

Q: And they were not all engaged killing though, were they?

A: No. Many are in police stations, but they are at one point when it comes the day to kill the Jews in that region, often it is the local police that would be part of the liquidation process. They do not move about. Some do. There are two concepts: The ones kept in police stations and then there are the mobile battalions.

Q: If I introduce the concept of the interregnum between the

P-172

time that the Soviet troops pulled out of the Baltic countries and the Nazi troops arrive, a period of, say, one or two weeks?

A: I am not sure that it was that long in many places.

Q: Was there much killing went on in that time?

A: That would have represented an infinitesimal fraction of the total number of Soviet Jews killed.

Q: You are not familiar with the private diary Otto Reutigang?

MR JUSTICE GRAY: Mr Irving, before you go further, is this your best point? If there really

were 300,000 of these people, Nazi ----

MR IRVING: Auxiliaries.

MR JUSTICE GRAY: --- auxiliaries, how far are you going to get with the idea that it was the local population that was either participating or instigating.

MR IRVING: I appreciate your objection, my Lord. I will not press that matter any further.

MR JUSTICE GRAY: Press on if you want, but it seems me it is not perhaps a particularly good point.

MR IRVING: My Lord, I have come to the end of my preparations for today's cross-examination. With respect, I would ask that, unless Mr Rampton has any further points to make, we will adjourn now.

MR JUSTICE GRAY: I told you I will give you as much latitude as you reasonably want. You have gone quite

P-173

expeditiously. So, Mr Rampton, you do not object to that?

MR RAMPTON: I am absolutely relaxed about that. I would like to know because I have to get Professor Evans ready, whether we will finish with Professor Browning tomorrow.

MR JUSTICE GRAY: Sensible timetabling.

MR IRVING: I think we will finish with Professor Browning tomorrow.

MR RAMPTON: In that case, I will prepare to have Professor Evans here for Thursday.

MR IRVING: I might want possibly one or two hours more on Thursday, but it is certainly not to inconvenience Professor Evans.

MR JUSTICE GRAY: One or two more hours more on Thursday with Professor Browning?

MR IRVING: If I have not quite finished with him by then.

MR JUSTICE GRAY: I am just wondering whether he is not wanting to go off somewhere else.

MR RAMPTON: He wants to go back home to America. So if he is not finished tomorrow, which is Tuesday, I would ask that he could be finished on Wednesday morning.

MR IRVING: I was thinking Wednesday morning, yes.

MR JUSTICE GRAY: What we will do, Mr Irving, is we will carry on on Wednesday. Do not worry, you will get your day, but it may be a split day, if you follow me, a day's time for preparing Evans.

P-174

MR IRVING: It makes sense for me to prepare properly the way I have for today.

MR JUSTICE GRAY: Of course. In the end it saves time which is why I think it is perfectly sensible.

MR IRVING: Unless Mr Rampton wishes to cross-examine him now on some of the points I have made.

MR JUSTICE GRAY: Re-examine.

MR RAMPTON: No, I would not dream of cross-examining, even if I were allowed to.

MR JUSTICE GRAY: Well, I would let you, but I do not think it is actually sensible.

MR RAMPTON: There is one little problem about Professor Evans. It probably does not matter enormously because I can use Friday with remaining cross-examination of Mr Irving. Professor Evans has rearranged everything because he thought we were not sitting on Friday. So he has, as it were, pushed everything into that one day. So even if he was started on Thursday I would ask him to be released for the Friday. Friday will not be wasted.

MR JUSTICE GRAY: Mr Irving, do you have a view about that?

MR IRVING: No, my Lord. I am in your Lordship's hands. I am much more relaxed than I was last week.

MR JUSTICE GRAY: The overall progress has actually been quite good.

MR RAMPTON: Very good. My hope is that we are actually going to save about a month of the estimate, which means we

P-175

might get a little time off to write our closing speeches.

MR JUSTICE GRAY: That may have been partly due to a bit of prereading. It did save a bit of time. Then we will have Evans on Thursday and resume him on Monday.

MR IRVING: My Lord, you must not forget that I have one more witness to call and that is Dr John Fox.

MR JUSTICE GRAY: You tell me when it is convenient for you to call him.

MR IRVING: I will arrange with the Defence on a date for that.

MR JUSTICE GRAY: Yes, discuss it together. 10.30 tomorrow.

**(The witness stood down).
(The court adjourned until the following day)**

P-176