

PROCEEDINGS - DAY SEVENTEEN

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Day 17 Tuesday, 8th February 2000.

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

MR JUSTICE GRAY: Mr Irving, I think there is a suggestion that we might at some stage amalgamate the documents really relating to Professor Browning's evidence which at the moment are in two separate places.

MR IRVING: Miss Rogers has very kindly volunteered to do this task and I willingly accept that.

MR JUSTICE GRAY: I am just mentioning it to you in case you had any feelings on the topic, but I think it must be sensible. I wonder whether we might not keep the pagination? Otherwise the transcript will make very little sense. Can I leave that to you? Yes, Mr Irving?

MR IRVING: May it please the court, I have given your Lordship a little bundle of documents, on the basis of which I wish to cross-examine the witness this morning.

MR JUSTICE GRAY: Yes. Let us decide where we are going to put those.

MR IRVING: Whatever occurs under the new regime, I think.

MR JUSTICE GRAY: Temporarily it had better go into J or L, I do not mind which.

MS ROGERS: L.

MR IRVING: L. I think the simplest thing to do, Professor Browning, is if we just go through this heap in sequence. You will agree that the first few documents apparently

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come from the Himmler papers, is that correct?

A: They come from the administrative and economic main office of the SS which is under Himmler.

Q: Yes.

MR JUSTICE GRAY: Just pause a moment, Mr Irving, will you? Yes, Mr Irving.

MR IRVING: My Lord, I should explain the purpose of the following questions is to go to the quantum, the figures really. That is all I am looking at. It is Operation Reinhardt. These are documents from a file in Himmler's papers called Operation Reinhardt. (To the witness):

Professor Browning, is it correct that these documents appear to come from the Hoover Library in California, if you look down the slash on the side?

A: Yes.

Q: And can you recognize the initials of Heinrich Himmler on the top copy?

A: Yes.

Q: So, in other words, this document is of high level, shall we say?

A: Yes.

MR JUSTICE GRAY: Where are Himmler's initials?

MR IRVING: The HH under the word "Hehler" about three inches from the top right-hand side of the document.

MR JUSTICE GRAY: Yes.

MR IRVING: I am purely interested in the very first line of

the letter under the word "Reichsfuhrer", where it says: No. 1. Then, when you translate the next sentence, this "Bis 30.4.1943 sind angeliefert"?

A: "Up until the 30th April 1943 had been delivered".

Q: "Had been delivered the following", right?

A: Yes.

Q: If you look then at the list that follows, it is a number of items, a rather sad list, I suppose, a tragic list, of wristwatches, is that right, for men and women?

A: Yes.

Q: Fountain pens?

A: Yes.

Q: Razor blades and other valuable items, is that right?

A: These are all the sort of things that would have been in one's toiletries or personal possessions, yes.

Q: Yes. Where had these items come from?

A: These were formerly Jewish possessions, but I see nothing so far that says which camps they came from.

Q: Yes. Can I draw your attention to the reference line at the top of the transcript, the Verwertung, the exploitation of -- then comes one of their stock phrases, is it not, "Jewish plundering loot", is that correct?

A: In fact, I have not seen that first phrase, but the "Diebesguts", the stolen goods, yes.

Q: This is the way that they sought to legitimate what they are doing, is that correct?

A: Yes, their stance was all that Jewish property had been stolen by Jews originally, so they were repossessing they claimed what was properly German property.

Q: Yes, a very distorted, perverse, kind of thinking, right?

A: A rationale that appears.

MR JUSTICE GRAY: How does this help on numbers?

MR IRVING: It helps on numbers, my Lord, because we have numbers of items that had been collected from the victims by April 30th 1943.

MR JUSTICE GRAY: It does not say "from when".

MR IRVING: I am hoping that the witness will assist us on this.

MR JUSTICE GRAY: Let us ask.

MR IRVING: Where did these items come from, these valuables? Did they come from victims of Operation Reinhardt?

A: I see nothing in the document that says Operation Reinhardt.

Q: Very well. Can I take you, therefore, to page 4, the handwritten number at the bottom?

A: Yes.

Q: And you will notice in the third line of the letterhead the initials "Reinh." in the top left-hand corner?

A: "Reinh", yes.

Q: Can I take you to page 10, and on the same letter head also we have Reinhardt?

A: Those two documents do have the "Reinh".

Q: Thank you. And on the page 12 -- I am sorry, it is the same document. So, if these items come from an SS folder which is called Operation Reinhardt and these particular documents have the initials "Reinh." on them, and they appear to be items stolen from the Jews or from victims, Jewish victims in fact, depending on the subject line, on the face of it, this is a list provided to Himmler of items that have been stolen from the Jews up to April 30th 1943. Is that a reasonable interpretation?

A: In terms of the inventory in the first document where we do not have the reference to Reinhardt, it is at least conceivable this was property taken from German Jews about to be deported, and could easily have been stuck in the same folder. I do not see anything there that would necessarily lead us to conclude that the first inventory came from camps in Poland. It could well be that this was possessed Jewish property taken while Jews were being in the process of being deported from Germany, but stuck in the same folder because it always was relating to Jewish property.

Q: Do you know what happened to these valuables that were collected in Operation Reinhardt? Where did they go initially?

A: I have seen documents that show a wide variety of distribution.

Q: Where they overhauled, were they recycled in some way

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before they were parcelled out?

A: Once collected at the three camps in Poland they are taken to Lublin where you have several camps, the old airport camp, for instance, where some sorting and reconditioning was done. Some of the properties were distributed there to ethnic Germans and any German unit that needs something can come and ask to be given something.

Q: Can I take you to document 10?

A: Yes.

Q: Does this say that they have a number of, 20,000, pocket watches and various other valuables at present at Oranienburg, and does the next paragraph say that the watches and fountain pens have been overhauled and are ready to be dispatched?

A: The topic of the document is watch distribution to members of the SS.

Q: Yes.

A: And then below they give you the different kinds. Would you allow me a moment to read the document?

Q: Would you read the paragraph beginning with the word "Insgesamt"?

A: Yes. At the moment in Office D there are for repair 100,000 hand wristwatches, 39,000 pocket watches, 7,500 alarm clocks, 37,000 pens and so forth.

Q: There is no indication of any other stocks of valuables of this nature being processed by this central processing and

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overhauling department?

MR JUSTICE GRAY: Do we have all the files, all the documents in the files? I take the point you are making.

MR IRVING: This was all the documents in this file. I picked them in California about five or six weeks ago.

MR JUSTICE GRAY: Is the file complete? Is it intact?

MR IRVING: I have no way of knowing, of course, my Lord.

MR JUSTICE GRAY: That is the problem. I see what are you getting at. Professor Browning, can you help on that? Is this likely to be a complete record? We have only looked at three documents.

A: Since so much was destroyed I think we presume a lot of them are not complete records. I have seen fragmentary records from the archive in Lublin where less valuable materials is distributed there. I think very valuable things like watches and whatever do have to be sent in but, if somebody wants furniture or wants clothing, they can requisition that in Lublin from these camps and they are never sent back to Berlin. Small volume high value items would be sent back. It would be something that would be worth shipping back, such as these particular items.

MR IRVING: Do you agree that this document on page 10, which is dated November 29th 1944, and has the heading or subheading Operation Reinhardt in its address list, says that altogether at present there are at Amtsgruppe D at

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present being repaired 100,000 wristwatches, presumably a rounded off number and various other valuables?

A: Yes.

Q: That gives an order of magnitude. It does not indicate there are any other treasure troves of such valuables anywhere else in the SS system, does it?

A: It says these are the ones that are available for distribution. We have no idea if there are lots of other kinds of valuables that have been sent elsewhere, but at least that much has been taken out for purposes of distribution to the SS.

Q: Can I take you back to page 1 again, which is about 18 month earlier, is it not, 13th May 1943?

A: Yes.

Q: That says that by April 30th 1943 we have received, effectively there have been delivered to us, 94,000 men's watches?

A: Yes.

Q: Is it likely that these were taken from the victims in the camps?

A: Again, it may well be that these were taken in Germany. It could be possible they were taken from the camp. In both, at least in the second case, I would presume that there was a selection of the best ones that they were sending back for repair for the Waffen SS. Cheaper goods in general would not have been worth doing that.

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MR JUSTICE GRAY: Does page 10, Professor, relate entirely to Oranienburg?

MR IRVING: Oranienburg, my Lord, was the headquarters was it not? Witness, was not Pohl actually based at Oranienburg, the head of this particular section?

A: The part of the administrative and economic main office that dealt with concentration camps is in Oranienburg, so Ampt D, which is here, is stationed in Oranienburg, or at least part of it. It says by the Office D in Oranienburg so we know at least they have one office there.

Q: All the wealthy Holocaust victims, either at the time they were dispatched from their places of residence or upon their arrival in the camps, were systematically robbed of their valuables by Operation Reinhardt, or as part of Operation Reinhardt? Is that correct?

A: Operation Reinhardt, in a sense, is the last stage of a long process of dispossession because the Jews in Germany were disposed of much of their property for that. When they were put on the trains the last things like rings and valuables and jewellery are taken. These are the small personal

possessions they would still have been allowed. Again in Poland Jews are dispossessed of their property and moved into ghettos and, when they are taken to the camps, the last remaining possessions are taken by Operation Reinhardt. Operation Reinhardt, in a sense, is the last cleaning up of whatever property had not been

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taken already.

Q: Not many more questions on this matter, Professor. Would you be able to make any kind of global estimates on these kind of data and say, well, therefore, the number of victims was not less than a certain figure and it was probably not more than a certain figure, on the basis that of course not everybody had valuable wristwatches or valuable fountain pens, but on the other hand not many people wear two wristwatches, shall we say, so it was probably not less than 100,000 people? Can you say that?

A: I would say that this would help us with a minimum figure but it would be nowhere close to a maximum figure because they are presumably skimming the cream and taking the very best things. Most Jews would have traded their wristwatches for food and whatever else long before this if they were in desperate straits, which they were. So it does not give us anything approaching a maximum figure.

MR RAMPTON: Can I intervene to say that I just have done some arithmetic? It is not obviously an exhaustive figure for whatever reason, but the total under A on this page is 200,000 items.

MR JUSTICE GRAY: Which page are you?

MR RAMPTON: Page 10, my Lord, at A. Many of these items may of course come from the same person, one does not know.

MR JUSTICE GRAY: That is what I was wondering. You can have a fountain pen and a watch.

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MR RAMPTON: Of course you can.

MR JUSTICE GRAY: What was the number?

MR RAMPTON: 200,000 precisely.

MR IRVING: Exactly, but it is giving orders of magnitude, in my opinion, my Lord. We are really clutching at straws and trying to arrive at figures. Is it not right, Professor, that our statistical database for arriving at any kind of conclusions for the numbers of people who have been killed in the Holocaust by whatever means, we are really floundering around in the dark, are we not? Is that correct?

A: No. I would not express it that way. I would say we have a very accurate list of the deportation trains from Germany. In many cases we have the entire roster name by name and we are not floundering. We can tell you, as we have seen in the intercepts, 974 on one train.

Q: But I interrupt you there and you say in many cases, but, of course, had we got a complete list of all the ----

A: Can I finish my answer.

Q: --- trains, then ----

A: May I finish my answer?

MR JUSTICE GRAY: Let him finish. You have been very good, Mr Irving, but let him finish this answer.

A: In terms again of France, the Netherlands, the countries from which there were deportations

from Western Europe, we can do a very close approximation by trains, the number of

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people per train.

In the area of Poland, there were at least statistics in terms of ghetto populations and these ghettos were liquidated completely, so we can come to a fairly good rough figure of Polish Jews. We also have a fairly reliable prewar census and postwar calculations so that one can do a subtraction. So, in terms of Holocaust victims from Poland westward, we are not floundering. We are coming fairly close approximation.

Where historians differ and where you get this figure of between 5 and 6 is because we do not have those figures for the Soviet Union.

MR IRVING: Can I halt you at this point ----

A: There is where we are -- that the numbers vary greatly.

Q: But can I halt you at that point and say the fact that a train load of Jews sets out from Amsterdam or from France does not, of course, necessarily mean that they end up being gassed or killed in some other way, does it?

A: If they are sent to camps like Treblinka or Sobibor or Chelmno or Belzec, yes, they are virtually all exterminated.

Q: On the basis of eyewitness evidence?

A: On the basis of, yes, what I have presented here. We know that ----

Q: Which we are coming to later on?

A: Yes, and they do not come back.

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Q: Yes.

A: They disappear.

Q: Well, the Nazis did not want them to come back, but would you accept that large numbers were also the subject of, shall we say, population movements, particularly in the 1939/1940 period. You talked about the Jews in Poland?

A: Yes, this is a move from one area of German control to another. So Jews that are moved from the Warthegau into the General Government are then included in the ghetto population statistics of the various towns in the General Government and those ghettos are then liquidated and they count as part of the disappearance ----

Q: When you mean "the ghetto is liquidated", you mean the ghetto is just wound up?

A: The ghetto is empty. People are put on trains.

Q: Emptied, but the word "liquidated" is rather suggestive that something else is happening?

A: Well, that was the German term. "Ghetto liquidierung" is their word, and that these liquidation, ghetto liquidations, also we know the mode in which they were carried out with extraordinary brutality and ----

Q: Yes, but come back to Poland for a minute. You talk about the fact that we had the prewar population census and the postwar census. We are having a major problem with Poland because the whole of Poland was shifted westwards as a result of the agreements, so what do you mean by Poland?

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This is the first problem. Is that not right?

A: Well, you are talking about territory, but the Polish population in terms of number of Jews left at the end really is not changed or altered by a shifting of borders because there were no Jews in either the German or the Polish territory.

Q: They also have a problem caused by the fact that the Soviet Union arbitrarily declared that everybody who was in the Soviet occupied part of certain parts of Poland became Soviet citizens. After they had entered, I believe, on September 19th or September 17th 1939, did they not arbitrarily declare after that that large number, the citizens who had previously been Polish were now Soviet citizens?

A: Yes, but those areas then fall back under the Germans and they are part of the statistics -- I mean, the prewar census we have is pre-1939.

Q: Are you saying that the Jews who were in the Soviet part of occupied Poland in 1939 stayed there until the Germans invaded two years later?

A: I think most did. Some did manage to get -- those that were saved, for the most part, were the ones that Stalin sent on to Siberia.

Q: Is it right the figure of those who left and were sent on to Siberia was of the order of 300,000?

A: The total number of Polish Jews in Siberia I do not think

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is even close to that. We know that the estimated number of Jews that fled or were deported from the German zone to the Soviet zone in 1939/1940 was in the magnitude of 200 to 300,000. How many for 1941 are, in a sense, caught in the German advance which in these areas, of course, is the very first territories they overcome, that you do not have any indication that very large numbers escaped at all.

Q: But there is an area of uncertainty, is there not?

A: The point at which the German documents start saying "The Jewish populations have managed to flee" is when you get much deeper into the Soviet Union where it took longer for the Russian armies to get to and there was more warning. The German documents indicate only then are they beginning to find that the Jews had managed to flee before they arrived.

So, while there is certainly a degree of uncertainty, to suggest that significant vast numbers of Jews escaped from these very border territories the very first days occupied by the German Army, I do not think is -- it is not one that I can accept.

Q: But is not the evidence, in fact, that the Soviet Union had evacuated large parts of their forward territories in preparation for their attack on Germany, and that when the Germans advanced into these areas in Operation Barbarossa in June 1941 they found the population relatively thin because of these evacuations?

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A: No, I do not think so.

MR JUSTICE GRAY: Can we ----

A: There were deportations of what they -- there were deportations of what they considered political enemies.

MR IRVING: So, in other words, I am not right in suggesting there is any area of uncertainty about the figures, in your view?

A: No. What I said is the area of greatest uncertainty is the areas of the Soviet Union and that from that boundary westward we come to a fairly close proximation. After that it varies, estimates vary greatly.

MR JUSTICE GRAY: Can I just interrupt because I want to go back to Operation Reinhardt which is where we started and we have rather sort of spread out from there. Can you -- Mr Irving, you are probably going to ask this at some stage anyway -- put an estimate on the number of people you would say were killed by gassing at the smaller death camps like Treblinka, Sobibor and Chelmno?

A: The numbers that the German courts came to in their investigations in which they emphasised that they were using the minimum estimate so that this would not be a controversy between the defence and the prosecution, in the first Treblinka trial, I believe it was 700 or 750,000. By the second Treblinka trial, they had upped that figure to 9 or 950,000. Belzec is estimated at about 550,000. Sobibor, I believe they estimated 200,000, and

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Chelmno, as a minimum, I think they said 150,000, but they thought it was more likely in the 250,000 area.

MR IRVING: When were these estimates made?

A: These were in the various judgments of the 1960s in German courts.

Q: 1960s and 1970s or 1960s?

A: These particular trials, I believe, all -- and I think the last one was in 1968/69, so I think all of those concluded before 1970.

Q: You say these figures were reached at by agreement between the parties?

A: These were the figures that were put into the judgment and what the prosecution said -- I mean, let me see if I can phrase this right, I want to be very careful on this -- that this was the figure that in a sense was in the realm where they had sufficient documentation that it was not contested. Then you have the estimate, possible additional that they did not want to put into the judgment or the indictment because they did not want that to be an obscuring issue or become a detracting issue, "Well, we did not kill 250,000, we killed only 200,000".

Q: I was going to ask, to put it in common language, was it any skin off anybody's nose if people added 100,000 more or less? I mean, was anybody going to get a shorter sentence because the numbers were lower or a longer sentence because the numbers were higher? What I am

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getting at is were the figures properly tested in court?

A: The figures were reached in general by historical expert witnesses that submitted these to the court and they were open to cross-examination by the Defence.

Q: And these witnesses were German or?

A: The most, the most active witness was Wolfgang Schafler who was a German historian.

Q: A German historian?

A: Yes.

Q: Is that the very reputable German historian too.

A: A very reputable German historian, who, in fact, looked at ----

MR JUSTICE GRAY: Mr Irving, if you challenge these figures, I think now is the time to do so. I do not know whether you do or you do not.

MR IRVING: My Lord, I am not in a position to challenge them on a numerical basis, but I do wish to plant or implant doubts in your Lordship's mind as to the rigour with which the figures have been arrived at, shall I put it like that? All I have to establish, if I have understood it correctly, in your Lordship's mind is the position that I am entitled, as a writer myself, not to be called a Holocaust denier because I question figures. I can put it as simply as that. Your Lordship

has a different take on that, I ought to be told it now perhaps in order that I can ----

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MR JUSTICE GRAY: I am sure about "ought", but I understand the way you use this evidence.

MR IRVING: I mean, this is not a court of law, criminal law, where they are trying somebody for murder. We are just trying to establish a matter of Holocaust denial really which is a different standard of proof, I think.

MR JUSTICE GRAY: Yes.

A: Would it be helpful if I said a little bit about how Schafner arrived at his figures?

MR JUSTICE GRAY: I think it might be in the sense that Mr Irving is really saying, "Well, I question the figures" and I think he must by implication be saying, "and I have good grounds for questioning the figures". So I think if you wanted to add something about the way in which the figures were arrived at, I think that would be helpful.

A: Yes, the figures for each of the camps he did by trying to trace the ghetto liquidations at the different periods into which camps they were sent. So we have a very accurate reduction of the Lodz population, which trains went to Chelmno, when, and we can come very accurately to the number of people deported from Lodz to Chelmno, then one is on a little bit less secure grounds for the various other surrounding towns where we do not have a day by day deduction or a train by train calculation, but we do have statistics of what the populations were there before the whole operation began.

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So with some rough estimate of how many would have been selected for labour, he came to a figure for Lodz as a minimum figure and then a more probable but not putting forward as necessarily a somewhat higher figure. He did the same calculations for the other camps.

We know how many Dutch transports went to Sobibor. We know which regions were cleared that were directed to Sobibor. We had the figures of the Jewish populations in those ghettos before the liquidation and the number of workers that were shifted to some of the work camps, and it was on the calculation, on that basis that he arrived at his figures.

MR JUSTICE GRAY: That is very helpful.

MR IRVING: Yes.

MR JUSTICE GRAY: Do ask anything you want, Mr Irving.

MR IRVING: I think this is probably an appropriate point to ask the witness about the atmosphere in Germany for historians. Is it possible for an historian in Germany now, whether reputable or disreputable historian, to advance opposing hypotheses in any degree of safety?

A: Oh, absolutely. For instance, in this court earlier I saw in the transcript you said that no one could refer to the Himmler guidelines without risking that -- the intercept of the Himmler guidelines, and, of course, Christian Jerloch has published that in Germany, and has suffered absolutely no repercussions and there is no question that

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he would, that there is a very vigorous discussion among German historians on the Holocaust.

Q: But would I be right in saying this discussion is skewed or distorted by the fact that anybody who goes to the other end of the spectrum, shall we say, and starts saying, "I think the figures are much lower because, for example, it was not a systematic liquidation" or anything like that,

anybody who accidentally says one of the taboo phrases in Germany is going to end up in trouble, in prison, and that this must certainly cast apprehensions in the mind of somebody about which side of the debate he takes?

A: I think that is nonsense. For instance, Hans Monson shares your view that Hitler did not give an order.

Q: Would you tell the court who Hans Monson is?

A: Hans Monson is a very notable historian at the University of Bochum, now retired boss tonne.

Q: He is not a Holocaust denier, is he?

A: You asked me with taboos and one of the things that has generally been seen that you have been identified with is the argument that Hitler did not make the decision. Hans Monson and Martin Broszat have accepted or have argued that Hitler did not give an order or a decision----

Q: Can I just halt you there? It would be useful if you would----

A: I am still talking.

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MR JUSTICE GRAY: You are interrupting a little bit, Mr Irving. Try and restrain yourself until the end of the answer.

MR IRVING: Your Lordship will know why I want to interrupt there.

A: Far from being thrown in jail or fearing, Hans Monson currently is the Shapiro Visiting Scholar at the United States Holocaust Museum. There is a wide of range of debate covering a wide spectrum of opinion. There is in Germany a law that outlaws Holocaust denial, but I know of no German historian that I have come across that has lost a night's sleep worrying that this prevents him from arguing from documents and from carrying out a full academic discussion.

Q: Have you heard of Dr Reinhard Seitelmann?

A: I have heard of Dr Reinhard Seitelmann. I know him.

Q: Are you familiar with the course of his career after he made certain statements? Was he originally a historian at the free university in Berlin?

MR JUSTICE GRAY: Mr Irving, I think this is a digression really.

MR IRVING: Very well. Would you explain to the court then who Professor Martin Broszat was? Was he an eminent German historian?

A: Yes. He was the head of the Institute for Contemporary History in Munich.

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Q: His opinion on my hypothesis that Hitler did not issue an order or that there is no Hitler order, are you familiar with that?

A: He takes your view that Hitler did not know of this, or that it was kept secret from him, or he would not have authorized it. That it was done by others behind his back he does not accept. He does not think that Hitler gave an order for or made a decision for the Final Solution, but that rather he ----

Q: It just happened?

A: He encouraged it, he instigated it in the sense that he made known his feelings and that others clamoured, or strove to gain Brownie points to get credit by realising the programme that Hitler hinted that he wanted to see done.

Q: Are you familiar with the word Verlegenheitslösung, a way out of an awkward solution, a way out of an awkward problem?

A: He used the phrase that it was a way out of a Sackgasse, out of a dead end.

Q: He picked up this word from the introduction to my book and said this was probably correct.

Are you familiar with that?

A: I do not know if he picked that expression up from your book, but he did. In so far as the issue of the Hitler order, Monson and Broszat have argued for a long time, as

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you have, they do not think that Hitler gave an explicit or formal order.

Q: It would be a grave injustice to call either of those two professors Holocaust deniers, would it not?

A: Yes. The argument over whether Hitler gave an order or not is not commonly part of the issue of Holocaust denial.

Q: Thank you very much for saying that. Hans Monson, would you identify him? Is he a Professor at the Royal university in Bochum?

A: Yes, he was. He is retired.

Q: A very eminent historian, is that correct?

A: Yes.

Q: Very well. I hope your Lordship pardons me for having made that little excursion?

MR JUSTICE GRAY: Yes. You picked up the answer that Professor Browning gave about whether denying Hitler's having given an order was an aspect of Holocaust denial, but I do not think the Defendants really say that it is.

MR RAMPTON: We do not.

MR JUSTICE GRAY: I was checking your summary of case.

MR RAMPTON: The Hitler exculpation, exoneration, apology part of the case has nothing to do with Holocaust denial at all. They may have a similar motive at the end of the day but that is completely different. We have focused on Hitler's exoneration to prove what we call distorted history.

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MR JUSTICE GRAY: Yes. I think what you do say is that it is part of Holocaust denial to deny that there was a systematic programme.

MR RAMPTON: Yes.

MR JUSTICE GRAY: That is not the same as denying that it was Hitler who instigated that programme.

MR RAMPTON: That is right. It is number 3, no systematic programme of exterminating Europe's Jews, whether on the part of Hitler or the Nazi leadership.

A: I think that Professors Monson and Broszat would say that Hitler instigated it in various ways. They would simply say there was no formal order or decision in the sense that we understand that is the way ----

MR JUSTICE GRAY: You say that yourself.

A: Yes.

MR IRVING: Is this the debate between the intentionalists and the functionalists?

A: It is one aspect of that debate.

Q: By instigating it, would you say that Hitler instigated it by raising the climate of anti-semitism in Germany, or was it more specific than that?

A: I think that was the beginning of it, but it gets also more specific than that when one continually indicates that you want this whole problem to disappear, that you want a settlement to this. You prophesy a disappearance of the Jews, which is in a sense to set the climate in

which people are to come forward to you with proposals which you then can approve or not. We know the pattern that Himmler comes to Hitler in mid September with the proposals for the ethnic cleansing of western Poland.

Q: September 1939?

A: He comes to Hitler. They bring the Madagascar plan to Hitler. They bring proposals about marking and deportation to Hitler. In terms of concrete proposals Hitler is not the micromanager, but the proposals are a response to the signals that he gives of what he wants and wants done, and this is what I would say we would call instigation.

Q: You refer to his prophesy, that was the speech of January 30th 1939?

A: That is one example.

Q: That was January 30th 1939. Did the killings start immediately?

A: No. That is a prophesy that could be realised in a number of ways.

Q: Nothing really happened for about three years, did it?

A: No. I would not interpret that as understood yet as total destruction. But when this does not work and there still needs to be -- that is, expulsion, ethnic cleansing, does not work, the reservation plans prove to be impractical, then the demand that something be done is still there, and then one brings more extreme points.

Q: How realistic was the Madagascar plan to which you just referred?

A: Do I think they took it seriously? Yes, I do think they took it seriously. It is fantastic but of course Auschwitz is fantastic, too.

Q: In what way is Madagascar a fantastic plan?

A: Fantastic in the sense that one is bizarre, the notion that you could take 4 million Jews and put them on ships and send them to Madagascar, and that anything other than the vast bulk of them would die under the conditions of being dumped into the jungle of Madagascar. Even that a plan that clearly in its implications involved vast decimation, they still talked in these words of resettlement.

Q: Is this not exactly what happened with the state of Israel? Millions of these people were taken and dumped in Israel, so to speak, although they did it voluntarily? It was an uprooting and a geographical resettlement.

A: The number of people coming into Israel of course came in gradually and there was a structure and an organization to arrange for and assist their reception.

Q: Have you seen in the German files references to the planning for the Madagascar settlement? In other words, the necessary retraining, the agricultural specialists and everything being set up by the Foreign Ministry and by the German Navy, the Naval staff?

A: No. I did not see some setting up retraining. I saw them planning to take all the property and who would be in charge of gathering the Jews, and that it would be an SS state at the other end, but I certainly did not see, as part of the files on Madagascar, retraining. There was some toleration of Zionist groups in Germany setting up agricultural camps in the prewar period when they were trying to encourage the emigration of Jews, be it to Palestine or anywhere else.

Q: Adolf Hitler repeatedly referred to the Madagascar solution, did he not, from 1938 in the

Goebbels diaries right through until July 24th 1942 in the table talk?

A: The Madagascar plan is a concrete plan, in which people are actually working on it. It is the period of June to September 1940, but there are references to Madagascar earlier and later. It is an idea that had floated in a number of anti-semitic pamphlets and the Jewish expert of the German Foreign Office in fact, who sort of arrived at this on his own, claimed that he got the idea from reading one of these pamphlets, so it was an idea in the air. This was one of the sort of anti-semitic fantasies that this problem would disappear if all of these Jews could be sent to the most distant island they could conceive of.

Q: Out of mind, out of sight. Would you agree that it was Hitler's pipe dream?

A: I would not call it pipe dream, because I think, if

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England had surrendered, they would have tried to do it. They would have tried to implement it just as they tried to implement the Lublin reservation plan and just as they tried and succeeded in implementing the death camp plans.

Q: Have you seen indications in the negotiations with France over the peace settlement with France, the armistice negotiations, that there was an attempt by the Germans to secure permission for the Madagascar plan because Madagascar was a French territory?

MR JUSTICE GRAY: I thought it was British.

A: No, French.

MR IRVING: Madagascar was French but it became British after May 26th 1942, my Lord, or thereabouts, when we did the usual thing.

A: They sent people to the French colonial ministry to get information on Madagascar. They certainly did not need French permission, and I am not sure how much this was a topic in armistice negotiations that were going on after the armistice, I do not know how much that was a topic between them.

Q: You think it was a totally impracticable proposition, the idea of sending 6 million Jews, or whatever it was, to an island the size of Madagascar?

A: I think they would have attempted it, and I think the results would have been disastrous.

Q: Why would they have been disastrous?

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A: Because I think a large percentage of the people sent there would have perished.

Q: I think that the Jews are a very sturdy people. They have shown that by their forthrightness in Palestine, have they not?

A: I think the conditions under which they arrived there, an island which the documents said clearly was to be an SS state, would not have been anything remotely similar to the conditions of an attempted and organized reception of refugees in Palestine after 1945.

Q: The population of Madagascar at that time was about 1 million?

A: I could not say.

Q: The population of Madagascar now is over 13 million?

A: I could not say.

Q: So it could have housed that number of people quite easily? It is a country the size of Germany, is that correct?

A: It would depend on the circumstances and indeed bringing Jews in, and all of their property taken, and under SS custody, I do not think one could say that they would have been housed

easily. I think it would have been lethal.

Q: If Hitler's intention was to exterminate all the Jews systematically, then why would he have had a pipe dream of sending the Jews to a country like Madagascar where they would have survived?

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A: This is where we get to the interpretational issues of the intentionalist and functionalist. I do not believe at that point that he intended to destroy the Jews systematically. He wanted a problem to disappear.

Q: When did the intention then develop? This is important I think.

MR JUSTICE GRAY: Yes. Let us get on to that.

A: As I say in my report, my feeling is that there were two separate phases of decision making. Both of them stretch out over a period of time.

MR IRVING: With particular reference to Hitler, please?

A: It is an incremental decision making process. We have in the Spring of 1941, in preparation for Barbarossa, a number of his statements about what kind of war this is going to be, a war of destruction, a killing of what he calls Judao- Bolshevik intelligentsia and this kind of thing. This results in proposals coming to him, one of which is the creation of the Einsatzgruppen in its arrangement with the army or logistical support, the Commissar order, and that in the opening weeks of the war this led to the selective killing of adult male Jews in the regions that the Einsatzgruppen enter.

Q: Can I halt you there for a moment and say, when he talks about the Judao-Bolshevik enemy, which half of that adjective weighs strongest in his mind, the Bolshevik or Judao?

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A: I think for him it is a package deal, but in terms of what is wrong with Bolshevism is that it is the latest manifestation of the Jewish threat, so the Jewish issue is the prime one and the Bolshevik is the current manifestation of this Jewish threat as he understands it, because he has seen previous manifestations are the French revolution and the liberals. Christianity is the first Jewish threat.

Q: There have been more recent manifestations, have there not, for example in the Spanish Civil War?

MR JUSTICE GRAY: Mr Irving, this is getting a bit discursive. Can we just pin it down a little bit?

MR IRVING: I am trying to pin it down.

MR JUSTICE GRAY: Professor Browning, I know we are interrupting an answer and I want you to resume it, but can we just anchor it to particular dates? The date that is in my mind, and I would be interested to see the document if possible, is the 25th May, and I think it was 1940 rather than 41.

A: The May 25th document is the Himmler guidelines for the treatment of the peoples of Eastern Europe, in which he wants to reauthorize the ethnic cleansing from the western territories, which Frank and Goring had managed to whittle down.

MR JUSTICE GRAY: Is that not, in a sense, the start of it all?

A: No, that is still in the ethnic cleansing phase. That is

the document in which Himmler is still referring to a total extermination as unGerman and impossible.

MR IRVING: I was going point that out, yes.

A: It is the following year, 1941 in the spring, when Hitler begins to talk about this war of destruction in the East, the destruction of the Judao-Bolshevik intelligentsia, that leads to the selective killing of adult male Jews in the opening five or six weeks of Barbarossa.

MR IRVING: Can I halt you there and say which documents? Are you referring to the Kommissar order then?

MR JUSTICE GRAY: Can we look at some of these documents?

A: We are referring to a collection of documents, the agreement between the military and the Einsatzgruppen in which the Einsatzgruppen will get its instructions from the SS but its logistic support from the military.

Q: Is it not possible to argue that these are purely military measures at this time?

MR JUSTICE GRAY: Can we look at the document? I really do want to look at this document, the Kommissar order.

MR RAMPTON: Your Lordship will excuse me for interrupting. You will find three relevant documents cited, or rather utterances by Hitler in a military or a semi-military context on pages 55 and 56 of Dr Longerich's first report. They are all three of them in March 1941 before Barbarossa starts. Perhaps Professor Browning might be given that, so that he can see it.

MR JUSTICE GRAY: I think it is quite important because, if this is too broad brush, it is perhaps not as helpful as it could be.

MR IRVING: I agree, my Lord, because I shall want to draw attention to the military nature of these orders.

MR JUSTICE GRAY: Do so please, but let us do it by reference to the documents.

MR IRVING: They are criminal, there is no question, and they are Draconian, but they are military.

MR JUSTICE GRAY: I understand that. So 55 and 56 of the first part of Longerich, Mr Rampton?

MR RAMPTON: Yes, my Lord.

MR JUSTICE GRAY: Thank you.

A: Yes. I think, if we look at the very first one, in fact he makes clear that his campaign has both a military and an ideological side. As he says, the coming campaign is more than just a struggle of arms. It will also lead to a confrontation of two world views. Then he goes on, it is does not suffice to defeat the enemy army, Jewish and Bolshevik intelligentsia must be eliminated. So this campaign from the very beginning is to be conceived as more than a conventional war between armies. It has a strong ideological element and that ideological element relates to race, and particularly to Jews, and that tenor I think is very strong in his spring of 1941 declarations. As I say, when we then look at what was the

result of that, if one looks at the Einsatzgruppen reports, the overwhelming bulk of the victims who were shot in the first five or six weeks are ----

Q: Described as Jews?

A: --- as male Jews. They kept some communist functionaries. They regret, in a sense, most of the communist functionaries seem to have disappeared, the Jews have not, and that these then are the main target group.

Q: If this document refers to the Judao-Bolshevik intelligentsia, this does not explain why large numbers of thousands of ordinary Jews are being taken off trains or taken out of the towns and taken out of the country side and machine gunned into pits They are not the intelligentsia in any way. This document covers the intelligentsia.

A: No one is saying that this is a hands on micromanaged order. This is a speech by Hitler in which he is declaring a set of expectations, and then there are various preparations made and proposals brought forward that, in a sense, cast his vision of a war of destruction into concrete terms.

Q: If I could rephrase that document, if this was going the other way and the Russians were saying, we are going to invade Washington and we are going to destroy the capitalist intelligentsia, and subsequently very large atrocities took place and millions of ordinary Americans

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being machine gunned into pits, you would not link those two facts, would you?

A: I think one could, in the sense that one would say ----

Q: Just Americans with bank accounts or otherwise fitted?

A: Well, one, it sets a mood in which destruction of civilian populations, killing will not be limited to armed soldiers.

Q: Would I be right in suggesting that this order effectively created a killing field, and that anybody else who fitted the title of Jew who came within that killing field was therefore at risk, put it that way?

A: This certainly creates an atmosphere in which clearly there will be lots of killing and it will not be restricted to military combat, that there will be killing of those that are seen to be an ideological and racial enemy, as well as military. I think, when we look at, in a sense, the kinds of proposals that are brought forward, very revealing are not only the Kommissar order and the agreement between the military and the Einsatzgruppen, but the economic plans that come forward, such as the May 2nd meeting of the State secretaries, in which they say, for Germany to be blockade proof, we must take lots of material out of the Soviet Union, and we must be very clear that, when we do this, umpteen million Russians are going to starve to death. So we have an atmosphere of a war of destruction in which civilian life is going to be

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totally cheap.

Q: He does not say, as a result of our taking economic goods out of the country, millions of people, preferably Jews, are going to die. That is just any Russians?

A: This is that lots of Russians will die, lots of civilians will die. Then, of course, if we cast that, as an historian, to put it into the wider context, you would not disagree with that, I think.

Q: Yes.

A: The wider context basically is where people have been shot, Jews have been shot in larger percentages than others, where people have starved, the Jews have starved first. So, if you have a programme of shooting and starving, one can begin with the fact that there is going to be a large loss of Jewish life, that this would be clear to anyone in the context of Nazi Germany in the spring of 41. That is not yet. That is not yet an explicit order for the killing of Soviet Jewry. It is a

creation of, we might say, a hunting licence. No one will get into trouble killing Jews. One will get credits rather than anything against them.

Q: I agree entirely, but the focus is at this stage on this document strictly, shall we say, the upper 10,000? It is the Judao-Bolshevik intelligentsia and their hierarchy, all the way down to the Kommissars, is that right?

A: The focus is selective killing and indiscriminate

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starvation.

Q: The emphasis is on this as a measure of war? This is the kind of war we are going to be fighting?

A: No. The emphasis is on measure of a war that is understood to be both military and ideological and racial.

Q: A war to the death, yes.

MR JUSTICE GRAY: Professor Browning, where do you get indiscriminate starving from?

A: That is a document I believe is not one that I cited. It is a protocol of a meeting of the State secretaries on May 2nd 1941. It is a Nuremberg document, in which the protocol is that we all agree that, when we take out of the Soviet Union what is necessary to make Germany blockade proof, we must be perfectly clear that this will mean the mass starvation of umpteen million Russians. So it is a document that speaks to what was clear to everybody involved in the planning process, that this war of destruction was going to mean a vast loss of life. Given what had happened in Poland, I would argue, everyone understood that, in a vast loss of life, Jewish life was even cheaper than other life. That is what I would call the beginning of this first phase of the decision making process. It sets up a genocidal atmosphere, it does not yet set up a systematic plan for total liquidation.

MR IRVING: Can I leap forward ----

MR JUSTICE GRAY: Mr Irving, I am going to highlight that.

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I am also going to suggest -- the questions have been fast and furious this morning. That is not a criticism. I suspect you would quite welcome a break and I am sure the transcriber would. It has been actually quite intensive this morning.

MR IRVING: Can I have one short question? On that point we shall round it off and let us say that this kind genocidal order, is it not almost identical to the Morgantower decision of September 1944, where the Americans said, let us do this to the Germans, we do not care how many starve?

A: I would have to look at that document before I could say whether it was similar or not. What we do know of course is that that document never was implemented.

Q: It was signed by both Roosevelt and Churchill, was it not?

A: I would have to see such a document.

MR IRVING: Thank you.

MR JUSTICE GRAY: I think five minutes is enough just to have a breathing space.

(Short Adjournment).

MR JUSTICE GRAY: Mr Irving, can we just identify the Kommissar document you refer to? I

am not sure I know where that is.

MR IRVING: The Kommissar order is in May 1941, I believe, about May 7th or May 5th. These March 1941 documents, I believe I am right in saying, are the kind of working

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level papers, are they not? I do not know exactly what is before the witness. I do not have copies of these documents.

MR JUSTICE GRAY: I only mention it and perhaps we can locate it in due course.

MR IRVING: The Kommissar order is important because it was dictated by Hitler to General Jodl, I think, so it very clearly represents Hitler's thoughts. That would be useful if I do obtain a copy and bring it into court tomorrow.

MR JUSTICE GRAY: If we can at some stage, yes.

MR IRVING: May I ask what this particular document was that you were quoting from?

A: The State secretary's meeting.

Q: No, the actual one with the references to the Judao-Bolshevik intelligentsia?

A: This is footnote 137 from page 55 from the opinion by Peter Longrich.

Q: And there are two more documents that Mr Rampton wished you to consider, I believe?

MR RAMPTON: Yes. They are just summarized on pages 55 and 56. There in fact may be four, paragraphs 15.1, 15.2, two documents, and 15.3 on page 56, all in March of 1941.

MR JUSTICE GRAY: Yes, thank you very much. Professor Browning, looking at those further documents, they do not, as it were, perhaps add anything, but they maybe confirm

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what you have already said in relation to the 3rd March document. Is that fair?.

A: Yes. What I think they confirm is that Hitler does not see this, and does not want his generals and others to see it, as a conventional war, but that it has a very strong ideological dimension to it, and that the enemy to be destroyed is not just the Soviet army and its power to resist, but what he considers to be Judao-Bolshevism, communism, he uses different phrases.

MR IRVING: Would it be right to say that at this time Hitler had knowledge of the manner in which the Soviet Union fought its wars, both its colonial wars as in Spain, for example, and also in the Finnish winter war of 1939 to 1940?

A: What picture the German intelligence portrayed of the Soviet Union in all of this, is an area that others have studied, it is not an area that I think I could speak with authority.

Q: Would he be familiar with the activities of the Russian Kommissars within the Red Army hierarchy?

A: It is very likely he would have been given even a more lurid description than maybe would have been historically accepted but that is just speculation on my part. As I say, I cannot think of any documents at the moment that I could speak from with authority.

Q: The Soviet Commissart system was a political agitator, am

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I correct, within each Army unit to make sure that they pointed their guns in the right direction, roughly?

A: It was to establish, in a sense, a dual control of military units, someone who would be there with military expertise and someone with political, what they called reliability.

Q: Did these Commissarts have an NKBD rank?

A: That I do not know.

Q: Can you estimate for the court approximately what percentage of these Commissars were, in fact, Jewish?

A: I have absolutely no idea.

Q: No idea. Very well. But if a substantial percentage were either Jewish or were perceived by the Nazis to be Jewish, would that justify the kind of language that Hitler used in these military plans for the coming Russian campaign?

A: No, I do not see that Jews who were part of the NKVD, in a sense, often were totally secular Jews separate from the Jewish religious communities in these towns, that they had given up, in a sense, their Jewish identity. They were often all part of the Jewish communities that were going to face the onslaught of the genocide. So if you ask me is there a justification, my answer would be absolutely not.

Q: Are you aware that, in fact, the Jewish community formed the backbone of the Red Army and of the NKVD?

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A: I am certainly not aware of that and I doubt that that is the case.

Q: Are you aware of the fact that 300 heroes of the Soviet Union of General's rank were Jewish?

A: I do not know the number, but I do not know that it is relevant.

Q: Well, I am just trying to establish the fact there may have been a military reason for Hitler to have used this kind of language in preparing his Generals for the very ugly war that was to come.

MR JUSTICE GRAY: If that were so, I just wonder, Professor Browning, whether the word "intelligenzija" would have been used? It is an odd word if one is talking in terms of talking military combat, is it not? Is that right or wrong?

A: Well, I think for Hitler he equates Bolshevism and the Communists with Jews, and in a sense he is talking about -- he sometimes used "leadership", sometimes he uses "intelligenzija" and in his mind these are intertwined.

Q: The point I was really putting to you is if one is talking about military extermination, if that is a fair way of putting it, one would expect to find a reference to not "intelligenzija" but "senior military personnel" or something of that kind?

A: Yes, I mean, and that I think is there as well, but the fact that he adds these others would again reinforce the

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point I am making that there is a strictly ideological racial dimension as well as a military dimension.

Q: More than a struggle of arms?

A: Yes.

MR IRVING: Is it not right, however, also to say that in defeating the Soviet Union, he would not only have to defeat the Red Army, he would also have to defeat the Soviet hierarchy, the bureaucracy; he would have to eradicate that as well in order to implement the German colonial rule on those regions?

A: Have to eradicate what?

Q: The bureaucracy, the entire Bolshevik hierarchy?

A: That certainly was his goal, yes.

Q: And the Nazis frequently used the phrase "Jewish Bolshevik"; it had become a bit of a slogan,

had it not?

A: It was more than a slogan. It was a reflection of their mentality.

Q: My Lord, I think we have taken that question as far as we can go, unless your Lordship has further questions on those particular documents?

MR JUSTICE GRAY: No, not at all.

MR RAMPTON: May I just add this? It may save time later on. Your Lordship was asking about the guidelines ----

MR JUSTICE GRAY: Yes.

MR RAMPTON: --- for Barbarossa, conduct of troops. The date is 19th May 1941 and the relevant part is summarized in

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and translated on page 5 of part 2 of Longerich.

MR IRVING: Yes. This is not a Commissart order, but it is very much a parallel document.

MR JUSTICE GRAY: Right. That is very helpful.

MR IRVING: It effectively says that ordinary court procedures will not apply and this kind of thing.

MR JUSTICE GRAY: Thank you very much, Mr Rampton. I was not aware of that at all. MR

IRVING (To the witness): Are you familiar with those guidelines of May 19th 1941? Can you answer questions about it, roughly, were they specifically anti-Jewish in nature?

A: There are, I would say, three key orders, one is the Commissart order, one is the order concerning military jurisdiction and then there is the troop, guidelines for the troops, in which "Jews", simply the term "Jews", is put in the same line with saboteurs, guerrillas, so that, in effect, Jews are created as a class that can be equated on the basis of who they are with other targets who are defined by what they do. This, of course, is the essence of a racial genocide.

Q: Are you familiar with the origins of these three documents you have mentioned?

MR JUSTICE GRAY: I think you mention them in your own report actually, do you not?

A: I am not sure if I mention the three documents.

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MR IRVING: I have not come across them in this witness report.

MR JUSTICE GRAY: Paragraph 4.2.1, I thought it was.

A: I may have mentioned them briefly.

MR IRVING: I would have remembered them if -- I think they must be in the Longerich report, my Lord.

MR RAMPTON: It is in Longerich.

MR JUSTICE GRAY: It is certainly there, but this is another guideline, is it not, at 4.21?

A: 4.2.1, the Heydrich order of July 2nd, which we discussed yesterday, is his summary to the higher SS and police leaders of his oral instructions to the Einsatzgruppen leaders on June 17th, five days before the invasion. This is when he includes among those to be shot will be Jews in state and party positions.

MR IRVING: This is the document your Lordship wanted translated yesterday.

MR JUSTICE GRAY: These are guidelines at that stage?

A: Yes. This is the guidelines of early July -- in fact, the guidelines of late June, prior to the invasion, because he is summarising what was already given to the Einsatzgruppen on the eve of the invasion.

MR IRVING: This is Heydrich, of course, who is two or three rungs down the hierarchy, is he

not?

A: Very close to Himmler.

Q: Yes. The question, witness, which I asked you just before that little discursive, are you familiar with the military

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planning documents or working papers that led to these three documents we were just talking about, the guidelines, not these ones, but the May 19th guidelines?

A: I have, I think, briefly seen in the Hans Adolf Jacobsen study his account of the emergence of the Commissart order and the Krasvnik(?) article on the emergence of the military jurisdiction order. I have not worked on those in the archives, but I have seen other historians' studies of those two particular cases.

Q: Are you familiar with the private diary of General Franz Halder, the Chief of the German Army General Staff?

A: Yes, I have read parts of that.

Q: Would you agree that in that private diary, which was written by him in shorthand (so it was of a very confidential nature) it emerges that the German Army were the source of the inspiration for those documents, in other words, it did not come from Hitler down to the Army; it went from the German Army effectively up to Hitler or up to the German High Command, they wanted ----

A: I cannot say that that was my impression from Halder, but I would have to disagree in the sense that we have Hitler/Jodl conversation in early March, in which Jodl then comes back to the Generals and says, "Hitler wants us to do something in terms of the" ----

Q: The Commissarts?

A: --- "Commissarts" and the negotiations over the shaping of

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the military jurisdiction order comes I think from a similar instigation from above, that the Army is not to be involved in disciplining the behaviour of troops against the civilian population which previously would have been primed under martial law.

Q: Would you identify Jodl to the court, please?

A: Jodl is, if I get it right, the Chief of Staff of the High Command.

Q: Was he Chief of the Operations Staff at the German High Command.

A: High Command, not the Army, the Arm Forces High Command, the global one.

Q: And if Hitler, as Supreme Commander, was having this discussion with the Chief of Staff of the German High Command, then it must have been a discussion of a military nature rather than ideological nature?

A: Not if he wants the Army to take part in and not to be a problem concerning this war of destruction. If the military is to take part in a wider kind of war, not to conceive of this war is a war like they fought against the French, and that they are to remove themselves from or to give to their own officers a new understanding that certain kinds of behaviour, the troops will no longer be subject to the jurisdiction of military court martial and will not be criminalized. Now, this has to go to the Army. But that certainly cannot be said to be ----

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Q: But this is the military discipline?

A: Yes, but it is an issue of military discipline that is completely related to the notion of this

wider war of destruction. It is not compartmentalized to military operations but to the ideological war.

Q: Is it not likely, in fact, that Hitler would have these discussions with the German High Command on the military side of the problem and he would have similar discussions with Himmler on the ideological side of the problem, and these documents only refer, therefore, to the military side of the problem.

A: I disagree totally. That certainly is the postwar plea of the German Generals of self-exculpation, but I think the documents we see is that he makes very clear to the Generals that this a multi-dimensional war, and that he does not compartmentalize. He wants the Army to revise its multiple court martial code. He wants the Army to take part in the finding of the Commissars and either shooting them or turning them over to the SS, that he does not compartmentalize this war.

Q: We so far have not mentioned one very important conference that took place around this time after Barbarossa, which is the conference of July 16th 1941. You are familiar with this?

MR JUSTICE GRAY: If there is a document, can we go -- I am quite keen to pick up these points and not deal with

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them ----

MR IRVING: It certainly be referenced by Longerich. It is not referenced by this witness in his report, but it is one with which he is quite familiar, my Lord.

MR JUSTICE GRAY: It does not make it any easier, but if we can identify and locate these documents.

MR IRVING: I was going to ask one question on this conference really which is -- are you familiar with the conference to which I am referring?

MR JUSTICE GRAY: This is for my benefit rather than yours or Professor Browning's.

MR IRVING: Are you familiar with the conference to which I am referring?

A: This is July 16th conference?

Q: July 16th. Hitler, Rosenberg, Martin Bormann wrote a memorandum on it?

A: Lammers, I believe, was present.

Q: Lammers was present, Himmler was present?

A: No, Himmler is not present. Himmler met with Hitler on 15th and left for Lublin.

MR JUSTICE GRAY: I am sorry, I am going to ask you to pause. I think I really must have the document, if only a reference to it.

A: It is a Nuremberg document. I think it is L...

MR RAMPTON: I can help. Page 57. Longerich 1, paragraph 15.7.

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MR JUSTICE GRAY: I am sorry to interrupt you, Mr Irving, but I have to try to digest all this and it is easier.

MR IRVING: Problem is, my Lord, that both the witness and I have all this in our heads.

MR JUSTICE GRAY: Yes, but it is quite important that you get it into my head too.

MR IRVING: It is not an easy task.

MR JUSTICE GRAY: I am sorry to hear you say that.

MR RAMPTON: If your Lordship wants to see the German?

MR IRVING: My Lord, the reason I said this is because it has taken me 35 years to get it into my head, the whole history

MR JUSTICE GRAY: Yes.

MR RAMPTON: It has only taken me nine months! It is 4.2, if your Lordship would like to see another splodgy German document.

MR JUSTICE GRAY: It may be that now you have given me the reference here, I can follow it up. Is it paragraph 15?

MR RAMPTON: Paragraph 15.7.

MR JUSTICE GRAY: Then it is in the transcript at least so I can go back to it. Yes, Mr Irving, follow that up if you want to.

MR IRVING: All that I want to say is, I mean, I have no idea where this question and answer is now going to lead. It may harm, it may help me. This was a very important, top level conference deciding areas of responsibility in the

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Eastern territories; is that right?

A: Immediately after that conference, the next, they issued the Fuhrer decrees delineating the responsibilities of Himmler and Rosenberg, the SS and the civil administration for the occupied territories, Soviet territories.

Q: And this, effectively, gave Himmler absolutely police control over all these regions, is that correct, the executive control?

A: It put the SS in a very dominant position.

Q: In the rear areas?

A: Actually, I think it gave him powers -- at least Einsatzgruppen already had powers to operate all the way up to the front, and this established in a sense that that would become permanent as the SS positions are changed from mobile units to a permanent police structure on occupied territory.

Q: I think that, Professor, you once mentioned that the Jewish problem was mentioned in this conference, but that is not correct, is it?

A: I do not think he does mention that. He does talk about "shooting anyone who looks askance at us and isn't it good that Stalin has called for a guerilla war because it gives us the pretext", I believe is the word, "to shoot anyone that we want?". I do not believe that I have said that ----

Q: That is a very interesting phrase. What was the phrase he

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used? "It gives us the pretext to shoot"----

A: "To shoot anyone who so much as looks askance at us" I believe is the ...

Q: "Schief schaut"

MR JUSTICE GRAY: The German is there on page 57 if you want to look at the footnote.

MR IRVING: Effectively, "Anybody who stands in our way or looks like he might stand in our way"?

A: Well, it does not even say "stand in our way", "looks askance at us", I believe, is a much wider shooting licence than "stands in our way".

MR JUSTICE GRAY: What does "nur schief schaut" mean?

MR IRVING: "Looks askance", literally.

A: "Gives us a twisted look" or "looks askance at us".

MR IRVING: Anybody whose face does not fit would be another way of saying it? It is a pretty broad kind of directive.

A: It is an open shooting licence.

Q: Yes, but there is no reference to the Jewish problem at all?

A: Not a specific reference, no.

Q: Yes. Just that Himmler has now given, effectively, carte blanche?

A: Yes.

Q: We will deal with that, I think, in more detail, my Lord, when we come to Longerich?

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A: You were still asking me my view of the decision-making process. Do you wish me to continue?

MR JUSTICE GRAY: Yes.

MR IRVING: If you have had after thoughts, yes. My view (and I would wish you to correct it) is that the German Army provided the impetus for these orders, and that this is evidenced in the papers of the German High Command where the position papers are, effectively, written by German Army officers and also from the diary of General Franz Halder. In other words, that the initiative did not come from Hitler?

A: I would disagree. I would say that the open invitation for these proposals comes from Hitler and, in terms of guidelines and policies, it is the response of the SS and the military and the economic planners to turn into reality this vague vision of a war of destruction in an ideological crusade against the Soviet Union.

Q: When you say you disagree, is this just a gut feeling or do you have any specific document you want to reference?

A: I think we have both the Jodl/Hitler meeting and Jodl's response, and we have the meeting of March 30th with the Generals in which he again makes clear to them his desire to have a war of destruction, a war that is not fought by the ground rules of a conventional war.

Q: The latter meeting is, of course, recorded in detail in the diary of General Halder, is it not?

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A: Yes.

MR JUSTICE GRAY: Again it would help me, rather than just having this ----

MR IRVING: Interesting discussion.

MR JUSTICE GRAY: --- debate between the two of you if ----

A: That would be 15.3, page 56, of Longerich, again where he emphasises the dual nature of the war, the struggle of two world views against one another.

MR JUSTICE GRAY: The Jodl/Hitler meeting, can you pinpoint that for me?

A: March 3rd.

MR JUSTICE GRAY: I mean, in terms of where I find a reference.

A: 15.1.

MR RAMPTON: Page 55, my Lord.

MR IRVING: Would it be correct to describe these features as pep talks by Hitler to his Generals to fire them up for the coming campaign?

A: I would say they are more than pep talks. I would say they are a setting of expectations and, as you know, I have tried to develop this model of Hitler eliciting, setting a level of what he expects and that that brings responses and proposals that are brought to him. I think this is a very good example of that dialectic.

Q: Yes. But he does not say, "We are going to invade the Soviet Union so that we can destroy

Jews"?

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A: No.

Q: Nothing as crude as that?

A: No.

Q: What he is saying is, "We are confronted by a Judaio Bolshevik enemy, and that we will destroy the Judaio Bolshevik intelligenzija and the leadership class and whatever, and that is what he is effectively in all these documents he is saying, he is just mapping out who the enemy is going to be?"

A: This is not yet an explicit instruction to systematically kill all the Jewish population on Soviet territory.

Q: Even in this important meeting of July 16th 1941, there is still no such instruction at any rate recorded in the memorandum by Martin Bormann?

A: Yes, in this case we have no smoking pistol document -- I have declared that often -- that we are working from inference, and the inference we draw is very similar to what you did about the November 30th meeting. Himmler and Hitler meet, Himmler gives an order. As you put it, it would be perverse not to assume a connection between them.

Q: Except that we now unfortunately ----

A: Find out the meeting came after rather than before.

Q: The meeting came after the telephone call, yes.

A: In this case the meeting, I say, comes before. We know that Himmler meets with Hitler and then leaves for Lublin on 15th, that the others meet with Hitler on 16th, and

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what follows thereafter is very quickly that Himmler vastly increases the number of people behind the Front in terms of putting the police battalions under the command of the higher SS and police leaders, of throwing in two of his brigades of his own and authorizing the raising of the auxiliaries and that within a very short period after that we begin to be able to document the systematic killing.

Q: Yes.

A: And then it is an inference, but I think it is one that circumstantial evidence supports, that there is a connection in that period of July 16th to ----

Q: Is not the likely inference that Himmler had received from Hitler the carte blanche that he had sought and Himmler strutted into occupied Russia and told his often teenage thugs who were wearing SS uniform, "I have carte blanche. Go ahead and deal with these people and pacify the rear areas"?

A: In fact, that is not what we know of how Himmler does it. Himmler says, "This terrible burden has been laid on my shoulders by the Fuhrer. This is the hardest thing I have ever been given to do." He does not strut; he shares crocodile tears ----

Q: 1944 he says that, does he not?

A: Yes, but in '43 too. We are talking about -- what we know about Himmler and how he speaks to others about this task, he does strut in and say, "Boy, aren't I lucky? I can now

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kill them". He comes and says: "The Fuhrer has laid this burden on my shoulders. This is a terrible thing we have to do, but we must fight this battle now so other generations do not".

Q: He says this just once, am I right?

A: We have the Posen speech where I think he says it on ----

Q: October 1943.

A: --- both occasions. But this is, I think, an accurate reflection of how Himmler speaks to others about this. So your portrayal that Himmler is the eager go-getter is not supported by how he talks when we can document it to the other SS leaders about his role and responsibility.

Q: The documents are very thin, though, are they not? We do not have a whole sheaf of documents to draw these inferences from; there are a lot of gaps?

A: There are gaps, but this is a very strong document. Here he is talking to all of the SS leaders and this is the stance that he takes to them.

MR JUSTICE GRAY: I think, Mr Irving, just so that you know -- you may know this from the transcript -- draws the distinction between after October 1943 and before. I think he accepts that Hitler knew and, indeed, authorized, I think.

A: But this is a different question, my Lord. The question here is how did Himmler act towards his SS Generals?

MR JUSTICE GRAY: Yes. As I understand the way you put it,

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what he was saying in October 1943 and later is consistent with the interpretation you put on the slightly thin documentation of 41/42. Is that a fair summary?

MR RAMPTON: It may be relevant to point out ----

MR JUSTICE GRAY: Can I have an answer first? Is that right?

A: Yes, I am saying that in so far as we want to know how Himmler talked to others about this, it was not that "Hitler has given me carte blanche", it is that "Hitler has laid a duty on me, it is a hard duty". It is not one that he portrayed himself as eager to do, but one that he felt obligated to do. That was an answer to the scenario that Mr Irving gave of an eager Himmler running with the ball with very little authorization from Hitler.

MR IRVING: Is it not also right to say that on one occasion Himmler specifically says to I think Berger, "The Fuhrer has ordered these territories to be made free of Jews. This serious grave order that Fuhrer has placed on my shoulders nobody can take off me"?

A: That comes end of July of 1942.

Q: 1942, which is closer to the time we are talking about?

MR JUSTICE GRAY: Is that what you are going raise?

MR RAMPTON: Yes, because the date came out wrong first of all. It is 28th July 1942.

MR IRVING: Yes, and that when Himmler is, therefore, talking about the order, he is talking about the blanket order to get the Jews out of here, and the way that Himmler then

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interpreted that is where you and I begin to differ.

A: We differ a great deal on how one interprets that, yes.

Q: But, Professor, I remind you that yesterday I showed you one coloured page photocopy of an intercept, did I not, and I suggested to you that we have hundreds of thousands of such intercepts in the British archives now, and I suggested that neither my expert, Dr John Fox or Richard Brightman or any of the experts who have waded through these hundreds of thousands of intercepts of top level and medium level and low level messages, is this correct, has found even

one inference, one document, which supports the inference that Hitler was behind this?

A: I have not read through them, but no one has said that these intercepts, the place that we have found such a thing, and we have not found the smoking pistol document.

Q: So the more documents that do come our way, whether from Minsk or Riga or Moscow or from Bletchley Park or wherever, and yet we still fail to find even a luke warm gun, let alone a smoking gun, indicates that possibly I may be right and my opponents may be incorrect, or, at any rate, I am justified in suspecting, would you agree?

A: No, because I do not think one would ever expect to find such a thing in a radio intercept. These are, from what I have seen of them, very specific things. They are not general points at which, for instance, Hitler has ordered Barbarossa or decisions of that level.

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Q: You refer -- I am now coming on to Adolf Eichmann, unless, my Lord, you wish to ask further questions?

MR JUSTICE GRAY: No. Take your own course.

MR IRVING: I now come on to Adolf Eichmann. What reliance can be placed on his writings, do you think?

A: I have used him as a very important source because we have ----

Q: Yes, understandably.

A: --- a collection of documents from him that stretch over a period of time and were given under different conditions before his arrest in Argentina under arrest by the Israelis, the private notes that are part of his attorney's, Nachlass that is in Koblenz, that subject to the confidentiality that were only between him and his attorney and were not in the possession of the Israelis.

Q: There is a lot of paper then?

A: There is a lot of -- and now, apparently, we have learned there is about 1300 or more pages of notes that we have never seen yet.

Q: When you were in Koblenz, did you have the opportunity to look at the 600 pages that I gave to the German government which I found in Argentina?

A: No. I have not seen those. I do not know what the overlap is between those and ----

Q: They are similar to Sasson material. Would you characterize for the court what kind of witness Adolf

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Eichmann was in all these stages? What kind of person -- was he robust, was he servile, just characterize him.

A: I would say that there are elements of both, that he is very robust and contentious in protesting against certain aspects of what he is being accused. He has no problem saying Hoess is lying about him, that he did not be involved there; that he engages in a vigorous denial of certain parts of the documentation the Israeli interrogators at court show him.

On the other hand, he comes and says things that there is no documentation for, admits to things that they would never have known otherwise, except that they are repeated consistently in all of his stories, and it is a story he sticks to from beginning to end for which we would not know other than that he consistently told that story.

Q: Yes. There are plausible elements and there are implausible elements, is that right?

A: In any eyewitness testimony, there will be elements that are more plausible than others. I think a fair amount of the Eichmann testimony is plausible. Again, it would depend on when he is reacting to particular documents they present, sometimes he takes a very defensive position, and

in other areas he is very self-incriminating and very forthcoming.

Q: Hannah Arred in her book "The Banality of Evil" I think

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refers to him as being almost complacent and compliant and anxious to please?

A: I do not agree with her characterization there.

Q: You do not agree with that?

A: No. He is quite vigorous in defending himself in many areas.

Q: I had the dubious fortune some time ago of coming into possession of his personal copy of Rudolf Hoess' memoirs. I will pass to you, if I may?

MR RAMPTON: May I enquire whether this is, I do not know, this is an entirely open enquiry, whether this is part of Mr Irving's discovery?

MR IRVING: It was in my box called "Judenfrage" but if you wish ----

MR JUSTICE GRAY: This is the original you are handing up, is it?

MR IRVING: This is a photocopy of it which I have retained, my Lord.

MR JUSTICE GRAY: A photocopy of the version you discovered or were given?

MR IRVING: That is correct, my Lord. It is only interesting in one very minor respect.

MR JUSTICE GRAY: Yes, that is what I thought.

MR IRVING: Pages 13 and 14 of your Lordship's little bundle which I gave your Lordship this morning. This is, of course, the published edition of Hoess' memoirs which you

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are probably familiar with?

A: Yes.

Q: Yes. The handwriting on that has been identified as the handwriting of Adolf Eichmann, as is evident also from the internal evidence of the comments that he makes. The original is in the possession of a friend of mine in Germany. He bought it in a store.

A: OK. I am, of course, not an handwriting expert.

MR JUSTICE GRAY: Mr Rampton, you are happy with this, are you?

A: And so I cannot confirm or deny.

MR RAMPTON: I have never seen it before. I do not have a translation.

MR IRVING: I just wish to refer to page 14.

MR RAMPTON: But what is puzzling me about this is if this is a selective use of the document, it may be that there are a considerable number of other comments by Eichmann of which Mr Irving is aware on these memoirs which we ought to see because they are relevant.

MR IRVING: I would be very happy to make available a copy to the Defence and I will leave this copy with them overnight and they can make a copy if they wish.

MR JUSTICE GRAY: That is fair. I think Mr Rampton is happy you should make the point that you make on these two pages.

MR IRVING: I just wish to put this to the witness. I just draw your attention, witness, to page handwritten 14

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which is page 122 of the book.

A: 122.

MR JUSTICE GRAY: Can you give us the context, Mr Irving?

MR IRVING: The killing of the Russian prisoners in 1941 I think he is talking about. This is by Rudolf Hoess.

MR JUSTICE GRAY: And he had been ordered to carry it out, is that right? He, Hoess, had ----

MR IRVING: "It was ordered that I had to carry it out", writes Hoess, "but I have to say openly that this gassing had a calming effect on me, as in the near future we had to begin with the mass destruction of the Jews too, and neither Eichmann nor I was clear about how we were to deal with these masses", is that roughly the sense of that final sentence on page ----

A: Roughly, yes.

Q: And underneath it in his appalling handwriting Adolf Eichmann has written -- can you read the words: "Ich war gar nichts zustandig"?

A: Yes.

Q: What does that mean?

A: I was not at all competent, this was not at all my jurisdiction.

Q: And in the margin next to the footnote he was written just one word "falsch"?

A: Correct.

Q: In other words, Eichmann, who ought to have known, if

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I can use one of the phrases Mr Rampton likes, disputes the version given by Rudolf Hoess. In private, he does not know that David Irving is going to come into possession of that years later, so can we assume therefore that there is some conflict in the evidence that Hoess writes?

A: Yes. This is the major case where Eichmann contests vigorously the evidence the Israelis bring to him and present this before him. For instance, in the handwritten notes to his attorney, he says: "Hoess is the arch liar. I have nothing to do with Hoess, with his death camp or his gas chambers". That is in Eichmann's handwriting and Serwateus' notes. He disputes having anything to do with Hoess's gas chambers. He does not deny the existence of gas chambers but confirms Auschwitz, but he says that was not my thing.

MR JUSTICE GRAY: The falsehood is his own involvement, Eichmann's own involvement.

A: Yes. He is saying that Hoess is laying responsibility on him for playing a part in the selection of the gas chamber site, and the selection of the type of gas at Auschwitz, and in this regard I think Eichmann is correct and that Hoess is utterly wrong.

MR JUSTICE GRAY: That is the means, not the end, in other words.

MR IRVING: You use the interesting phrase, of course, "Hoess's

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gas chambers" and that Eichmann ----

A: This is Eichmann's phrase; what I quoted to you from memory is what Eichmann wrote to Serwateus in the Serwateus papers.

Q: Serwateus was his lawyer in Israel?

A: Yes.

Q: Is there any hint there, therefore, that people like Hoess and the other concentration camp commandants were loose canons, and that they were doing things their own way without -- ?

A: I do not think that there is a hint of that at all. The hint is that Hoess is trying to shift blame elsewhere and that Hoess has a very bad memory.

Q: Or a conveniently bad memory perhaps?

A: Well, Hoess has many self-incriminating things. Where Hoess's testimony is particularly unreliable is anything related to dating.

Q: Dating and numbers?

A: Numbers as well, and to, in this issue certainly, Eichmann's role in all of this.

Q: Is it not correct that Hoess, in fact, fluctuates between 2.8 million and 1 million, and then back to 2.7 million, as late as March 1947? Before his execution, he is back to 2.7 million again killed in Auschwitz.

A: I do not remember the exact figures but I believe he does give fluctuating figures.

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Q: Can any kind of credence be attached to figures like that when they vary by such enormous amounts?

A: This would be a case where you would look at the testimony and say that, when Hoess is talking about dates and figures, one would not use it as reliable. When he is talking about experiences that he recalls with great vividness, one would say this is more likely to be something that one at least must look at, can we corroborate this? It would not mean that everything Hoess says is wrong, but it would mean that, in the areas of dating and where he is trying to share responsibilities with others, one must use it with great caution.

MR JUSTICE GRAY: You do not know this, Professor Browning. We looked at the 2.8 million figure in some detail and it is quite clear that that is actually not his own account but it is what he has been told by others.

MR IRVING: It did actually creep up again, the 2.8 just before he was hanged. He appeared to be readily flexible and this is what I am getting at; I suppose "suggestible" is what I am aiming at, the word that these witnesses -- you yourself have said that you had to pick and choose what they wrote, effectively?

A: You had to make judgments about it. "Pick and choose" sounds as if one was picking and choosing for my convenience rather than my ability to explain in terms of ----

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Q: We will come to that in a minute, Professor Browning, when we come to Gerstein.

A: We will get there but, in terms of ability to bring reasons as to why you think parts of it are more reliable than others.

Q: Yes. Is there any reason why, when somebody is in captivity on trial for one's life, one might write things, either deliberately or inadvertently, that were not true, do you think?

A: This is a possibility but, again, one looks at it and judges. If one is already sentenced to be hanged and there is, in a sense, nothing further they can threaten you with, then wonders one why would one go through the business of writing out a long handwritten document.

Q: Have you not read large numbers of interrogations and pretrial interrogations yourself, where you have marvelled at some of the statements that these people have made?

A: Can you give me a context?

Q: For example, self-incriminating statements which, as you said in the case of Eichmann, nobody knew what he was admitting there. Have you never wondered why people would make these statements?

A: I think in cases I have used he is telling the truth. I think he is relating----

Q: Obviously. Otherwise you would not have used them. But does it not occur to you that sometimes people make

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astonishing statements, self-incriminatory statements? The most extraordinary examples are, for example, in the Soviet show trials. It is a psychological problem. I am just trying to assail the credibility of eyewitness evidence basically. That is what I am getting at.

A: Certainly in Soviet trials where part of the protocol, in a sense, is to have a signed statement at the end. I would not put great weight on something collected in 1937 and 38 in which a witness said, "Oh yes, I was part of the Trotskyite conspiracy", or whatever.

Q: Or American agent. Do not the same kind of duresses prevail when you are in a cell in a bleak prison in Nuremberg and the Americans come to you and say, well, we can guarantee you will not get the death sentence if you sign this affidavit which we have taken from your testimony?

A: I would not accept that Americans came and said, "Sign this or we are going to kill you".

Q: Are you familiar with the case of Dr Friedrich Gauss, who was Ribbentrop's legal adviser?

A: No, I am not.

Q: Are you familiar with Dr Robert Kempton, who said, "If you do not sign this we are going to turn you over to the Russians"?

A: No, I am not familiar with that.

Q: Obviously I cannot develop that particular line. If you

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are not familiar with that case I cannot develop it. In later trials in Germany we have another problem, do we not, and this is the passage of years? 20 or 30 years pass. You have referenced in your own very interesting expert report a number of German war crimes trials conducted quite properly by the German government in the 1960s and even in the 1970s?

A: Yes.

Q: How reliable is that kind of evidence being given by Germans who have been taken out of their little bedsits somewhere in Ingoldstadt or somewhere and they find themselves on trial, they are going to be locked away for 20 years, and they are being asked to remember something that happened 30 years before?

A: I think that much of it is very reliable. They did not have to give testimony. They had counsel, they did not have to, under German law, give self-incriminating testimony. They could remain silent.

Q: how many did remain silent?

A: Virtually none. A few. The document that we see in the Chelmno gas vans, the villager who signs that refused to talk and nothing happened to him. He is one who did not get brought to trial.

Q: So the man who signed the famous memorandum about the 97,000 killed, is this the document you are referring to?

A: This is the document and this is the case where someone

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refusing to talk ----

Q: Nothing happened to him?

A: They said, we have not enough evidence to contest that he contributed in a causal way to the killing, even if he knew of it, and therefore we have no grounds. In fact, there was a case where the one who did not talk did much better than his colleagues in the motor pool who did talk, incriminated themselves and were tried.

MR JUSTICE GRAY: Mr Irving, I do not want to interrupt you unduly. I am not finding this terribly helpful because we all know that eyewitness evidence has to be looked at very carefully. Everyone agrees on that.

MR IRVING: If you think I have laboured the point too strongly then I shall not bring it up again.

MR JUSTICE GRAY: It is not really that, but illusive references which are not really followed up do not help me very much, besides which it appears to me we are straying perhaps a little bit from what I think is the intended structure of your cross-examination, which really goes to the case for saying that Hitler knew about the extermination. I am not keeping you to any tramlines.

MR IRVING: I was trying to undermine the quality of his sources by referring to the fact that a very large number of the sources which he refers to in his report in the footnotes appear to be ---

MR JUSTICE GRAY: Not in relation to Hitler's knowledge. I do

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not think eyewitnesses come into that at all, do they?

MR IRVING: It is certainly in connection with the numbers and I was just about to get on to the 97,000 figure again, when your Lordship intervened.

MR JUSTICE GRAY: Yes. Develop that, but can you help me by giving me a little bit more information about which figure you are talking about, given by whom, in what context?

MR IRVING: This is one of two letters. One is the Greiser letter of May 1st 1942, Greiser to Himmler. Are you familiar with that document?

A: Yes.

MR RAMPTON: Page 38 of Professor Browning's report, my Lord.

MR JUSTICE GRAY: Thank you.

MR IRVING: In that letter Greiser says that we shall have within, I believe, two to three months killed 100,000 effectively. That is what he is saying, is he not?

A: Yes.

Q: Has he already started by then?

A: Yes. Chelmno has opened in early December 1941.

Q: Does he actually refer to Chelmno in that document?

A: He does not refer to Chelmno in that document.

Q: We do not know whether he is actually referring to the document or actually to Chelmno, and whether even one of those 100,000 has died at that time or not.

A: He does not say explicitly but Chelmno is the operating death camp in the region to which he is referring, the

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Warthegau.

Q: There is a reasonable inference?

A: Yes.

MR JUSTICE GRAY: Do not assume too much. You have been, as you say, for 34 years on this topic.

MR IRVING: Not on the Holocaust.

MR JUSTICE GRAY: I appreciate that, but you know what I mean. I have had rather less long. So can you just help me who Greiser was?

A: Greiser is the head of---

MR IRVING: The Gauleiter of the Warthegau.

A: Gauleiter of the Warthegau. Lodz and Chelmno are located in the Warthegau.

MR JUSTICE GRAY: Thank you.

MR IRVING: The second document is the one -- you must help me on this -- with the 97,000

figure in it?

A: I believe it is June 6th 1942.

MR RAMPTON: June 5th?

A: June 5th.

MR IRVING: 1942, correct.

MR RAMPTON: Perhaps in this case we should maybe get the document.

MR IRVING: I agree. There are two rather odd features about the document I want to draw your Lordship's attention to.

MR RAMPTON: It is in the second volume.

MR JUSTICE GRAY: I hope it is in J or L.

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MR RAMPTON: I think it is in the main bundle now.

MR JUSTICE GRAY: If Greiser's letter is there too, then I would quite like a reference to that at the same time.

MR IRVING: Do you have the actual document in front of you?

MR JUSTICE GRAY: Just a moment. Let us catch up..

A: No, I do not.

MR RAMPTON: One starts at page 92 of the new Browning file which is Greiser's letter.

MR JUSTICE GRAY: You tell me about a new Browning file. I feel I am the last to know about it.

MR RAMPTON: Tab 7, I am sorry.

MR IRVING: My Lord, meanwhile I can tell you what I am aiming at here.

MR JUSTICE GRAY: Let us pause a little, Mr Irving. You have to be patient with us.

MR RAMPTON: Then the motor pool letter, the 97,000, is on the following page, I hope, 93 to 97.

MR JUSTICE GRAY: I think I may have misunderstood. Are we in tab 7 of L1.

MR RAMPTON: Tab 7 of L1.

MR JUSTICE GRAY: Page 97.

MR RAMPTON: Starting at page 92, that is Greiser to Himmler of 1st May in a printed form. We have not got a copy of the original.

MR JUSTICE GRAY: Yes. And the other one, Mr Rampton?

MR RAMPTON: Then the very next page, 93, is the 97,000 letter

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of 5th June 1942.

MR JUSTICE GRAY: Thank you.

MR IRVING: I am just going to wave one little flag about the document's oddities. This is the document containing the 97,000 figure, correct?

A: Correct.

Q: Do you see at the top it says "Einzigste Ausfertigung" in German?

A: Yes.

Q: Have you ever seen that designation on a document anywhere else in your entire archival experience?

A: I do not recall seeing it.

Q: Yes. "Einzigste Ausfertigung" which means the "onlyest" copy.

A: Yes, the motor pool sergeants were not terribly literate.

Q: I take that point. Can you see that the document begins with the sentence: Beispielsweise, for example? The very first sentence in the document.

A: Yes, it says, "seit December", yes.

MR JUSTICE GRAY: I am sorry, I have not got that. Where are you?

MR IRVING: In the very first sentence of the document, my Lord.

MR JUSTICE GRAY: "Seit December".

MR IRVING: The one with 97,000 figure in it.

MR JUSTICE GRAY: Since December.

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MR IRVING: No. The word I am looking at is "Beispielsweise". It is a letter beginning with the phrase, for example, "Beispielsweise", it is just lifted out of the middle of nowhere. Have you ever received a letter from somebody beginning with the word "Beispielsweise", Professor Browning?

A: No.

Q: Or "for example"?

A: But I think to have to realize Mr Schuss was not a college graduate, that these are people who are working in the motor pool in Berlin, and that the tone, as I see it, is someone who is trying to emulate what he thinks is proper bureaucratic German and he in fact is someone is not a bureaucrat, he is a mechanic.

Q: He was not stupid because, as you say, he was the only one who was not punished in this entire horrible affair.

A: You have to remember that "Beispielweise" comes after the subject, which is they are talking about technical changes.

Q: Yes.

A: I presume that this is a result of a conversation people have had, there has been a meeting.

Q: Yes.

A: And someone has said, write it up.

Q: OK.

A: We get a very ----

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Q: Can you do a rough calculation of how many people were being killed per van per day?

MR JUSTICE GRAY: Just pause, Mr Irving. If I may say so, you must just let me absorb the points you are making.

MR IRVING: I am just planting suspicion.

MR JUSTICE GRAY: You are casting doubt on this, partly because it has "Einsigste Ausfertigung" on the top and I understand that, but I am not sure I am really following your point on "Beispielsweise".

MR IRVING: It is an unusual turn of phrase to start a letter with, my Lord.

MR JUSTICE GRAY: Why is it unusual? He is picking three trucks, is he not, to give an example of the sort of numbers that are being processed if that is the right word, in the special trucks.

MR IRVING: I agree, my Lord, but you would normally expect that in the second paragraph of a letter. In the first paragraph he says, well, we are going to have troubles doing this, that and the other, troubles with the trucks, the exhaust hoses are getting corroded and all the rest of it, for

example, but in fact his letter begins with the word "for example". This is the oddity about it. But I can do no more than ----

MR JUSTICE GRAY: You rely on that as an indication that this is not an authentic document?

MR IRVING: I am trying to plant a seed of suspicion in your

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Lordship's mind, that is all.

MR JUSTICE GRAY: You are not succeeding at the moment because I would have thought, if you are trying to create a document that is going to deceive anybody, you would not do what you say is something obviously inappropriate, which is to refer to an example in the first paragraph.

MR IRVING: It would be improper for me to do anything else. Mr Rampton will object if I do anything else because I have already stated that I fully accept that this document refers to the homicide of large numbers of human beings in gas vans.

MR JUSTICE GRAY: Where are we going?

MR IRVING: We are going to look at the number, my Lord, the 97,000.

MR JUSTICE GRAY: So you accept this is an authentic document?

MR IRVING: For the purposes of this morning, yes.

MR RAMPTON: I do have to know sooner or later, and so does your Lordship, whether Mr Irving accepts for the purposes of this trial that this is an authentic document. If it is a forgery, we need to know why he says it is a forgery.

MR JUSTICE GRAY: You do not say it is a forgery?

MR IRVING: No.

MR JUSTICE GRAY: Then we can forget about Beispielsweise, can we not?

MR IRVING: But it also helps to address the court's attention to the fact whether this witness had competently

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questioned the integrity of the documents we are confronted with.

MR JUSTICE GRAY: It is not a valid criticism of him if you do not question it.

MR IRVING: I personally would question it but not for the purposes of this morning's hearing. Shall we just proceed to the number?

MR JUSTICE GRAY: Let us do the numbers. 97,000 -- what is wrong with that?

MR IRVING: I am sorry about that detour. 97,000 people killed in three vans in what space of time?

A: From December to June, this would be six months, by my calculation.

Q: Six months?

A: Yes.

Q: Are these regular German army diesel trucks, five ton trucks or something?

A: They refer to two and then a third, and I think they had -- we do not know the capacity of two of them because they were not either the Opal or the Saurer trucks. They were apparently converted Renault. Then they brought in a Saurer truck, which is the biggest model and could carry I think 50 to 80 people. The Opal was 30 to 50. We do not know the capacity of the actual two trucks that were----

Q: From the descriptions we have, it did not actually do it

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on the spot. They were loaded aboard, the victims, and they were driven off into the country side for a couple of hours and then they were gassed on the way?

A: No. As best we can tell they loaded them, gassed them there, or for a while ran the engines, and then drove them off.

Q: Yes.

A: So it was not a long way from Chelmno to the forest. I think it is two kilometres or 3 kilometres.

Q: I have read 20 kilometres.

A: That is not correct at all. I have driven it myself. It is not far, and one would have to do a considerable amount of the time needed to kill the people, one would have to remain in the courtyard unless you wanted to run the engines for a prolonged period after you arrived in the forest camp.

Q: Have you ever calculated the quantities of gasoline or petrol that would be needed for these kind of trips?

A: Not knowing the fuel consumption of the various truck models, no, I have not made a calculation.

Q: Does it strike you as being a very economical way of killing people?

A: I think this camp was probably very inexpensive to run in comparison to what they were taking in, property and getting in labour from the Jews in Lodz. My guess is that this was an infinitesimally small part of their budget.

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Q: If they had just the three trucks and this length of time to do it in, and they had the problem of persuading the people to get into the truck, and loading them up, driving off, waiting for the gas to have its effect, then unloading them at the other end and cleaning up the mess so that the next cargo did not have any suspicions, there must have been quite a substantial turn around time?

A: The trucks made return trips each day. In fact, we know with just one truck at the Semlin camp, it took about two months, with just one trip a day and occasionally two, to gas the 7,000 people there. So, with three trucks operating on a shorter run, they did not have to drive all the way through Belgrade to the far side, which is what happened in Semlin. I did the calculations for Semlin.

Q: You have done the calculations?

A: Yes. I have not done them for this.

Q: Does the 97,000 not strike you as being wrong by a factor of two or three?

A: Absolutely not. It does not strike me as wrong at all.

Q: It depends strictly on what the capacity of the trucks would have been, what the turn around time was, whether they were really efficient, whether they worked 24 hours a day and whether the trucks had any down time.

A: From the witness reports the trucks made numerous trips each day, the drivers traded off so that they in fact operated continually during the day.

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Q: Around the clock 24 hours a day?

A: Not 24 hours, through the day.

Q: Yes.

MR JUSTICE GRAY: It is pretty distasteful, but may I ask this question? How many people were there in a gas van when they were being gassed? How many people could be

accommodated?

A: We do not know for Chelmno because it is a different truck. There is a Saurer truck, one Saurer truck was at Chelmno. That is the one that exploded. Then they had two converted Renault French military trucks that they turned into gas vans, so we do not have a knowledge there. The small truck that they produced, the Opel Blitz, was the smallest. The Saurer could carry 50 to 80 people, the Opel Blitz was 30 to 50. So, even if the Renault was smaller than the Opel, which probably as a military truck it was larger, would be in between the two.

Q: That is the order of magnitude?

A: Yes.

MR IRVING: Were there more than three of these ominous trucks of death going around the Eastern Front do you think? Did they go from location to location?

A: Some of them were distributed to each of the Einsatzgruppen so there were some operating in Riga, some in Minsk and south, so that they were a few. We know, for instance, that Minsk, I do not have the document, but

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I think they had 3 or 4 trucks and they asked for more. So we know that they had small fleets of these trucks with different Einsatzgruppen.

Q: Was this the principal means of killing at that time?

A: No. It was a very minor part of the Einsatzgruppen. The vast bulk of the killing in the East was by shooting. The gas vans attached to the Einsatzgruppen were a very minor part of their killing operations.

Q: Can you draw any conclusions from the fact that they used different methods of killing people, a lack of system?

A: I think we can find a kind of chronological sequence. They start with shooting. The next thing implemented is the gas vans starting at Chelmno and Semlin. Then they move to the fairly primitive gas chambers, which is the gas chambers that Operation Reinhardt and the converted peasant bunkers at Auschwitz. Then they move to the design construction. Once they have experience one can go back and say, how would you do this if you were creating something modern? So I do not find anything haphazard and confusing. I find it quite a logical sequence in which they add new methods of killing at the same time as the old methods continue.

Q: Would you not agree that the lack of preparedness at the time Barbarossa began on June 22nd 1941 is in itself an indication that they did not go into Russia with the intention of carrying out systematic liquidations on a

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large scale?

A: That has been my argument. We get evidence of preparations at the death camps coming in the fall of 41, which is when I have argued, partly because of that, that one then concludes that they have now reached the point where they want a systematic killing of the Jews of Europe.

Q: Yes. My Lord, I wanted to take this witness briefly on to the table talk document which your Lordship may remember, October 25th 1941.

MR JUSTICE GRAY: I am sure I will when you tell me what it is. Is that the Himmler Hitler meeting?

MR IRVING: It is the ugly rumours one, good thing that the rumour goes ahead of us.

MR JUSTICE GRAY: Let us dig it out.

MR IRVING: I put in my clip, my Lord, of documents I gave to you.

MR JUSTICE GRAY: If it is somewhere else perhaps we will go to where it is already.

MR RAMPTON: It is in part 1 of Longerich.

MR JUSTICE GRAY: I was wondering about the actual document.

MR IRVING: We will find it most neatly on page 25 of the clip I gave you, my Lord, in the actual original Martin Bormann version.

A: The problem is that I do not have the document.

MR IRVING: It is the clip that I gave you this morning,

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Professor.

MR JUSTICE GRAY: Page 25.

MR RAMPTON: Page 59 of Longerich 1, paragraph 16.4. It is translated and the relevant part of the German is given at the footnote 149.

MR IRVING: Professor, do you have the document in front of you?

MR JUSTICE GRAY: Just pause a moment, Mr Irving.

MR IRVING: Page 25.

A: Yes.

MR JUSTICE GRAY: Yes.

MR IRVING: Professor, in your absence, before you arrived in the United Kingdom, I was taking stick for having wrongly translated two or three words in the second paragraph of that document.

A: Yes.

Q: The translation which I relied upon was the Weidenfeld edition of Hitler's table talk.

A: Yes.

Q: I will read out most of the paragraph. They are talking about the Jews. They are going to have to disappear from Europe. The Weidenfeld translation continues: "That race of criminals has on its conscience the 2 million dead of the First World War -- this is Adolf Hitler allegedly speaking -- and now already hundreds of thousands more. Let nobody tell me that all the same we cannot park them

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in the marshy parts of Russia. Who is worrying about our troops? It is not a bad idea by the way that public rumour attributes to us a plan to exterminate the Jews."

I will stop there. That is the translation of the phrase "Es ist gut, wenn uns der Schrecken vorangeht".

A: Yes.

Q: I would ask you how would you translate the phrase, "it is good if wenn uns der Schrecken vorangeht"?

A: It is good if the terror precedes us that we are exterminating the Jews.

Q: The terror?

A: The Schrecken, the fear of the terror. I certainly would not have translated it as "rumours".

Q: You would not translate it as "public rumours"? So they have it wrong and I was wrong, criminally wrong, perversely wrong to have adopted the Weidenfeld----

MR JUSTICE GRAY: That is for me, not for the witness.

MR IRVING: Professor, are you familiar with a historian by the name of Philip Burrin?

A: Philip Burrin, yes.

Q: Yes. Is he a notable historian? He is not an extremist in some way, is he? Is he a dependable

historian? His works are published?

A: He is an historian of accepted reputation.

Q: Are you familiar with a book that this historian wrote

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called "Hitler and the Jews, the genesis of the Holocaust".

A: Yes.

Q: Please turn to page 17 of your bundle of documents that I gave you and look at page 145? Would you say that in the second half of that paragraph this historian has done his own translation of the original German? Perhaps I ought to draw your attention, first of all, to the end note 47, which you will find on page 18 of my bundle.

MR JUSTICE GRAY: How do you know he did his own translation?

MR IRVING: That is what I am just referring to.

MR JUSTICE GRAY: How does that prove that?

A: He wrote the book in French and someone else translated it. Burrin's original book is in French. He is a French speaking Swiss historian.

MR IRVING: He has not used the Weidenfeld translation from what you can see.

MR JUSTICE GRAY: That is obvious.

A: He has not listed his monologue.

MR IRVING: Is that the title of the German edition of the book, Hitler's table talk, Monologe im Fuhrer...

A: Yes, but what it looks to me is that his translator got lazy and, instead of translating Monologe, in fact grabbed the Weidenfeld and borrowed an English translation from an earlier edition and goofed it entirely. Burrin has been betrayed by his translator. That is how I would look at

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this.

Q: Will you take it from me that this Weidenfeld edition, sad to say, only went through one edition and there were no other editions than this? If he had had this edition before him, he would have used use phrase "public rumour".

A: I am in possession of a paper back that presumably was sold in great quantities that has exactly the Weidenfeld translation, so it is not a scarce book to get.

Q: They did not change this wording then? They did not use the word ominous reputation, which is the wording that has been used by Philip Burrin?

A: I am afraid I am not following you right now.

MR JUSTICE GRAY: I think this is such an open question that it is not going to get you anywhere really. There is no point in my not saying that. I see the point you are driving at but it is too speculative.

MR IRVING: My point, my Lord, is quite clearly that, if this historian uses the phrase "ominous reputation", which is arguably very close to the translation which is adopted both by myself and Weidenfeld translation, then it would be perverse to call me perverse for having adopted a perverse ----

MR JUSTICE GRAY: No. I think the criticism is more focused really, that you saw the German text, saw the word "Schrecken", but were nevertheless content to use the

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word "rumour" because it was in Weidenfeld when "Schrecken" does not mean "rumour". That I think is the point.

MR IRVING: So, my Lord, does this translator.

MR JUSTICE GRAY: Yes, I follow that. In a sense, this is beside the point.

A: One have would it to ----

MR JUSTICE GRAY: That is my feeling. I have the point you seek to make. I have told you what I think about it.

MR IRVING: The point I am seeking to make is that he is not a Holocaust denier. He is not perverse. Others also use a milder version of it than the outright terror, which is possible translation of "Schrecken" but not the only one.

A: One way to deal with it is to get the Burrin original and see what he says in French, because this is what would reflect what he was thinking, and then we could decide whether Burrin, as a historian or a historically ignorant translator, using a different version to save himself the time from a responsible translation, is at fault here.

Q: While you have the bundle in front of you, we can now dispose of the bundle in a few minutes, page 32 of the bundle, my Lord, I am just using this witness in order to introduce a document.

MR JUSTICE GRAY: You are doing it in exactly an appropriate way, as I say.

MR IRVING: Page 32 and page 33: Are you familiar with the

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Harvard University? Of course you are.

A: Yes.

Q: Are you familiar with the fact that their library at Harvard University is called the Weidener library?

A: Yes.

Q: Does this appear to be a list of books which the library has in its card file by an author called David Irving?

A: Yes.

Q: And do there appear to be 47 books by that author in the Harvard University library?

A: 47 entries. Some of them are duplicate.

Q: Yes. In other words, 47 copies of my books are in Harvard University Library?

A: Yes.

Q: Is that a commendable total, would you say?

A: It is a large number.

Q: How many books by Professor Browning are there in the Harvard University Library? Have you any estimate?

A: I do not know if they have any of mine!

MR JUSTICE GRAY: Mr Irving, joking apart, what I get out of this is that you are thought by Harvard University or the Wagner Library to be the sort of author of whose many books they have a large number in stock. I think that is a fair point for you to make.

MR IRVING: Taken in conjunction with one of the earlier paragraphs of Professor Evans' expert report, my Lord --

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I am sure your Lordship will remember it -- Professor Evans went to the British Library and found that my book "Hitler's War" was kept on the pornographic and restricted list. Apparently, it

is not the case in respected institutions in the United States.

MR JUSTICE GRAY: If Professor Evans makes points like that, you are entitled to make this sort of point in reply.

A: I would just add that Harvard University tries to have a complete list so they will buy everything. It does not reflect an endorsement of the authors by virtue of the fact they have them available in the library.

MR JUSTICE GRAY: No, of course.

MR IRVING: Would you turn to page 34 of that bundle? These are just odds and ends and this is the appropriate way to use them, I think. It is the last page. My Lord, this is the German original and also I have translated it into English for your Lordship.

MR JUSTICE GRAY: That is very helpful. Thank you.

MR IRVING: It is German police decodes. It is Traffic of November 13th 1941, is that correct? Intercepted and decoded a month later roughly. There are two radio messages here, is that correct?

A: Item 10 and item 32, yes.

Q: Item 10 and 32. Would you agree that item 10 appears to be a radio message sent from the SS Chief Medical Officer in Riga to the firm of Tesch and Stabenow in Hamburg?

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A: I do not see the Riga. I see radio message of the SS at Hamburg.

Q: The last line says: "Signed, Senior Medical Officer"?

A: I was looking at the top.

Q: Would you agree this is from the Senior Medical Officer attached to the Chief SS Officer in Riga and it is going to the firm of Tesch and Stabenow in Hamburg?

A: Via the Hamburg SS, yes.

MR JUSTICE GRAY: Mr Irving, sorry, can I just ask you this? It is called a decode. Is this is an intercept?

MR IRVING: This is a British intercept.

MR JUSTICE GRAY: A Bletchley intercept?

MR IRVING: From Bletchley Park. One of this myriad of hundreds of thousands of messages, but it is typical of the kind of information that is there waiting to be fished out of the Public Record Office. Would you agree that this shows a request for information on which Zyklon was dispatched for the use of a man called Dr Tesch?

A: Yes.

Q: Do you know who Tesch and Stabenow were?

A: They are people involved -- no, I do not know for sure. I will not say. I mean, I have heard their names.

Q: Is it right to say that they are the firm in Hamburg which had the monopoly of supplies of Zyklon and other fumigation agents east of the River Elb?

A: I remember the names in connection with the production of

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Zyklon-B. I could not testify that they were in Hamburg or had a monopoly.

Q: And that this message is referring to dispatch, not only of Zyklon, but also substances referred to as Tegas, Athylo, Trito?

A: They are referring to three other products. Whether they are gas or not, we do not know.

Q: Well, we do.

A: I do not know.

Q: Would you accept they are other fumigation products?

A: I will accept that they are referring to three products. I do not see anything that says what their purpose is.

Q: Yes, and the message also shows that Dr Tesch who is doing something in Riga connected with training?

A: Obviously, they did not get the complete message, but they do have the word "training" in Riga, at least as part of a garbled part of the intercept.

Q: So that the inference to be drawn from that telegram is that people were being trained in the use of fumigation agents, both lethal and non-lethal?

A: Since I do not know what Tegas, Athylo.D and Trito are, I can only say that there are three products in addition to Zyklon being dispatched.

Q: Will you accept that Tegas is a substance which is nine parts of ethylene oxide to one part of carbon dioxide? It is one of the proprietary fumigation agents that the

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German Army used?

A: Well, I have no ground to accept or dispute. If you want to present that to the court or whatever, I cannot comment on that because I simply do not know.

Q: And the other items were, in fact, proprietary fumigation agents?

MR JUSTICE GRAY: Professor Browning, does this decode tell you anything about whether it was a lethal or a non-lethal use of these gases, assuming they were gasses or fumigation agents?

A: They say nothing to that regard and I do not know of any lethal gassings in Riga, except for the gas vans which gassed with carbon monoxide.

MR IRVING: I just need one further piece of evidence. Have you read the Tesch trial at all, the trial of Dr Bruno Tesch by the British?

A: No.

Q: You have not read that?

A: No.

Q: But the word "training" indicates the people were being trained in the use of fumigation agents or could be both?

A: They were engaged in the training of something.

Q: Yes. I am going to go through the remaining pages of your report. We have started at I think round about page 24.

MR JUSTICE GRAY: Before you go further, Mr Irving, shall we just decide what should be the home for this? I will be

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guided by the Defendants, Mr Rampton.

MR RAMPTON: I am so sorry.

MR JUSTICE GRAY: Do you have any suggestions about where this clip should go?

MR RAMPTON: My Lord ----

MR IRVING: L, I think.

MR RAMPTON: --- what we will do, if your Lordship will just put it all at the back of L for the moment, we will take out the ones which are chronological.

MR JUSTICE GRAY: Yes. Thank you very much.

MR IRVING: My Lord, so you have an overview, I have now finished the general part and what may seem to your Lordship rather vague and eccentric (as the opposite of concentric) questioning. We are now focusing just on the report. I think I will be finishing this half way through the afternoon.

MR JUSTICE GRAY: Do not hurry at all. My problem was simply you were assuming too much knowledge on my part.

MR IRVING: I was hoping to hit a few nails in while this witness was here.

MR JUSTICE GRAY: Of course. You are perfectly entitled to do that.

MR IRVING: And we will do the same with Professor Longrich when he comes. (To the witness): Paragraph 4.4.1, which is on page 24 of your report, Professor?

A: Yes.

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Q: Once again, simply stated, I do not deny that these shootings occurred and these killings occurred. All I am looking at here are two specific matters. First of all, the scale, and, secondly, the quality of the evidence that is available to us. That is what these questions are all going to. You say: "The commanders in the field were explicitly told to report extensively" -- this is your middle sentence -- "as both Hitler and Himmler were to be kept well informed."

Now, did you have a specific reason for including Hitler in that sentence, or what I am asking for is what is the proof that Hitler had asked to be kept well informed?

A: The document that we cited of August 1st 1941, I do not say Hitler asked, I said the document there said Hitler was to receive, you know, a regular supply of reports, the current reports.

Q: But this paragraph refers only to the systematic mass murder, does it not? It does not refer to the Einsatzgruppen's other operations?

A: If you want to know the work of the Einsatzgruppen and one major piece of the work of the Einsatzgruppen was the killings.

Q: But I do not want to repeat the discussion we had about that document yesterday, but we concluded that the document was looking for visual materials?

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A: To supplement, it was following on the already existing policy of handing on these reports and they wanted to fatten them.

Q: I guess what I am asking really is that the only document you rely on when you say that both Hitler and Himmler were to be kept informed?

A: That is the one for Hitler, I am not ----

Q: I am not interested in Himmler. We have accepted that Himmler needed to be kept informed.

MR JUSTICE GRAY: So solely based on the 1st August 1941?

A: That is the documentary evidence we have, yes.

MR IRVING: Thank you.

A: In terms of a wider thing, of course, Heydrich then summarized these, and that we have the monthly summaries that are spread out and copied as many as 100 for report, that are distributed to various Ministries, and the Foreign Office report will be seen by 30 or 40 people. So there does seem to be a great eagerness to get the word out. This is not something within the government that these reports are terribly shielded.

Q: You are familiar with Hitler's order on secrecy, are you not, of January 1940, the need-to-know order, that Hitler issued the order saying that only those were to be told of secret operations

or events ----

A: I have seen reference to it. I do not believe I have read it myself, but I have seen reference to it.

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Q: So that would have tended to keep information compartmentalized, would it not?

A: These always listed who was to receive, so there was -- it was not circulated on the street corner. They had a list of who was authorized to receive it.

Q: But you say now in paragraph 4.4.2, the next paragraph: "Such a thorough documentation does not exist concerning the fate of the Jews from the rest of Europe". In other words, we are reliant on postwar materials, eyewitness accounts, inferences, are we?

A: We are reliant on that systematic documentation in the sense we do not have a complete run of reports like we have of Einsatzgruppen. We have some documents that have survive here, some there. We are reliant on less complete documentation, though some pockets of documentation that are very suggestive and, in addition, postwar testimony as well. Documentation, for instance, concerning the deportation operations is fairly rich in some countries.

Q: But you are referring to the railroad information?

A: Well, I say "concerning the fate of the Jews from the rest of Europe", we have a mixed bag of documentation, rather than a fairly rich and steady run. I mean, Einsatzgruppen reports, to have a complete series, it is fairly rare for an historian.

Q: I appreciate that.

A: We do not have that rich ----

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Q: But if you take one specific matter, for example, the deportation of the Jews from France, is it right to say that there is a broad measure of disagreement on what the total number involved was, ranging from 25,000 at one end of the scale (which I think Pierre Vidal Nacette supports) right up to the high 200,000s?

A: Of how many in France or how many deported?

Q: How many Jews were deported from France?

A: I think most historians accept the figure of around 75,000. I have not been aware of a huge difference because we have references to most of the trains and when they left, and we can add up the trains. So I did not, I do not think -- it is not my -- I am not aware that there is a vast discrepancy of interpretation concerning the number of Jews deported from France.

Q: Why would Himmler have discussed with Hitler the deportation of 200,000 or 300,000 Jews from France when that figure was not in France at that time?

A: In mainland France there is roughly about 300,000 Jews.

Q: Yes.

A: The number in North Africa, I have no idea, but it is ----

Q: This is a discussion on 10th December 1942. Do you remember what happened one month before that?

A: Well, the Germans were pouring troops into Tunisia.

Q: And we had seized control of most of French North West Africa, had we not, so that the Germans could not have

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done anything with the Jews in that part of the world, so those figures could not have been included, could they?

A: Not in the 2 or 300,000, but if you are working -- the question is why -- let me back up so we do not get totally lost. There is a figure in the Wannsee conference protocol that has mystified historians because it is listed I think 600,000. It is a number well beyond what any historian believes of Jews in France. Puzzling, some people have speculated, purely speculated, that this may include the Jews of French North Africa too.

Q: But on December 10th 1942 that can no longer have pertained?

A: No, but we do not get that figure. We get the 2 to 300,000 that is ----

Q: Still wrong?

A: No. That is still approximately right. If you started with 300,000 and 40,000 were deported in 1942, you would be at 260,000.

Q: But there were not two or 300,000 Jews in mainland France on December 10th 1942, were there?

A: Oh, there were. 300,000 is the figure that I have seen for the population in all of France and, of course, Germany occupies the southern part of France and thus would have the Jews of all of France in December 1942.

Q: Where have you seen these figures?

A: This would come from Michael Merris and Paxton's book on

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the Vichy France and the Jews.

Q: Would you turn to page 25 please? I am looking at paragraph 5.1.1 which I suppose is your topic paragraph. You are setting out what you are going to be saying. You say, the final sentence in that paragraph, you are referring to the fact that there are disagreements over historical interpretation?

A: Absolutely.

Q: They are not at all unusual, you say?

A: We have seen several of these, the questions of interpretation from circumstantial evidence about what date decisions were made ----

Q: You do not have to have a Professor's title to be entitled to have a different opinion, do you, or to be Lord somebody or Sir John somebody, do you? You are entitled to have a different opinion?

A: There is a range of opinion and one does not have to have a PhD to hold an opinion.

Q: Yes. You do not have to be rocket scientist, as they say now. You say: "On the contrary, it is quite a normal occurrence" to have different opinions about how the programme for murder of the Jews came about?

A: Yes.

Q: You finish that paragraph by saying: "What follows is my interpretation concerning the emergence" of what you call "the Final Solution" by which you are referring to the

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murder of the Jews, are you not?

A: Correct.

Q: "It is not shared in every aspect by other able and learned historians of the Holocaust".

A: Correct.

Q: But it would be wrong to call them Holocaust deniers, would it not, just because they disagree

with the established view?

A: As I have said, there is a large body of interpretation on a number of issues, including the issue of whether Hitler gave an order or not, that is within the historical debate.

Q: What is permissible, in your view, and his Lordship may interrupt this discussion, to debate and what is impermissible to debate? Where is the line drawn?

A: Where we draw the line? I would say ----

MR JUSTICE GRAY: In relation to these death camps, do you mean, or more generally?

MR IRVING: The Final Solution -- the mass murder of the Jews.

A: I would say if interpretations are based upon evidence such as you invented yesterday when you added the lines to the Himmler notation, and that becomes the basis of an interpretation, that would be one that we could say, "This is flawed".

Q: Over the line?

A: "This is over the line".

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Q: Yes, we are talking about December 18th 1941 note?

A: Yes.

Q: We put things in square brackets saying, if you remember, Jewish problem to be treated as partisans or to be wiped out as partisans ----

A: And when you added "that they were" ----

Q: Yes, in square brackets?

A: --- I said that was invention, and if one is using invented evidence, this would be one example of where we would say, "This person is no longer taking part in the debate. He is fantasizing evidence".

Q: That is a very good example. Suppose the person who did the inventing put the invented words in square brackets, which is the accepted connotation for his assistance to the reader, and if he also then gave the German original, if there was any doubt, would that be over the line or within the line?

A: I would have to see the particular case to get a sense of whether it was clearly intending to help the reader or to mislead the reader. I mean, this would be a border line case and one would have to look at the individual circumstances.

Q: So the criterion then is if something has been changed or included with the intention of misleading, then that would be over the line?

A: Certainly when the intention is clear, then we are -- it

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is easier to decide. I, myself, would feel that if one has a pattern of distortion, even if it is not intended, but is so much of the personality of the person that they are so identified with this that they no longer in a sense can see the evidence except by kind of default position, one gets a consistent pattern of distortion even if it is not a calculated and wilful distortion.

Q: This is a very useful concept. In other words, if an historian is so imbued with the notion that, "Surely, Adolf Hitler gave the order and, even we cannot find it, it must be there somewhere and I am going to disregard any evidence to the contrary", that would fit within that concept, would it, or are you only looking at the people on the other side of the mirror when you say that?

A: I think it is a general rule and the is, as you have brought it up, obviously, one can reverse these things, and if every piece of evidence one gets, the first thing is, "Does this implicate Hitler? Is there Hitler in it? Well, it does not implicate Hitler, we can deal were this document;

but if Hitler is in there, then we have to do something with it".

Q: Suppose there was a document which suggested that Hitler had repeated the order that he wanted the Final Solution postponed until the war was over and all the historians ignored that, would they be being perverse or would they be entitled to act like that?

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A: In the circumstances, which I am sure we will discuss in detail, I will explain why, I do not think it would be perverse not to discuss that document.

Q: We do not discuss the document today. I just wanted to know would it be right to ignore it and pretend it did not exist or would that be perverse?

A: I do not think one is obligated to footnote all the documents they do not use.

Q: Yes. In other words ----

A: And that they have made a judgment they do not find helpful.

Q: You put it under the carpet and you do not even put a footnote about it, and that is OK, is it? That is what you are saying?

A: Again, it would depend very much on the circumstances.

Q: So I am trying to help you here because the picture you are giving is that a person is considered to be a respectable historian provided he has views that are respectable, if I can put it like that, but as soon as he starts having disrespectful views, then -- if he has politically incorrect views, then this makes him disreputable and beyond the pail?

A: It not said that at all.

Q: But there are certain views which one has no problem with at all?

A: There is a range of views which involve a looking at the

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evidence that historians seeing that evidence would say, "This is within a range of interpretation". The example I then gave was that if one invents further evidence, this is not within the realm of acceptance as one example of where I would say we could say one has gone over the line.

Q: Yes, but putting something in square brackets to assist the reader is not inventing evidence, is it? If you are adding an interpretation for the reader and helping the reader to see that -- would that be ----

MR JUSTICE GRAY: Mr Irving ----

A: I think that could be called misleading.

MR JUSTICE GRAY: --- I think that for two reasons we have had enough of this. (A) it is my province, and (B) I think the questions are too broad. I think it all depends.

MR IRVING: It is, my Lord, and I am going to ask the witness now to turn to 5.1.6 which is on pages 27 to 8. We have had this before already in another context, my Lord. In fact, it is not irrelevant to the previous matter. (To the witness): If one has a certain mind set, Professor, is it correct that one might read a document the wrong way?

A: That is possible.

Q: I think we are going to come to one example of this straightaway. You say at the foot of page 27: "Rademacher reported: 'Then as soon as the technical possibility exists within the framework of the total

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solution to the Jewish question, the Jews will be deported by waterway to the reception camp in the east."

A: Yes.

Q: Now, the fact that they were going to go to a reception camp implies to your mind that they were going to go to a sticky end, to some kind of sinister place where nasty things were going to be done to them?

A: What I used this for was to show that a reception camp, and we will come to my mistake in terms of the plural and the singular, I am sure, immediately. As I said yesterday, yes, I did make mistakes.

Q: Is that an example of the kind of mistake one might make if one had a mind set where you were expecting that we are talking about one of the Operation Reinhardt camps, one of the camps, that they are going to be sent there and they are going to be bumped off; but when we read that the actual document says they are going to be sent to reception camps, all the sinisterness goes out of this particular document?

A: On the contrary, I think my interpretation was against interest, that I have looked and what, as an historian, I have been concerned with is evidence in the fall of 1941 of this, as say, a vision between Himmler, Hitler, Heydrich and others, that they have now decided on the murder of Jews. For my purposes, in terms of what I would have been predisposed to find, would indeed to have found

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evidence of a much broader thing and to have interpreted it correctly. To have it in the singular was against interest; an error on my part, but certainly not one that would be one that I would have made willingly or would have been disposed to make because of opinions I held that this is a case, in fact, where I made an error that limited the importance of the document I had, and the correct translation, I think, is very useful to me because it goes towards something that I have been working to collect evidence on, hoping to bolster an argument. So in that case, I would say this is not a reflection of a predisposed mine set to read the document wrongly. I read it wrongly despite a prior interpretation that I had published.

Q: So you do not think that this very minor translation error has in any way damaged the burden of the argument you are making?

MR JUSTICE GRAY: I cannot see that it makes a blind bit of difference myself.

A: I think it limits it. If my argument has been that after, that the second Hitler decision came in early October and that after that there is an awareness among the Germans they are going to build a series of camps, to put this in the singular instead of the plural, that Eichmann's assistant saw travelling with Rademacher is speaking about the creation of, I put it there, within "the technical

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possibility of a framework for a total solution" is talking about a series of camps, this is a much stronger document than the way I have interpreted it.

MR JUSTICE GRAY: Well, it depends if it is one big camp or a lot of little camps.

MR IRVING: Except that one big camp might have been Belzec or Sobibor or Treblinka, whereas a lot of little camps could not have been, my Lord. It would have been the "new life", if I can put it like that? It would be the gettoes, the alternative solution that was being propagated. I fully accept that it was an accidental mistranslation on the witness's part. But the other point I was going to make is do such accidents happen and are they necessarily perverse in translation?

A: If they happen, they should at least sort of be 50 per cent one way and 50 per cent another, and

here the case we have found is one, as I say, against interest. If there was a consistent pattern where all mistakes tended to support the position of the man making the mistakes, one could make a case that (indeed, what we have talked about) a predisposed mind set was contributing.

Q: You mean it is like a waiter who always gives the wrong change in his own favour?

A: Yes.

Q: 5.1.8, please, which is on page 28 -- I am just going to refer very briefly to Aberhard Wetzel. We have looked at

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this document many times. I am not going to look at it again. What happened to Aberhard Wetzel, do you know? Was he prosecuted or punished in any way?

A: I do not know of a Wetzel trial, so I assume he was not, but I do not know that.

Q: So this is yet another case of a man who, prima facie, on the basis of the documents on which you rely was committing crimes of great enormity or encouraging them or inspiring them, and yet nothing happened to him.

A: Well, the problem is, of course, that it is a letter in which they propose something. It was never done. Therefore, the document does not -- the only documentary evidence was to a crime that was not committed because, in fact, this plan was not carried out and, therefore, they had no crime with which to charge Mr Wetzel. Knowledge of the killing does not constitute in German law a felony. It is contributing to the killing and in this case there was no gas van killing in Riga resulting from this action by Wetzel, so there was no crime to charge him with.

Q: Now page 29 please, paragraph 5.1.9, you summarize: "In short, surviving documents show that by late October 1941 the Nazi regime" had done a number things. But does not the previous paragraph, 5.1.8, suggest that it is actual individuals who are doing it and that frequently their proposals were not being taken up? What do you mean by the "Nazi regime"? Are you talking about Himmler, from

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Himmler downwards or from Hitler downwards?

A: Well, I am talking about a policy that is out there. I think Hitler is involved. I do not have a document to prove it, but given how I think the Himmler/Hitler relationship worked, and that in every case, numerous cases we can find that Himmler did not act without Hitler's permission, that I would say -- my conclusion circumstantially is that Hitler is part of that, but I do not have the document to collect my £1,000.

Q: You say in paragraph 5.1.10: "These documents suggest that a policy of systematic extermination", and so on, was going on, but is suggestion enough really? You have documents from which inferences can be drawn, and yet here we are, 55 years after the war is over, we are still looking for documents that only suggest things?

A: Well, this is, in terms of dating, suggests that by late October, and that others like Jerloch argue it is not until December, some like Dr Longerich will argue that this comes even later than that. The suggestion is not that there was or was not a killing programme. It is at what date it will take shape.

MR JUSTICE GRAY: I think that must be right, as a matter of the interpretation of what is in the report. I think, Mr Irving, it is probably a time to -- unless you have a short point you would like to deal with.

MR IRVING: No. It is quite a long point, the next one, it is

going to go to page 31, yes.

MR JUSTICE GRAY: Well, we will do that at 2 o'clock.

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

MR JUSTICE GRAY: Yes, Mr Irving?

MR IRVING: Thank you, my Lord. Professor Browning, are you still under contract to Yad Vashem?

A: I have contracted to write a book for them and that has not been completed.

Q: They paid you \$35,000?

A: No, they have paid me, I believe, 27,000.

Q: Are you aware of the fact that Yad Vashem also paid money to the second Defendant in this case?

A: I do not know. No, I am not aware.

Q: Yes. So you do not see any possible conflict of interest in giving expert evidence in this action on behalf of the Second Defendant?

A: One, I did not know that and two, I do not see the connection if I had none.

Q: Have you seen the book published by the Second Defendant "Denying the Holocaust"?

A: Yes, I have.

Q: Had you not seen that very early on in the book in her introduction and on the title pages, she thanks the Yad Vashem/Vidal Sassoon Institute?

A: I do not remember reading that. I may not have read the

credits. One often goes directly to the body.

Q: Yes. Yad Vashem is an institution of the State of Israel, is it not?

A: Yes.

Q: So you are, in that respect, a paid agent I suppose of the State of Israel using the word "agent" in its purely legal sense?

A: If that was the case, then since I had been at the Holocaust Museum, I would also have been an agent of the American Government, and since I have received scholarships in Germany, I would be an agent of the German government, so I must be a very duplicitous fellow to be able to follow these regimes.

Q: There is lots of money, is there not, in connection with the Holocaust research scholarships? It has become a well-funded kind of enterprise, can I say, Holocaust research, history, publishing --

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A: All in the past, I wish it had been much better funded. I did not find that I lived particularly well.

Q: \$35,000 to write a book which you have not delivered seems relatively well remunerated to me?

A: They have got the manuscript for the first half and that is where I have been remunerated from. They have it as in France.

MR JUSTICE GRAY: Is the book that, I have not quite got the name of it, but this organisation is going to publish

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written by you connected with your evidence?

A: No. I mean I was in the course of researching that book. I am using evidence here, but it is not directly related to this, no.

MR IRVING: Will you tell his Lordship what the nature of the book is you are going to write for Yad Vashem which is the Holocaust memorial in Israel, is it not?

A: The book is an overview of Nazi/Jewish policy from 1935 to 1945. The first half of September 1939 to March 1942 is what is now in the hands of both the editorial board of Yad Vashem and the Cambridge University Press, and it is under completion of that manuscript that I was paid the money, according to the contract that we had signed.

MR JUSTICE GRAY: So it covers the same general area as your evidence but is broader?

A: Yes.

MR IRVING: If you were to write a book for Yad Vashem which suggested that you discovered that Adolf Hitler had not issued the order or that it was just a totally haphazard killing operation that had resulted from the Holocaust, would this book be welcomed by them, do you think? Would that enhance his prospects or diminish them?

A: As I have said, a number of historians have already made the argument that Hitler did not give the order, and I have been with them at a conference at Yad Vashem. They had been invited to take part in the discussion there.

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Q: Will it surprise to you hear ----

A: I have been on what we would call the functional end in terms of Hitler not having, as I say, a blueprint from the beginning, and though that is different than many Israeli scholars' view, that does not cause them to view me as outside the pale.

Q: Yes.

A: No, I have not had anyone interfere with or attempt to interfere with how I write the book.

Q: The point I am trying to make is obviously quite clearly you do not feel that your evidence, expert evidence in this case, has been in any way tainted by the money you have received from the State of Israel or Yad Vashem?

A: No. I have written a book from which obviously my scholarly reputation is going to be based, that would be far more important to me than whatever money may be given, and that certainly would not be a factor in what I was writing.

Q: Very well. If an historian writes a book, just a hypothetical historian writes a book, and then between that publication of that book and the publication of the next edition of that book he changes his mind in any respect, on whatever basis of evidence, and he makes deletions from the text of the original edition of his book, is this reprehensible necessarily?

A: Not necessarily. In my review of the second edition of

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Raul Hilberg I noted where he had made changes.

Q: You are running ahead of my question.

A: That represented his view of the change between 61 and 85.

Q: You have correctly anticipated my next question, Professor, which is you are familiar with Professor Raul Hilberg?

A: Yes.

Q: Can you describe Raul Hilberg and his qualifications to the court, please?

A: I would say that Raul Hilberg is the major historian who has written the overview of what we call the machinery of destruction, bureaucratic ----

Q: Hold it one moment. You describe him as an historian. Did he actually study history at university? Did he get a degree in history?

A: No. He sits in the Political Science Department, but in terms of political science he is an historical end of that field which in fact involves people who do many other things that do not have particularly historical dimension.

Q: So you do not have to have book learning as an historian in university to be regarded as an historian?

A: No.

Q: Walter Laqueur is an example, is he not?

A: I do not know what Laqueur's Ph.D., is but Raul Hilberg's is political science.

Q: And Winston Churchill is another historian of course and

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he never history, and Edward Gibbon I believe he also never studied history, and we can keep on going through the list, am I right?

A: --- and Heroditus, yes.

Q: Raul Hilberg is, as you say, one of the world's leading Holocaust historians?

A: In my view.

Q: He wrote a book called ----

A: The Destruction of the European Jews.

Q: The Destruction of the European Jews. What was his position on Hitler's responsibility in the first edition of his book?

A: In the first book he was mainly laying out what he called bureaucratic structures, but that he did have sentences that talked about two decisions, a two-decision theory, that Hitler made a decision in July of 1941 and then Hitler made the decision later, the first for Soviet Jewry, the second for the mass murder of the European Jews outside Soviet territory. He rephrased that to ---

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Q: Hold it for a moment, you have very carefully chosen your word there. You said "decision".

A: Two decisions I said.

Q: Yes, decisions. Is there a distinction in your mind between "orders" and "decisions"?

A: Yes, I think so. I usually use the word "decisions". I do not usually use the word "order", because an order

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implies a more formal, it is a formal transfer from position of authority requesting a certain action be taken in a more specific way. "Decision" I have used, and I would also say I use this in a broad way, a point at which it became crystallized in the mind of Hitler and Himmler and Heydrich, or at least Himmler and Heydrich knew now what Hitler expected of them had been conveyed what they were to do. I have said that in the senses at the end of this decision-making process, and I have always said that is an amorphous incremental process. I have argued against what I would call the "big bang" theory, there is a certain moment in time in which suddenly, voila, we will kill all the Jews.

Q: So did Hilberg in the first edition of his book, The Destruction of European Jewry, refer to a Hitler order or a Hitler decision or both?

A: I cannot remember exactly. I would have to look at the text.

Q: What happened between the publication of that edition and the publication of the second edition? What did he do?

A: He took out specific references to a Hitler decision or order, I forget how he phrased it, and phrased it more generally.

Q: Is it not right that he went the whole way through the book cutting out the word "Hitler order", and the notion that Hitler had issued an order?

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A: In so far as it refers to a specific order, yes.

Q: And you actually wrote an article on this subject called "The Revised Hilberg"?

A: Yes.

Q: Which is no doubt well in your memory?

A: Well, it was written in mid-1980, so it is 15 years in the past.

Q: And your recollection of events 15 years ago is not all that good?

A: It is not bad, but if you want to tell me which word did I use I would like the like text. If you want the general gist of it I can give it to you.

Q: I am suggesting that if your recollection of something you did 15 years ago is not all that hot, then an eyewitness's recollection about something 30 years ago might be equally shaky?

A: I can remember writing the article and I can tell you the gist. I cannot tell you if I used a word or a different word. It depends on the magnitude of detail that you are talking about.

Q: Just winding up that matter, there is nothing reprehensible whatsoever about Hilberg going all the way through his book taking out any reference to a Hitler order, which is quite a major element to the book obviously, because he had reflected. On second thoughts he had decided the evidence was not there, is that the

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right way of putting it?

A: He had decided that the way he had phrased it in the first volume should be revised.

Q: Yes.

MR JUSTICE GRAY: Surely the key consideration is what persuaded him to change his mind. If there were good reasons, there good reasons, and if there were not there were not.

MR IRVING: Witness, can you answer his Lordship's curiosity in this respect?

A: He does not explicitly address that question as to why the change. He rephrases it in such a way that he felt that was too specific.

MR JUSTICE GRAY: No. What I am getting at is, that the ground for criticising him for changing his mind would depend on the quality of the evidence that convinced him to change his mind. If there were not good reasons for his change of mind, then he should not have changed his mind or the text, that is obvious, do you agree with it?

A: Yes.

MR IRVING: But of course it would be an entirely subjective decision by the author or historian concerned as to what evidence would meet his own personal criteria?

A: Yes, and I think in this case it was partly a semantic question. He felt the word "order" implied or had come to imply by the 1980s more than he was comfortable with in

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specificity, and so he phrased it in a more general way because by this point of course the controversy between intentionalist and functionalist had broken out. In fact he withdrew himself from that controversy. He phrased things in a way that was not part of that debate.

Q: Can I put to you just a few words of your testimony in a court action in Canada in about 1988, which obviously your recollection then was fresher, it was 12 years ago:

"I will go on, thank you, said Browning. There is a question of how we understand the word 'order' and this is a case where I think we have deepened understanding. Though we have tried to deal with the concept, what does it mean for there to be Hitler order, a so-called Fuhrer befehl. I have certainly looked into that question. I have myself", that is you, "proposed that we have to look at it in terms of a series of signals or incitements", and that appears to have been a favourite concept of yours, signals or incitements?

A: I believe ----

Q: Yes.

A: I did not mean to interrupt.

Q: Do you remember saying that in that particular legal action in Canada, in the Zundel case?

A: I remember we discussed the question and that sounds very much like what I said.

Q: Would you just explain to the court what you mean by this

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phrase of signals and incitements from somebody like Hitler which would lead to a Holocaust?

A: I would say it is the same as we have been discussing this morning and yesterday. Hitler sets a level of expectation, in this case, for instance, that the war in the Soviet Union is to be not simply a conventional war but a war of destruction, an ideological war, and then people bring him proposals and he approves or does not approve.

Q: It all sounds frightfully vague, does it not, far short of an order with a heading signature Adolf Hitler that we have in some of the other Hitler crimes like euthanasia?

A: Yes. This in a sense is a very different kind of process, and I think the reason why Hilberg took that word out is because people would read that word and interpret it that there must be a specific piece of paper, and so he talked more about a general process in which intentions or desires are conveyed, but did not want to use the word "order".

Q: Yes. Does your Lordship wish to explore that particular matter any further?

MR JUSTICE GRAY: No, thank you very much.

MR IRVING: I think it is quite useful that we should establish that somebody of the reputation of Hilberg became uneasy, that in his own conscience, would you agree, he felt that he could no longer accept, having suggested there was a

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Hitler order in his first edition and he went through actually -- I think, would you agree this is more significant than not mentioning it in the first place, that he had put it in the first place and then took it out? This is a more significant step than just not mentioning that there was no Hitler order?

A: It does mean that this had become I think a word that had become more freighted than when he wrote the first edition, and that he felt now the connotation of the expectation or the interpretation of the word "order" would place him in an interpretation that he was not comfortable with.

Q: Have you visited any of the Nazi concentration camps or the sites that you are talking about?

A: Yes, I have been to Poland and visited Chelmno, Treblinka, Sobibor, Belzec and I have been

to Auschwitz, Birkenhau.

Q: You have been to Auschwitz and Birkenhau?

A: And to Semlin.

Q: Was this recently or some years ago?

A: In 1990 or 1991.

Q: 1990, 1991?

A: One of those. I forget which summer.

Q: Did you visit the sites of the alleged gas chambers in Auschwitz one and Auschwitz two in Birkenhau?

A: I visited both of them, and so I did go into the crematorium building, the reconstruction in Auschwitz one.

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Q: You called it a reconstruction?

A: Yes.

Q: In other words, it is not the original building?

A: No. It was a crematorium and then in 43 to 45, I am not an expert on this but I believe it was used for other purposes, and then it was reconstructed back to close to what it had been before. Then I visited in Birkenhau and walked around the grounds, including the four sites of crematoria 2 through 5. One could walk to bunker two, the site of bunker one that seems to be totally unknown now.

Q: Yes. Did they make any attempt to tell you at the time you visited these two sites that the Auschwitz one site, the old camp, that what they were showing you was a reconstruction?

A: I do not know even remember. I went in and I knew what I was looking at and I do not even recall how it was signed or labelled.

Q: Were you aware of the fact that you were not being shown the real thing?

A: I was aware that this was a reconstruction, yes.

Q: Did you say you also went to Dachau concentration camp?

A: I have been to Dachau much earlier. I believe that would have been 1972, the fall of 1972.

Q: Do they have gas chambers on display at Dachau concentration camp?

A: There is a gas chambers on display in Dachau concentration

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camp.

Q: Do you wish to express an opinion to the court as to whether that is a genuine gas chamber or not?

MR JUSTICE GRAY: Whether he wishes to, is it going to help me really at all? I know that that there was at one time a belief that there had been gas chambers at Dachau. I know it is now accepted, I think on all sides, that there were never any. Do I any need any more than that?

MR IRVING: If your Lordship will accept the proposition that the Allies and their Allies after World War II are capable of erecting fakes for whatever purpose, and that it is not perverse of me to have said that and it does not make me ipso facto a Holocaust denier, then I will move on to another matter on.

MR RAMPTON: If the word "fake" were changed for "reconstruction" or "demonstration" or something like that there would be common ground. The word "fake" is inappropriate for the reconstruction at Auschwitz one.

MR IRVING: I would happily give Mr Rampton a reconstructive \$50 bill if me gives me ten

fives in exchange.

MR JUSTICE GRAY: You can have your wagers outside court. I do think we must move on. I do not think Dachau has anything to do with this case. I have explained my understanding of the position.

MR IRVING: Are you familiar with the fact that at Nuremberg the British prosecutors stated that there had been

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gassings at Dachau, Buchenwald and at Oranienburg?

A: No, I am not familiar with that passage.

Q: But you have read the Nuremberg war crimes trials records?

A: I have read some of them. I have not read the whole 42 volumes, no.

Q: Are you aware of the fact that large numbers of eyewitnesses, and I think this is relevant, my Lord ----

MR JUSTICE GRAY: Yes.

MR IRVING: --- testified to the existence of homicidal gas chambers at Dachau?

A: I do not know how many did.

Q: Are you aware that any did?

A: No.

MR JUSTICE GRAY: If you want to take that further you would have to put chapter and verse.

MR IRVING: My Lord, I cannot put chapter and verse to him at this time. If the witness says he is not aware of these eyewitnesses' testimonies I cannot take it further, but I shall certainly do so again with successor witness. If your Lordship agrees that putting it that way is relevant.

MR JUSTICE GRAY: No, I think that is a rather different kind of question and I think it is legitimate.

MR IRVING: Moving back to the integration of Adolf Eichmann, are you aware of the conditions under which he was interrogated when he arrived in Israel?

A: He was in prison.

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Q: Was he in prison with the light permanently switched on?

A: I have read that that was the case. My guess is, and this is purely speculation, the Israelis might have been very worried that he might commit suicide, so they wanted a constant watch on him. They did not want a dead witness on their hands.

Q: That he was constantly in the company of a guard?

A: I presume he was under constant watch.

Q: Would you suspect that this might have some affect on his mental stability if he was deprived of sleep through these conditions?

A: I have no idea how bright the light was. There are such things as night lights that would not disturb the sleep at all.

Q: Do you have any reason to believe that he was provided with a night light on these occasions?

A: I have absolutely no idea what the wattage of the light in his cell was.

Q: Mr Leon Poliakov who is also an expert on the Holocaust, is that name familiar to you?

A: I am familiar with the name.

Q: Is he a trained historian with a university engagement?

A: I do not know what his academic background is.

Q: I would now like to revert to the December 1941, the Hans Frank diary, the meeting which is

familiar to this court now held on I think December 13th 1941 -- no, it is

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December 16th.

A: The speech is December 16th.

Q: The speech by Hans Frank is on December 16th?

A: Yes.

Q: I am purely concerned with your treatment of this, Professor. You have gone in some detail over the content of that speech, and this is on page 31 of your expert report.

A: Yes.

Q: Paragraph 5.1.13. I will ask that you have in front of you ----

A: I have the English text and the footnote I believe contains the original, yes.

Q: Can we have footnote 88, the document that corresponds to it? I think it would be adequate if I ask the witness just to read the three lines in German and translate what he has omitted.

MR JUSTICE GRAY: Yes. I personally think it is a good idea to actually have the document.

MR IRVING: The whole document.

MR RAMPTON: Pages 68 to 75 of what I now know to be L17.

MR JUSTICE GRAY: I missed the page number.

MR RAMPTON: 68 it starts.

MR JUSTICE GRAY: Thank you very much.

MR IRVING: The passage which you have quoted, Professor, is on page 457 of the printed text.

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A: Yes.

Q: If you remember this is the passage where the translation is: "What is to happen to the Jews? Do you believe that they will be lodged in settlements in the Ostland in Berlin? We were told why all this trouble. We cannot use them in the Ostland or in the Reichskommissariat either, liquidate them yourselves. We must destroy the Jews wherever we encounter them and wherever it is possible in order to preserve the entire structure of the Reich", and there you cease to quote. You then paraphrase for two or three lines on page 32 of your report?

A: Yes.

Q: Then you continue with the word: "Nonetheless, we will take some kind of action". If you will now go to page 458 of the original text you will see what you have omitted. It is seven lines down. Do you agree that you have omitted from the front of that quotation beginning with the word "nonetheless" ----

A: I am afraid I have still not located it.

MR JUSTICE GRAY: I have the German text. I have not got the English.

MR IRVING: Line 2 of page 32 is what I am looking at on the expert report, my Lord.

A: I have not found it yet.

Q: It is line 2 of the expert report on page 32 and it is line 7 of the original Hans Frank conference.

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MR JUSTICE GRAY: Yes, I have the line 2. It is the line 7.

MR IRVING: Page 458.

MR RAMPTON: One should start from the first complete paragraph.

A: Is Judensendts the paragraph you want us to get to?

MR IRVING: That is correct.

A: OK.

Q: His Lordship has not found it yet. Footnote 88 and it is page 488 of the printed text.

A: Yes.

Q: Would you translate, please, those first five or six lines, the first four lines of that paragraph: "The Jews are exceptionally damaging eaters for us", right?

A: Yes.

Q: "In the general government we have got an estimated 2.5 million, with the Jewish next of kin and all the rest that depends on them, now 3.5 million Jews", is that correct?

A: Correct.

Q: Then a significant sentence follows: "We cannot shoot these 3.5 million Jews. We cannot poison them". Then you continue with the passage about: "Nonetheless, we will take some kind of action"?

A: Yes.

Q: I do not want to get into the content of this particular paragraph. I just want to ask for your motivation for leaving out that opening sentence, unless his Lordship

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feels it is irrelevant?

MR JUSTICE GRAY: I do not feel it is irrelevant at all. No.

A: Well, I do not know that it was a specific motivation. I do not see why one concluded or not concluded. What I did is, he rejects certain kinds of or when he says, "We cannot do this or cannot do that", I simply summarized that as ----

MR IRVING: He effectively says: "We cannot shoot them. We cannot poison them."

A: Yes.

Q: Is he suggesting we should strangle them?

A: What he is suggesting is he does not know how they are going to do it.

Q: Would you not agree that if another historian had omitted sentences like that at the beginning of a paragraph, without any even any indication of an omission, he would be held up to opprobrium and obloquy?

A: I mean by putting precedents, you know, switching out of direct quotes I do not think I indicated that there was nothing that I was continuing directly on.

Q: Unless of course the part that was being omitted substantially altered the sense of the gist that you were trying to convey?

A: I do not think it substantially alters the gist.

Q: If the man who is speaking says "We cannot kill them" ----

A: No, he does not say we cannot kill them. He says, "We

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cannot shoot them or we cannot poison them".

Q: Which is another way of saying, in my submission, that we cannot kill them?

A: No, I do not accept that.

MR JUSTICE GRAY: Apart from gas what are the alternatives?

A: Well, the alternatives are that one can starve them. One can keep them in conditions where they will perish. Of course Frank does not know yet, I think, that in fact they were working on

ways to poison them. This would indicate Frank has not yet been initiated into the fact that indeed they will be poisoning them. What he does say, and what I think is important, is the fact that he is told there is going to be a big meeting to sort this out, and when they go, when Buhle then is sent to the Wannsee conference he is going to get some answers to this.

MR IRVING: But did they discuss methods of killing at the Wannsee conference?

A: According to Eichmann it is not literally in the protocol. They use the euphemism we talked about, solutional possibilities or possible solutions when Eichmann was asked ----

Q: Which could mean anything, could it not?

A: When Eichmann was asked what did that mean, he said it was ways of killing or something to that effect.

Q: When Eichmann was asked in Israel during these interrogations we were talking about a few minutes ago,

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right?

A: Yes.

Q: And he agreed it could have meant killing?

A: Yes. He did not agree that it could have meant. He said that is what it did mean. When he did not want to agree to such things such as Auschwitz, he denied it vigorously, which would indicate that he could say no when he wanted to.

Q: We are now on to the Wannsee conference which is quite useful, Professor.

MR JUSTICE GRAY: Before we do can I ask this. Do you read Frank at this point in the omitted words, do you read Frank as still quoting Hitler's speech?

A: No. I think at the beginning part of his talk in which he says, "We must put an end to the Jews" and he cites the Fuhrer and that he goes on, you know, "We must have compassion only for the German people", these are citations I think in a sense the speech that he got there. Then when he gets down to beyond that I believe he is now not necessarily paraphrasing what he had heard in Hitler's speech on December 12th.

Q: He does say, "In Berlin we were told why all this trouble", and so on?

A: Yes. My feeling here is that that is more than a speech, that he has had a separate meeting with Hitler and he must have at some point had meetings with people who told him

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about the upcoming Wannsee conference, because there is no indication that Hitler would have mentioned that. So that I think he has talked to -- my interpretation would be that he had talked to a number of people, possibly with Hitler alone, and clearly with someone who let him know that there would be further meetings, because he makes reference to this meeting under the SS at which much of this will be sorted out.

MR IRVING: Are you aware of testimony that Hans Frank gave at Nuremberg, evidence-in-chief I believe, in which he was questioned about his contacts with Hitler, and he mentioned having visited Hitler once and talked to Hitler about Auschwitz and asked him what was going on there, that he described having tried to gain access to Auschwitz but that he was turned back on the excuse that there was an epidemic? Are you familiar with that passage?

A: I am not, but Auschwitz is not in the General Government and certainly not in Frank's jurisdiction, and I would see no reason why he could barge into Auschwitz.

Q: Was this particular passage put to you in the Canadian trial that I referred to earlier?

A: I have a vague recollection but I do not remember in fact that discussion in any detail. I know

that we brought up aspects of the Frank testimony at Nuremberg. I do not remember.

Q: And that Frank testified on oath at Nuremberg that when he

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put this to Hitler, Hitler said to him, "I do not want to hear about this, this nothing to do with me, this is entirely Himmler's business"?

A: I do not remember us discussing that passage. We may have but I just do not remember it right now.

Q: If your Lordship is interested I could find the actual quotation and read it to you.

MR JUSTICE GRAY: Well, do not do it now, but that is quite a revealing exchange.

MR IRVING: Yes.

MR JUSTICE GRAY: It seems to me.

MR IRVING: I will do that overnight.

MR JUSTICE GRAY: Yes, do.

MR IRVING: We are now at the Wannsee conference. Is there any indication at all that Hitler was involved in the Wannsee conference or was even apprised of it?

A: We have no evidence of him being apprised of it. We do know that Heydrich cites him as authority that the Fuhrer has now ordered something other than the territorial solutions that now will be sent to the East.

Q: Are you referring to the letters of invitation that Heydrich sent out in the middle of November 1941?

A: No, I believe it is in the opening of Heydrich's remarks that he cites that he is acting on the authority of Hitler.

Q: Is that a reference to the vulmardt which was issued to

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Heydrich by Goring, do you think, on July 31st 1941?

A: The fact it includes the Goring authorization with the invitation, I think that is indeed what he is partly referring to. He is bolstering his credentials because he is dealing with people who might not be anxious to take orders from him.

Q: Is there a dispute among historians as to the significance of the Wannsee conference?

A: I think that most of them view it as an implementation conference, at a point at which they are now trying to initiate the ministerial bureaucracy and in which Heydrich is going to visibly assert his leading position in this. I do not think it is viewed by many historians now as a conference at which a decision was taken. They did not debate should we do A or B and then say we will do B. They said, "Hitler has ordered this and now how are going to implement it? Are we going to include mixed marriage? Are we going to include this?" It is an implementation conference.

Q: Are you saying that it has been overrated?

A: Not overrated, because it is a crucial part of bringing in the ministerial bureaucracy. I have always seen it that way, so I do not consider it, I am not backing up from something I think that I have claimed more than.

Q: Am I correct in describing it as being an inter-ministerial conference at State Secretary level?

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A: Yes.

Q: In other words, the ministers themselves were not brought in; it was just at the lower levels?

A: Because Heydrich cannot sit there with people higher than his rank. Cabinet ministers would have been parallel with Himmler. If Heydrich is sponsoring it he cannot bring in people higher in his rank in a programme he is trying to assert his leadership. So he would invite the State Secretaries.

Q: This rather tends to down-play the significance of Heydrich was acting on Hitler's orders at this meeting then, if he is only able to bring in State Secretaries. As you say, he is only relying on his own rank. He is only pulling his own rank and he is not pulling Hitler's rank on those present?

A: Well, at the place he cites Hitler's authority, buried against all protocol for him summoning cabinet ministers.

Q: He cited Hitler's authority just proforma, is that what you say?

A: I do not think it is proforma. It is setting out his authority and he has the signed Goring letter which, as best we can tell, he drafted and took to Goring for signature and that he, likewise, invokes Hitler's authority at the conference.

Q: You said earlier at any rate in the record of the conference (which is not verbatim) there is no explicit

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reference to killing. There is one inference from which killing can be drawn, am I correct?

A: There are a number of passages in which -- that most people would view as transparent references.

Q: Can you remember one offhand?

A: I would suggest two. One is that most of the Jews will diminish away under physical labour and the rest ----

Q: The hard core will remain?

A: --- will be treated accordingly. The second is Buhle's reference that where we should we begin, and he said, "We should begin in the General Government because there we do not have to worry about Jews capable of work". They do not mention in the first place what happens to the non-workers. They talk about the workers will diminish, the survivors will be handled accordingly, and there is no reference to the vast majority, the women and children and old people, who obviously are not even going to work. Then Buhle's reference, "Well, let us begin this programme with the General Government because most of the Jews are not even work worthy there any longer", I would interpret it as a fairly -- as a reference to the fact that they can be killed first of all.

Q: Is there a passage in the protocol that reads: "The remnant that finally survives all this" -- do you remember this passage -- "because here it is undoubtedly a question of the part with the greatest resistance will have to be

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treated accordingly"? This is what you were referring to right, right?

A: Yes.

Q: "Because this remnant representing a natural selection can be regarded as the germ cell of a new Jewish reconstruction", what are the next two words, do you know?

A: "If released".

Q: "If released", that is the way you translated them, is it not?

A: Yes.

Q: And you are familiar with the fact that people accused you of having mistranslated that,

people accused you of having translated the words "upon release" "as if released"?

MR JUSTICE GRAY: What is the German?

A: "Abfreilasung".

MR IRVING: "Abfreilasung". It is one of those German words which you can translate so oder so, as the Germans say, one way or the other.

A: And when you say people, quite specifically, Mr Christie, the attorney for Zundel ----

Q: Precisely.

A: --- spent a great deal of time trying to make a great deal out that.

Q: Trying to embarrass you, I agree. I certainly shall not try to embarrass you today with that, Professor. I just wanted to draw attention to the fact that we do have

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problems with words, do we not, in German? I know that there are occasionally from the public ranks behind me when I spend time going into these words, like "vie" and "als" and so on, but it is a problem, is it not, how to translate words with the right flavour?

A: There are many areas where we could have disputes. I think the context here does not leave a whole lot of doubt in this case.

Q: Is it not possible, and have you in fact done it, to either interview those who were at the Wannsee conference or to read the interrogations of them which were conducted by the Allies after the war, people Stuckart and Kritzinger? Have you read the interrogations when they were questioned about their recollections of that and other conferences?

A: No, I have not read those systematically. I have seen excerpts of them, I believe, but I have not gone through the exercise of tracing all of those.

Q: For once I have to express my astonishment that, as an Holocaust historian, knowing that in the national archives in Washington they have verbatim transcripts of the questionings of these half dozen or so surviving attendees, you did not read what they had to say about their recollections?

A: You are free to express your amazement.

MR JUSTICE GRAY: Well, what did Kritzinger have to say? Can

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you put that?

MR IRVING: As a question?

MR JUSTICE GRAY: Yes, otherwise ----

MR IRVING: Can you justify why you did not do so?

MR JUSTICE GRAY: No, no. He has accepted he did not do so, but that perhaps is only material if there is something really significant he missed by not having consulted what Kritzinger said, whoever Kritzinger may be, I do not know.

MR IRVING: He was a State Secretary in the Reichschancellory, I believe, under Lammers. Is it right -- well, I cannot ask him what he has not read, my Lord.

MR JUSTICE GRAY: Yes, you can.

MR IRVING: Would you not expected to find that they would have been questioned about as to whether there was actually explicit reference to killing operations in the Wannsee conference and that this might have clarified the uncertainties from the text?

A: I think I have seen excerpt of the Stuckart one and, in general, they are denying that this had much significance.

Q: Yes. So all of them denied that there had been any discussion explicitly of killing operations?

A: Yes, as far as I know all of them did.

MR JUSTICE GRAY: Does that influence your thinking about what Wannsee was about?

A: No. I think these people were shown the protocol and if, of course, their participation there made them more

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vulnerable legally, and here is one case where I would invoke Mr Irving's practice that we look at oral testimony very carefully, and ask what motive would they have to say less than the full truth, and when I have a written document, on the one hand, and a self-exculpatory testimony post war, on the other hand, I put more weight on the written document.

MR IRVING: But suppose this self-exculpatory testimony after the war contained references, for example, by a man called Gottfried Buhle who attended the subsequent conference on March 5th 1942, and he says: "It was disgusting the way these SS officers treated the Jews like cattle", and referred to forwarding them here and shipping them there, "and when we protested, Eichmann's deputy said, 'We are the police and we do as we want'", would that be taken as self-exculpatory? Would you expect this man also to have remembered and testified if there had been decisions on killings?

A: I would take that as testimony that, in fact, they talked fairly openly about killing at these conferences, and a denial of others to the contrary should not be trusted. This is a non-self-exculpatory statement with much more specificity and would indicate, in fact, that Eichmann's indication that there were open in their discussion about killing than his euphemism has for their credibility.

Q: Well, if I am more specific here and say that these

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interrogations referred only to the brutal nature of the language used by the participants in the uncouth language, but there was still no talk of killing, it was just treating these people like cattle, does this not indicate that probably there was no talk of killing at these meetings, no open talk anyway?

A: Well, there is no open talk of that at the second one, at the March 6th. That is all that Buhle is referring to.

Q: But again neither in the interrogations nor in the records of the Wannsee conference, as far as you have seen them, have you seen any explicit references to killing only references by inference?

A: Except for Eichmann.

Q: Except for?

A: Eichmann is a participant and he ----

Q: What he said in Israel in 1963?

A: Yes. Or 1960/61.

Q: '61. My Lord, do you wish to ask further questions about Wannsee?

MR JUSTICE GRAY: No, thank you very much.

MR IRVING: You referred to Hermann Goring's authorization to Heydrich dated July 31st, 1941. One very brief question on that: was it intended or taken by either party as being a blank cheque to kill?

A: I believe it was intended as a kind of authorization for a feasibility study, that what it says is, "Please study the

question of"----

Q: Of what?

A: --"the fate of the Jews in the rest of Europe". It does not say killing, it says a total, you know, examine the possibility of a total solution for the Jews in Europe. Deal with, the second sentence, I believe, is to deal with the agencies whose jurisdiction is affected. The third is to bring back a plan for a Final Solution, both "gesamtlosung" and "endlosung", and my interpretation is this is not an order, this is an authorization for Heydrich to look into the possibilities of what will they do with the rest of the Jews of Europe?

Q: Yes. Can it be taken just as an extension of the powers conferred on Heydrich in January 1939?

A: My feeling is no, that the very fact they needed a new authorization means that we are no longer talking about immigration but a new kind of solution that is no longer immigration is what is envisaged, otherwise he would not need a new authorization.

Q: Can I ask to go to page 44 in your expert report, please? This is another criticism, I am afraid, of your methodology.

MR JUSTICE GRAY: Page what?

MR IRVING: 44 of the Professor's expert report. Two lines from the bottom you say: "... unloading the train cars some 2,000 Jews were found dead in the train"?

A: Yes.

Q: That is the figure you quote?

A: Yes.

Q: You have made the translation yourself?

A: Yes.

Q: Can I draw your attention to the footnote 113 on the following page, 45?

A: Yes.

Q: In which you state, no doubt correctly: "A more legible, retyped copy of this document contains the figure 200 rather than 2,000"?

A: Yes.

Q: Why did you use the larger figure rather than the smaller figure?

A: Because it was the original document. The other one says "Abschrift" and I use the original rather than copy if I have both of them.

Q: Why do you, therefore, state that a more legible retyped copy contains the figure 200 rather than 2,000?

MR JUSTICE GRAY: Was the figure illegible in the original?

A: The original is clearly 2,000. It is just a hard document to read because the photostat quality is less. The retyped copy is a clear one to read but in neither ----

MR RAMPTON: Your Lordship has it.

A: --- is there any doubt about ----

MR JUSTICE GRAY: Do I? Well, we can actually look at it for

ourselves.

MR RAMPTON: Yes. Everybody should look at it. It is page 103 to -- it is the Westerman report, I think, of 14th September 1942 -- 105 of L1.

MR JUSTICE GRAY: And this is the original, not the Abschrift? Whereabouts?

MR RAMPTON: That I cannot -- your Lordship will need the Professor's report. I can barely read the wretched thing.

MR JUSTICE GRAY: So it is not legible?

A: Well, the report itself is very difficult to read in this edition and in terms of whether it is, you know, what the number is.

MR JUSTICE GRAY: Well, I think I have found it in it. I think it says 1,000. It is the third paragraph on page 105. It looks to me like 1,000 Juden.

MR IRVING: How many spaces does it have? Is it enough spaces for ----

MR JUSTICE GRAY: It has plenty of spaces to be 1,000.

MR IRVING: Four digits then?

MR JUSTICE GRAY: Yes, four digits.

MR IRVING: In that case I will accept that 2,000 is probably correct.

MR JUSTICE GRAY: You can have a look at it, if you want to, Mr Irving. I may have the wrong bit.

A: It will come near the end.

MR RAMPTON: My Lord, I think it is the wrong paragraph. I am

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sorry. I think it is the last paragraph up from the bottom of the last page and I think it is the third line and I can read it very clearly. 5,000 "Juden tot" -- it is five words in from the right-hand margin is the word "tot" and 2,000.

MR JUSTICE GRAY: Yes.

MR IRVING: How did that figure of 2,000 dead on a transport of that size compare with the average for journeys like this? Was the average, am I right in saying, about 20 to 25 per cent?

A: This is an extraordinarily high one, but when one looks at the surrounding documents of the Westerman report, one realizes what had happened, that they -- in these previous reports that they had march people from surrounding towns in August, and a very hot August, for three or four days, left them in a collection centre for several days -- these people had not eaten or drunk for nearly a week -- were then crammed into cars in which they had not nearly enough room. So instead of the usual 100 to 120, they were packed in even further, so that you have in a hot summer in suffocating conditions packed totally full of people who have not eaten or drunk for a long time, being shipped in which the guards say they fired off all of their ammunition into the cars. This is not a normal transport and, thus, I concluded that the 2,000 number is not, in fact, unrealistic, given what we know about the nature of

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this transport, that it was not a normal transport.

Q: Which would have happened to the 2,000 bodies when they arrived at Belzec?

A: They would have been a logistical problem. You would have had -- they do not walk out of the trains, so you have to get people to carry them from the ramp to the pits.

Q: And there they would have been buried or cremated or disposed of?

A: At this stage they would have been buried. They were not cremating yet at Belzec.

Q: And lots of people would have seen this going on, presumably?

A: The people inside the camp. The train cars were brought into the camp in the ramp ----

Q: There would have been lots of eyewitnesses, in other words, of 2,000 bodies been buried in Belzec?

A: Well, they were burying much more than that, in my opinion because ----

Q: I am asking about these 2,000.

A: They would have seen these 2,000 being ----

Q: And that would have remained in the memories of very many of these eyewitnesses?

MR JUSTICE GRAY: Well, the railway line runs into the camp, does it? There is a spur?

A: The main line runs through and then I believe they pulled off on a ramp which, in effect, is fenced in, a siding, so

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this would not have been at the central train station, this would have been somewhat off, though the Belzec camp lies very close to the train tracks there.

MR IRVING: The reason I am saying this is, quite clearly, as you say, it is a logistical problem, it is a human problem. You have 2,000 corpses being carried into a camp in which there are living people, there are guards, there are eyewitnesses, there are prisoners. They are being buried, they are being disposed of. It is an horrific problem, it is an atrocity, there is no question of that, and there are eyewitnesses to it?

A: If one is gassing 5,000 people a day, an extra 2,000 bodies in the train cars is not going to be a memorable experience. They are seeing more corpses than that every day, day after day, week after week, month after month.

Q: If I take you now to page 46, paragraph 5.3.14?

A: Yes.

Q: Here you say that the documentary evidence of the killing at Belzec and Treblinka is scant. Have I got it right?

A: The scant surviving documentation concerning the purpose of Sobibor.

Q: Yes?

A: Yes.

Q: Do we have documentary evidence about Belzec and Treblinka, about the gassing?

A: No, about the kinds of people, this is a section that is

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still dealing with people being sent there who are not sent there to do work and who do not reappear. This is not yet the section in which I say how do we find out what the documents do not tell us and that is how they were killed.

Q: Can I take you now to page 48, paragraph 5.4.1? Here we have the talk about the pestilential smell from all the rotting bodies caused by the inadequate burial of the Jews. "No contemporary document specifically states how the Jews sent to these three camp were killed". We have the same kind of documentary problem again, do we not?

A: We are dealing with something -- yes, as I have said, that they do not have a document, we do not have a document from Operation Reinhardt that specifies their being killed in gas chambers.

Q: So how do we know then? Eyewitnesses?

A: This is what we then turn to, yes. At the beginning I said there are numbers of kinds of evidence. Eyewitness is one category among a number.

Q: You very honestly state in the same paragraph towards the end: "As in any body of eyewitness testimonies, there are errors and contradictions as well as both exaggerations and apologetic obfuscation and minimisation"?

A: Correct.

Q: So, in other words, the whole sorry of these three camps which I am not challenging -- I am only challenging the

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scale of the operations -- the whole story is rather hedged in uncertainty and lack of the kind of documentary evidence we have for the killings that went on on the Eastern Front.

A: It is evidence of a different quality. The convergence of testimony I think establishes beyond any reasonable doubt what took place in those camps.

Q: The convergence of testimony, as I am beginning to believe, is a phrase that people take refuge in when there is no testimony and little evidence?

A: Well, I believe it is a very useful concept that we deal with a totality of evidence, and that if one were to argue that we cannot use eyewitness testimony and had to let out every criminal in prison on that ground, we would have a fairly chaotic society.

Q: But you would agree that there is are different qualities of eye witness testimony; there is eyewitness testimony gained from somebody who saw something this afternoon, reports this afternoon what he saw this morning or yesterday evening, but eyewitness testimony recalled 30 years later in a West German court is liable to be somewhat more shaky?

A: It is liable to have less specificity. My feeling is if somebody had spent six months or 12 months in a death camp, he does not forget the existence of gas chambers.

MR JUSTICE GRAY: Mr Irving, can I just go back to something

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you said a while ago which was that you were not challenging -- I am just picking up your quote.

MR IRVING: This is quite right, my Lord. I am not challenging the nature of these three camps.

MR JUSTICE GRAY: You are not challenging that?

MR IRVING: As killing centres.

MR JUSTICE GRAY: Yes, you do not have to put it quite like that, but you are challenging the scale of operations?

MR IRVING: Yes.

MR JUSTICE GRAY: I understand that completely. But at paragraph 5.4.1 what Professor Browning is dealing with is the way in which Jews were killed. I just wanted to have clear from you, you do accept that gas was used to kill Jews at all these three camps, as I recall; is that correct?

MR IRVING: I think it is immaterial what way they were killed or the way I accept they were killed at these three camps. There is a lot of debate about it. But in order to keep this trial far shorter than it could be if we really wanted to challenge everything in it or debate everything in it

MR JUSTICE GRAY: Well, if that is right, you need not bother with paragraph 5.4.1 because that is where Professor Browning says that they were basically killed in gas chambers at those three camps ----

MR IRVING: It goes to the whole problem of ---- no.

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MR JUSTICE GRAY: --- and, as I understand it, you are not challenging that.

MR IRVING: --- reliability of eyewitnesses. We have now established since that concession or

statement by me -- I hate to say "concession" because it implies that ----

MR JUSTICE GRAY: Do not worry about that, yes.

MR IRVING: --- we have now established since that once again it is the eyewitnesses that we are relying upon for this, and I am using this as a way of undermining the credibility of eyewitnesses or eyewitness evidence as a general source. We are later on coming to quite an important eyewitness who is a man called Gerstein who I shall spend a few minutes assailing the credibility of.

MR JUSTICE GRAY: Does Gerstein deal with gassing at Belzec, Sobibor or Treblinka?

MR IRVING: Indeed, yes. He claims to be an eyewitness and he introduced -- Your Lordship will remember the pretrial hearing on November 4th where we learned that Professor Browning had desired to incorporate subsequent material relating to one particular man.

MR JUSTICE GRAY: Yes. All I am getting at this is -- I am sorry to interrupt you because I want to keep the interruptions to a minimum -- if you are accepting that gas chambers were used to kill Jews at these three camps, in a sense, there is not terribly much to be gained by challenging the credibility of Mr Gerstein who says that.

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Is that unfair?

MR IRVING: It is a general attack on eyewitness evidence which is important for the main plank of my case which is Auschwitz where we have established, I think ----

MR JUSTICE GRAY: I see.

MR IRVING: --- from Professor van Pelt that the only evidence one can really rely on is the eyewitness evidence.

MR JUSTICE GRAY: So you are using Gerstein as a sort of example of the fallibility?

MR IRVING: Rather like Rommel, I am coming round from the rear and attacking am attacking the eyewitnesses.

MR JUSTICE GRAY: All right.

MR IRVING: It is an indirect attack. (To the witness): One of the eyewitnesses that you rely on is, of course, Eichmann. He saw, he visited, some of these camps, did he not?

A: Yes.

Q: Yes. We have talked a bit about his reliability. Does he ever have a tendency to exaggerate, do you think?

A: Much less than others and I think sometimes he probably understates, but, in general, his memory of sequence of events and things seems to be better than most witnesses.

Q: Did he describe once visiting a scene of executions and seeing blood spurting from the ground like in geysers?

A: Yes, and then when we have the -- when you have lots of bodies like that, I believe that coming up of blood was

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testified to by others as well.

Q: Did he once testify or write in his papers -- in fact, in my collection of papers too -- did he write that he got so close to one shooting that bits of babies' brain were splattered across his nice leather coat?

A: He complained that at Minsk that happened and, of course ----

Q: Is that credible in your view?

A: I have written on police battalion 101 where the men came routinely with their uniform

saturated in blood. When you shoot people at point blank range, you get bloody.

Q: Eichmann, of course, testified that he was told there was a Hitler order, and perhaps we ought to ask your views on that.

A: He consistently says that he learns from Heydrich, so this is second-hand, that he learns from Heydrich that Hitler has issued the order for the physical annihilation of the Jews of Europe.

Q: Is it second-hand or third-hand or fourth-hand? If Hitler has Himmler who has told Heydrich or Himmler has told Muller who has told Heydrich or Himmler has told Heydrich who has told Muller?

A: We only know that it goes from -- all we know is what he says and that is that Hitler -- that Heydrich tells him Hitler has ordered. Heydrich does not give details of what may or may not have intervened.

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Q: What importance do you attach to that particular piece of evidence?

A: He says that from beginning to end, and I think that he is probably accurately relating a meeting with Heydrich in which this issue was clarified.

Q: The end was, presumably, 1963 when he was hanged, and when was the beginning in the 1950s, late 1950s?

A: Certainly from the ----

Q: The Sassen papers?

A: I am not sure what he says in the Sassen papers except I think it must be included because Aschenal wrote a bunch of footnotes saying that the person he was publishing was mistaken on this -- a strange thing for the editor to do. So I believe that -- sometimes I do not remember exactly which one says which, but my recollection is that the published Adolf Eichmann which based on some Sassen papers does stipulate that he was told there was a Hitler order.

Q: I secured the publication of those actually. I am the one who found a publisher because I thought they needed a publication, a publisher. I insisted that they should be published in their original form because they did contain these very odd passages. But can you see any reason why Adolf Eichmann in the 1950s, living in the underground in Argentina, should have wanted to state in his writings that he remembered a Fuhrer order in that way? Can you think of any reason why should he have written that?

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A: I think he was absolutely convinced there was an order, that he was carrying out state policy.

Q: Yes, would the existence of a Fuhrer order in his mind have let him off the hook? "I was only acting on orders", would that have let Eichmann off the hook in his own mind if there was a Fuhrer order?

A: It would have been a defence after being arrested, but if he says it before that, I think it is a reflection of his feeling that he had been carrying out a very major Hitler order.

Q: Is it evident from these papers that he wrote or dictated to the journalist, Sassen, while in the underground in Argentina while hiding that he was aware that there was a worldwide hue and cry searching for him?

A: I do not know how much he was aware of. It is very strange that the man who, obviously, had fled to Argentina because he knew he was hunted would talk to a journalist. What sort of self-destruction wish he had, I do not know, but it was very strange behaviour for someone, but certainly not an indication that he would then take the opportunity to lie.

Q: Would you not agree that it is possible that he was either consciously or unconsciously creating an alibi for himself, rehearsing the alibi he would use when he was caught or if he was caught?

A: No, I do not think he would be increasing his chances of

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getting caught by trying to establish an alibi when if you kept your mouth shut he would not be caught in the first place.

Q: Is it not evident that Sassen had a commercial interest in marketing these papers and that he sold them to a major New York magazine?

A: He did sell them to Life magazine. What his motive was earlier, I do not know.

Q: So, in fact, we do not know whether Eichmann actually made that confession or whether it was incorporated by the journalist?

A: Well, we do have -- the Israelis have the transcripts of the tapes in which he made handwritten notations, and I would have to look at those to find if there was a huge discrepancy. I think the one discrepancy in the Life magazine report, as opposed to what he consistently says in his other testimony, is that they portray his visit to Belzec where he talks about there is a camp in a sense under construction, I think the Life magazine account talks of this being already in operation. My guess is that that is a Sassen invention to make it more spiffy.

Q: Who was Kurt Gerstein?

A: Kurt Gerstein was a covert anti-Nazi in the SS who was in the hygienic department.

Q: What makes you suggest that he was a covert anti-Nazi?

A: He had joined and then been expelled from the Nazi Party

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and then, at least in his own account, got back into the SS because he had heard of the euthanasia programme and he wanted to find out more.

Q: You say "in his own account", when was his account written to which you are referring?

A: The accounts that he gave that he writes are dated in late April and early May 1945. He also had conversations with others that have been related to us later, would be his statements at a time earlier than 1945.

Q: Would it be to his advantage after World War II to establish or to maintain the position that he had been a covert anti-Nazi?

A: Certainly, lots of people claimed that they were anti-Nazis who were not, and the question then is you have to look, is this a bona fide claim or not? Certainly, lots of people were claiming that, and that would be one question you would have to put to the evidence. If you have other people such as Bishop Dalias(?) who said Gerstein came to him in 1942 or '43 and corroborates his anti-Nazi stance, then you would lend more credibility to the 1945 statement as opposed to someone who had been killing Jews over the years and then suddenly poses as an anti-Nazi in 1945.

MR JUSTICE GRAY: Was he tried?

A: Gerstein? He was arrested and sent to a French prison where he died, and the French prison ruled it as suicide.

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Some have voiced suspicion that he was killed by fellow prisoners as a traitor.

MR IRVING: Kurt Gerstein is used or relied upon as an important eyewitness, or was relied upon as an important eyewitness, for various camps or killing operations. Is that right?

A: He is relied upon, as far as I know, for Belzec and Treblinka.

Q: For Belzec and Treblinka, because he visited these camps?

A: This is the visits to the camps, yes, that he says he visited these camps and I am sure we will get into why I credit that.

Q: What was his actual position in the SS?

A: One of the things he was doing was delivering Zyklon-B to places for fumigation.

Q: He was head of the SS pest control office, can we say, their fumigation or hygiene department?

A: Their fumigation department, I think we can say that, yes.

Q: I mean in the non-homicidal sense ----

A: Yes.

Q: --- a straightforward meaning of the word. So he visited these camps. Was he delivering anything to these camps?

A: According to his account, he brought out Zyklon-B to Lublin to fumigate the clothing that was there and then went on to Belzec and Treblinka, and that in his account at Belzec, I think it is, he buries the rest of the

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Zyklon-B and does not deliver that to the camp.

Q: You talk about "in his account". How many accounts were written by Mr Gerstein, to your knowledge?

A: I think there are a number of drafts and notes, but, in general, in terms of the finished product, we have the French version and the German version and maybe even two French versions, but how many -- I have not seen the actual notes. I do not know how many drafts that we might count as a version, but ----

Q: There is no question as to the authenticity. He was the author of these ----

A: I do not believe that has been challenged.

Q: Are you familiar with the work of a French academic called Henry Rocques? R-O-C-Q-U-E-S, I think it is.

A: I have not read his work. I have heard the name.

Q: You have heard the name. Did he write a dissertation on the various reports by Kurt Gerstein in order to obtain a PhD?

A: I believe so -- I have heard that.

Q: Was he awarded a doctorate on the basis of these, initially?

A: I believe initially.

Q: On the basis of his PhD thesis. Did he keep his doctorate?

A: I believe not.

Q: What was the problem?

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A: I think somebody said the document did not deserve a PhD and it was looked into and they withdrew it.

Q: So the university decided to knuckle under pressure, am I right?

A: I believe you could say that the university discovered somebody had let through a very sloppy

dissertation and decided that they had better get their house in order.

Q: Do these things happen often? Are people often stripped of their doctorates?

A: Not very often.

Q: Does it happen very often in France?

A: I do not know.

Q: Does it happen largely to revisionist historians?

A: I know of this case. I do not know of any other.

Q: Professor Faurisson, are you familiar with the case?

A: I do not believe he has had his dissertation withdrawn.

Q: Did he have his Professorship removed from him?

A: I believe he is suspended from teaching but I do not know that he had the position terminated. I do not know.

Q: To get back to Gerstein, is it right that Henry Rock, in writing his dissertation discovered no fewer than seven different versions of the Gerstein report?

A: I cannot answer that.

Q: And that he obtained also access in the French police files to all the private letters that Gerstein had written?

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A: That I do not know.

Q: Not that either. Is it not surprising that your Holocaust historian, you have not read his PhD dissertation which relies on these papers?

A: Well, I have not seen the PhD dissertation, and it is not in circulation that I know of.

Q: Like most PhD dissertations, it can be obtained from the university, can it not?

A: If it has been withdrawn, I do not know.

MR JUSTICE GRAY: Mr Irving, I am not going to stop you, but this is all slightly Alice in Wonderland, is it not? For the reason we went through before, you accept there were gas chambers so criticising Gerstein for saying there were is slightly limited value, I think. Do not take it too slowly.

MR IRVING: A well deserved reprimand, my Lord.

MR JUSTICE GRAY: It is not a reprimand.

MR IRVING: Can I take you to page 50 of your report, please?

A: Yes.

Q: I want you to look at the second version of page 50, which contains the bold type on it. Your Lordship said in November you would interleave the pages?

MR JUSTICE GRAY: Yes, I have done that and I have crossed out the superseded one.

A: My account does not have bold type.

MR IRVING: It does not have bold type?

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A: No.

Q: In the new version you interpolated certain sentences.

A: I can get my own version and I believe I may be able to use that.

MR IRVING: My Lord, I shall be another half hour at most.

MR JUSTICE GRAY: Do not hurry. I really mean that. I am not seeking to hurry you, just to

guide you to the areas which I think are of greater significance.

MR IRVING: Is it fair to say that, after you wrote your report initially, you realized that you had omitted, either accidentally or wilfully, certain passages which, if included, would have cast grave doubt on the reliability of this man as a witness?

A: What happened is that I in fact sent a draft, mistakenly you were sent what was not my final report, and, when I got back, it was clear that things that I had put in were not included. One of the things was that I was able to look at both the French and the German reports and the French has some exaggerations not included in the German, and I then amended mine and I emphasised further the elements ----

Q: I do urge you, before you continue, to consider your replies carefully, because the tenor of each of these interpolations is very much material that has been previously left out or not included which, if left in, would have totally destroyed the veracity of this report

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or certainly tended to undermine it. In other words, it all tends the same way. It is not random omissions. It is all that kind of document, right? That kind of omission?

A: The ones that were added were the cases that highlighted exaggerations in Gerstein, that on reflection I felt should go in.

Q: According to Gerstein, I am reading from the middle of paragraph 5.4.1.3, new version, this is the sentence which you omitted but have now put in: "According to Gerstein Globocnik also claimed with great exaggeration Belzec Treblinka and Sobibore respectively 15,000, 25,000 and 20,000 Jews were killed daily with diesel exhaust gas".

A: Yes.

Q: Do you consider those figures to be reliable?

A: No. I think they are not reliable at all.

Q: Rather lower down that same paragraph, we have a 45 wagon transport arriving from Woolf with 6,700 Jews, of whom 1,450 were already dead. That is about the same kind of proportion, is it not, 20 per cent?

A: That is similar to the Versterman report and, given the conditions under which the Galetian transports were coming, I do not consider that to be an exaggeration or, on the face of it, outrageous.

Q: This was in your original report. What would have happened to those 1,450 corpses? Would they have been

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dragged into the camp and disposed of?

A: I can only speculate, but my guess would be that after the entire operation was over they would then bring the dead bodies from the transports. That would have been the last clean up item when they had finished liquidating the transport.

Q: Now we have, "The Jews were forced to undress who arrived on this transport", and then comes a parenthesis that you originally left out, "the piles of shoes were allegedly 25 metres high". Is that from the Gerstein report?

A: That is from Gerstein report.

Q: 25 metres is, what, 80 feet?

A: Yes, it would be.

Q: About as tall as that building out there, probably?

A: I do not know, but it clearly is an exaggeration.

Q: It clearly is an exaggeration, but you left it out because of space reasons, or was there some other reason why it got left out?

A: It was not a matter of left out, it is a decision of putting something in. I had said in the original working draft that there were many exaggerations and I felt we had better be specific about what they were.

Q: Then over the page, my Lord, page 51 of the new version, with bold face on the third line, you say: "Approximately 750 Jews were driven into each of four gas chambers, measuring 5 metres by 5 metres each." Is that a

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reasonable kind of estimate of the number of people? Why did you leave out the phrase "measuring by 5 by 5 metres each or apiece"?

A: As I said, it was question of putting it in when I felt I had to be more specific about what I meant in terms of Gerstein's exaggerations.

Q: Would it be perverse to believe that, if that measurement, the dimensions had been left in, that would have tended to undermine the credibility of that sentence?

A: Well, given that later I have 200 Jews per gas chamber and in another the 750 figure was already considerably out of line with other stuff that I put, I make clear in this from beginning to end that there are exaggerations and that Gerstein does exaggerate.

Q: But he does not exaggerate just on an amateur scale, does he? He exaggerates on a Munchhausen scale.

A: There are some extraordinary exaggerations, yes.

Q: Can I draw your attention to the next paragraph, 5.4.1.4? This is one you left in, I believe?

A: This was there.

Q: "The following day Gerstein drove to Treblinka where the gassing facilities were larger and he saw, you quote, veritable mounds of clothing and underwear 115 to 130 feet high".

A: Yes, which I would suggest was that I was putting in already in the first draft considerable materials that

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were demonstrating my conclusion that much of his report was exaggerated. I added further material. Certainly in the working draft there was no attempt to hide that fact.

Q: But would you agree ----

A: You suggest that there was some sort of cover up or sinister attempt to sanitize Gerstein, I do not think that is borne out by looking at either first and second draft.

Q: I am not trying to suggest that you tried to cover up or sanitize, but merely to make passages you wanted to rely on seem more plausible. I put it to you that, if you had left these passages in, it would have totally demolished the veracity of this witness, and no responsible historian would have dreamed of using Gerstein as a source.

A: They are in, and I use him, and others have used him, and we use him with caution.

Q: They are in now, of course, because you subsequently amended your report to include them.

A: Well, "amend" is not the right word. As I have said, it was a mistake by Mishcon de Reya to have turned over what was not the final draft.

Q: In other words, in your first draft?

A: Do you write one book in one sitting, or do you revise things as you go, and do you reflect about what you are writing? I have things in a number of drafts.

Q: I quote Mr Rampton and say you are not allowed to ask me questions. I am the one who asks

the questions.

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A: Then let me phrase it this way. I write in many drafts. I would expect any careful author would write a number of drafts, the second and third drafts would not be identical, or one would not write numerous drafts.

Q: Out of your own mouth, Professor, you are condemning yourself. That implies that in your first draft you chose to leave all these passages out, and only later did you decide to put them back in again for whatever reason.

A: It is not a matter of having decided to leave out, I was constructing it. I said in the initial draft there were many exaggerations. Looking at it, I said let us spell that out more clearly.

Q: Does it not indicate in fact, if you read these monstrous exaggerations by Gerstein, that he was a man with a severely disordered mind, which finally crashed when he committed suicide in prison?

A: I think he was a man that was utter traumatised and unstable.

Q: Yes. In other words, totally unreliable and undependable and it was responsible to base an important piece of history just on the eyewitness testimony of this man because -- is there any other eyewitness testimony of equal colour?

A: Two things wrong. To say he is unstable is not identical to saying unreliable. To say that it is the only testimony is false because we have lots of other

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testimony.

Q: Are you referring to Pfannenstiel?

A: We certainly are.

Q: Are you referring to what Gerstein is alleged to have said to a Swedish diplomat?

A: Yes.

Q: When did this conversation with a Swedish diplomat take place?

A: August 21, 22, coming back from Warsaw.

Q: In 1942?

A: Yes.

Q: What date is the Swedish diplomatic memorandum on that conversation? Was it contemporary or was it written years later?

A: The one that is in the file of the Swedish Foreign Office was written after the war.

Q: Three years later. Was there any opportunity for that Swedish Foreign Office gentlemen to have cross-pollinated his knowledge with what he had read in the Allied and Swedish newspapers about what had been discovered?

A: I have no idea on that.

Q: No, but you agree that, if this Swedish diplomat had written a contemporary memorandum dated August 1942, that would have very strong evidentiary value?

A: That would have been much stronger.

Q: Something written after the war in 1945, for various

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reasons, is less dependable?

A: It is evidence of less strength than one written at the time.

Q: Why did this man Pfannenstiel accompany Gerstein on his visits to these extermination camps?

A: I do not know why he went.

Q: What was his position?

A: He was a Professor.

Q: Was he a Professor at the Institute of Hygiene in Berlin? Yes, not in Berlin, Mabuch on the Lan.

Q: And why did he accompany Gerstein?

A: I do not know.

Q: Was that the kind of position where a Professor would accompany an SS officer in connection with controlling epidemics?

A: It could well be that he would be invited along as an expert or someone who wanted to learn, or that the SS was trying to bring in, I do not know. There are a number of possible explanations.

Q: Pfannenstiel, of course, after the war, am I right, testified broadly in accordance with what Gerstein had stated?

A: Yes.

Q: He confirmed that he had seen these things happening?

A: Yes.

Q: What did Gerstein testify that he had seen happening in

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two or three sentences? He had seen gassings?

A: Gerstein testified that he went to both Belzec and Treblinka and saw gassings at each. I am not sure -- yes, I think he said he saw them at each. Pfannenstiel said that he only went to Belzec, that he did not go to Treblinka, it could well be that Gerstein went on and he did not. Pfannenstiel only confirms being with Gerstein in Belzec and seeing the Belzec gassing.

Q: Take these two people separately. Gerstein went to these two camps, carrying with him a hundred kilograms of Zyklon or some fumigating agent and his story is that, after he had delivered the goods, which was for fumigation of clothing -- and he himself states that am I right?

A: Yes.

Q: That the local SS people then gave him a treat and let him watch a gassing on the following day. Is that plausible in your view?

A: Well, I think they said they did some of the work in Lublin and then they took him up, and of course, by his account, he had gotten into the SS to find out what he could. So he would have taken this opportunity.

Q: Is there any reason why they should have shown him something that was top secret?

A: To people in Lublin this was not top secret, and he was a member of the SS.

Q: What about Pfannenstiel? Why should they have shown to

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this Professor of Hygiene one of the most secret and deadly operations going on, namely the Final Solution and operation? Why should they have done that?

A: I do not know why they should have done that.

Q: Can you think of any reason why Pfannenstiel, testifying in a West German court after the war, would have said that he had seen these things?

A: It led to a lot more interrogations. If he had denied it entirely, I think nothing would have

happened, and, when he said this, nothing happened either, because witnessing it was not committing a crime.

Q: You are absolutely right. Witnessing was not committing a crime and Mr Gerstein, was he still alive at that time?

A: No.

Q: He was dead. So, by saying that Gerstein had witnessed it and was involved bringing Zyklon and so on, that did not hurt Gerstein either, did it?

A: Gerstein was dead.

Q: There was no skin off Pfannenstiel's nose to accept whatever was put to him?

A: I think it led to a series of interrogations and, if it had not happened, he would have said it. He had no reason to incriminate, not incriminate but to involve himself in supporting Gerstein's account if it had not occurred. To me, it would have been much more likely that he would, even if it happened, have denied it than vice versa.

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Q: Surely, if he had denied it, then he would have been subjected to even more intensive interrogations until finally he came round. Is that not more likely?

A: These are German interrogations in the 1950s and, from my looking through a number of court cases, the notion that he would have been subjected to ongoing pressures and whatever, I see no evidence of that in the Belzec trial or other trials of this sort.

Q: Gerstein has however been pretty comprehensively discredited as an eyewitness, has he not?

A: Gerstein, as I think most would agree, was a very traumatized and, they decided, unstable individual, but what he witnessed, in terms of having been in Belzec, that he knows the names of several of these people, he gets them slightly wrong but close enough, whatever, he could have come up with those names in his cell in 1945 when the Allies had absolutely no knowledge of the names of the personnel in these camps. How could he have known that there were Galetian transports in August? This was not knowledge in 1945. He knows a number of things that could not have been known if he had not been there. In that case, in those areas, I think one can say that this is a witness that is telling what he saw, even if it is in a highly excited and exaggerated mode.

Q: So his visit is plausible but one is entitled to disbelieve large parts of what he claims to have seen?

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A: If this was the only witness for all of Operation Reinhardt, we would say that this is a very contested one. What he did say in fact, there is very good plausibility in the details of which he tells us about some things that he could not have known if he had not been there, and in turn it is confirmed by a number of other witnesses.

Q: Does it not tell us something about the integrity of historians who have relied so wholeheartedly on Gerstein and have suppressed the details which you omitted from your original report. I am not pointing a finger at you, Professor, I am just talking about a number of other historians. I am not going to mention any names.

MR JUSTICE GRAY: Why does it matter for our purposes, what other historians may have made of Gerstein? I do not understand.

MR IRVING: It does not matter at all.

MR JUSTICE GRAY: I do not think it really does if one thinks about it.

MR IRVING: It does not, no. The point which I am finally going to develop is that, if an

eyewitness like Gerstein can be discredited so largely through the good fortune of our having access to his French police records and other materials, is it not likely that other eyewitnesses will turn out also to be made of straw to a greater or lesser degree, for one reason or another?

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A: No, I do not agree. I think that he is confirmed in his essentials, and the question before us here was how did the killing at these camps take place? And he is one of a number of witnesses that say they take place in gas chambers. In so far as he can come up with the names of the people that were there, the transports from the particular region that were arriving at Belzec at that time, I think this is very essential for saying this part of his testimony is reliable. I do not consider that having been destroyed in any way, and I think there are a large number of other witnesses that are also believable that tell the same story.

Q: Just dealing with Gerstein at this moment, I do not have to destroy all the eyewitnesses. I just want to tackle the principal ones. If he was who he said he was and he had the task of delivering these fumigation supplies, the Zyklon, to those camps, then he would know the people who were operating whatever they were operating, would know the names. This does not necessarily presuppose that all the rest of his story is true, or any of the rest of his story is true.

A: We know that transports from the Volf went there at this time. This was the place from where they were coming. We know that Hockenholt was the man who ran the gas chambers, that Oberhauser was Wirt's assistant, that he could have come into this information without having visited Belzec.

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Q: How did he know that Hockenholt ran the gas chambers? Is this another eyewitness?

A: This is the other eyewitnesses, but people from whom Gerstein could never possibly have heard of and known of when he was giving this testimony.

MR JUSTICE GRAY: Can I ask a question at this stage, Mr Irving, really because it might suggest to you that there may be one or two questions you would want to ask as a follow up? It is really this. Given that there is a live issue about gassing at Auschwitz, does the evidence about what was happening at Belzec, Sobibor and Treblinka have an impact on the issue in relation to Auschwitz? Do you follow my question?

A: In the sense that it has the impact that, if the Operation Reinhardt camps are basically killing the bulk of Polish Jewry, then the bit provides the historical context for weighing, is Auschwitz a similar camp for killing Jews brought from other parts of Europe? So they are interrelated if, in that sense, the camps are dividing up geographical areas from which they receive people. We know, I do not know if he does concede but it seems to be, that the people sent to these camps died in one way or another, and at least the eyewitness testimony tells us how that was done. That would contribute to the credibility of those that say Auschwitz was a similar camp as part of a similar programme.

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MR IRVING: My Lord, may I remind you, of course, that I do not challenge that there gassings at Auschwitz on some scale? It is the scale that we very much challenge.

MR JUSTICE GRAY: I think, I do not want to quote him without his permission, as it were, but I imagine, Professor Browning, it is implicit in the answer he has just given, would say that you

learn something about the scale of the gassing at Auschwitz from what was happening at these other death camps.

MR IRVING: With respect, my Lord, I think not.

MR JUSTICE GRAY: Am I misrepresenting you?

MR IRVING: I am just alarmed at the notion of building such a major part of World War II history just on the testimony of half a dozen eye witnesses as far as Auschwitz is concerned.

MR RAMPTON: I do not know where that comes from. It is the second time we have had that today. It is built on a mass of evidence, documentary, archeological, eyewitness, goodness knows what, all of which, as Professor van Pelt puts it, converged to the same conclusion.

MR IRVING: The transcript will show what position we reached.

MR JUSTICE GRAY: We will obviously have to deal with the totality of the evidence, but it had gone through my mind, this thought, and I therefore thought it right to put it to Professor Browning, because it seems to me to be an argument for the existence of gassing on a substantial

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scale at Auschwitz. You have heard the answer that Professor Browning has given to me. It is a matter for you whether you want to pursue it. I appreciate you do not accept it.

MR IRVING: I can only ask the supplementary question, which is does that answer depend entirely on eyewitness evidence, or is there any documentary basis whatsoever for what you have just told his Lordship?

A: We have documentary evidence for gassing in Semlin and Chelmno and the uses of the gas van. We have only eyewitness testimony for the existence of gas chambers in the three Operation Reinhardt camps.

Q: So there is no documentary evidence relating to scale then?

A: Not to scale, to mode of killing. What we do have is documentary evidence concerning the emptying of Poland of Jews to these three camps, which are teeny little villages which do not accommodate one and a half million people.

Q: We have been through part of that argument sometime ago when I mentioned the English village of Aldershot, to which large numbers of English people went during World War II.

A: If the population of Aldershot had been a group of people already deprived of their rights and property, if they had been rounded up with all of the brutality that left bodies lying all the way to the train station, and if they had

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been sent there and never came back, and if a hundred witnesses from Aldershot said they had been gassed, we would, I think, say something happened at Aldershot.

Q: Absolutely right. We do not have 100 witnesses in these cases, do we? We have apparently, in the case of Auschwitz, about which Mr Rampton is concerned, tens of thousands of survivors, but only five or six have been questioned on this matter so far as we know from these proceedings before us. Anyway, I have no further questions. Thank you very much for coming to England, Professor Browning.

MR JUSTICE GRAY: Thank you.

Re-examined by **Mr Rampton QC.**

MR RAMPTON: My Lord, if I ran maybe past quarter past 4 perhaps I would be forgiven?

MR JUSTICE GRAY: I had thought already that, if needs be, we will do that.

MR RAMPTON: We would like to get the Professor off the stand.

MR JUSTICE GRAY: I think that would suit Mr Irving actually, and then he will have a free run tomorrow, preparing Evans.

MR RAMPTON: Yes. I do not have that many questions, Professor, but it may take a bit of time because I want your help with some documents. Can we start, please, with what I call the Browning document file, which is tab 7 of L1? I would like you to turn to page 19A. This is a

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document which by now we all probably can recite in our sleep. There was a lot of cross-examination about it. It is the message from Muller to the Einsatzgruppen of 1st August 1941, I hope, is it?

MR JUSTICE GRAY: Yes.

MR RAMPTON: 19A in a circle. There are about four numbers on the page. You are looking for a handwritten number in a circle in the bottom right hand corner of the page.

A: Yes, 19A I have.

MR RAMPTON: First of all, can I ask you whether you know how long this document has been accessible to scholars?

A: I think the first reference I saw to it was in Gerald Fleming, a book published in 1982.

Q: Is that "Hitler und die Entloosung"?

A: Yes.

Q: Second question. I am coming back to the content of it in a moment. You see it has the security mark Geheim on it?

A: Yes, I see Geheim.

Q: I want you just to have a quick look at some of the other documents in this bundle, not for the content but for their superscription, if I can call it that. For the moment, I have lost my note. Can we turn, please, to page 38? You will remember the context of these questions. It was that Mr Irving was suggesting that Geheim was such a low security classification that this document could not have a sinister connotation.

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A: Yes.

Q: Page 38 ought to be what I call the Rademacher report, following his visit to Belgrade. Is it?

A: Correct.

Q: Can you tell me, just glancing at the first page, you know it backwards, what is the substance of this document, the first page of it?

A: He is reporting here on the shooting of the male Jews in Serbia. He had been sent down there to deal with what was to happen to them and he says there really is not a problem concerning the male Jews, they are being shot.

Q: They are being shot. He is an official in the Foreign Office?

A: He is the so-called Jewish expert in the Foreign Office.

Q: Do you see that has the mere marking Geheim at the top of it?

A: Yes.

Q: Thank you. Then can we go to what I think is 40A? It is 25th October 41. I am going to ask you to do a bit of stationery work, if you do not mind, Professor. Just put this in the file. There is one for the witness and one for the judge (Same handed).

MR JUSTICE GRAY: One for Mr Irving?

MR RAMPTON: One for Mr Irving, yes. This is another of your documents, Professor. I say "your documents", documents referred to by you. 25th October 1941, from a Dr Wetzler

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to somebody called Lohse, who is the Reichs Kommissar for the East land. What is this document about?

A: This is the one in which he discusses the possibility of sending someone to Riga to construct gassing apparatuses.

Q: That is in the fourth line on the first page Vergassungs apparate. Then, if you turn over the page, can you just tell us what the first sentence of the first complete paragraph says?

A: He says that, given the situation, there are no objections if Jews not capable of work are removed by Brock's "little helper".

Q: His Vergassungsapparate?

A: Yes.

Q: Notice then please on the first page the appellation, the security?

A: The security rank is Geheim.

Q: Yes. Then, finally, three other documents. Page 91 is a document dated 26th March, the year I do not know. 42, I guess, is it?

MR JUSTICE GRAY: I am going to be very pedantic and say Wetzler document, 40A, or otherwise we will never find it.

MR RAMPTON: Sorry, my Lord?

MR JUSTICE GRAY: 40A for Wetzler.

MR RAMPTON: To Lohse?

A: This is a carbon, so they would have had on the original stationery the 194 and the blank paper behind just recalls

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the two they typed in.

Q: Have you got page 91?

A: I think it is the 26th, 26th March 1942.

Q: This is a letter, I think, from somebody called Rauf. What is this about?

A: Rauf is the head of the sort of, I guess we could call it the administration of material matters of the Reichssicherheitshauptamt. Included in that is the motor pool, and this I would have to read through to see exactly.

Q: Something about Sonderwagon.

A: Yes. This is about the Sonderwagon that are prepared by them.

Q: I see. It is about the supply of Sonderwagon?

A: Yes.

Q: What are Sonderwagon?

A: This is one of terms they used for gas vans.

Q: I notice again in a box at the top of the first page the word Geheim only, please. Then, last but one, page 99A, this I hope is a letter or a copy of a letter, I think it is a Nuremberg document in fact, from Gantzen Muller to Karl Wolff?

A: Yes.

Q: This, I think there is no dispute about this, announces the starting of the journeys of 5,000 Jews a day from Warsaw to Treblinka and twice a week of 5,000 Jews from an

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unpronounceable Polish word.

A: Schemeshall.

Q: To Belzec, is that right?

A: Yes.

Q: And again the appellation or classification is, is it not, on the front page, Geheim?

A: It is Geheim.

Q: A mere Geheim for that one. Just by way of contrast, we can look at Wolff's reply, which is 99C, 13th August 1942,. This is not a Nuremberg document. This looks like a copy of an original, does it not? Have you got 99C?

A: Yes. We have the initials on this, but it is not clear. I am not sure whether this is in the files of the person who received it, or the person who sent it I assume this is in fact in Wolff's file because that is I think where these documents come from.

Q: It may be. The only thing we can see about this is that there is no Geheim, still less a Geheimerreichssacher . The only thing you can see in the box at the top of the page is a Gothic AR. Do you see that?

A: Yes.

Q: What does this series of documents that we have looked at, and I can tell you in the file there are lots of other fairly sinister documents which have no security classification at all, what does that tell you about the classification Geheim as used on documents of this kind?

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A: That there are many documents referring to the workings of the Final Solution and deportation and killing that do not have a high secrecy rating.

Q: Finally -- I know this has been laborious -- what is your reaction then to the suggestion that the classification, a mere classification of Geheim, on the Muller order or message to the Einsatzgruppen? It is suggested it is not a document of any importance.

A: That would not be a persuasive document.

Q: Now, this will be slightly disorderly, not in any sense a criticism of Mr Irving, simply because I track his cross-examination in my questions to you. Are you familiar, I am talking now about numbers, with something called the Korherr report of 23rd March 1943?

A: Yes.

Q: So as to save us all getting it out, it is noted in some detail in Mr Irving's book Hitler's War, in the 1977 edition, at pages 503 to 4. The numbers it apparently gave---

MR IRVING: My Lord we have not raised Korherr report in the examination.

MR JUSTICE GRAY: No, but there was an issue about numbers.

MR RAMPTON: It has to do with the cross-examination about numbers, scale.

MR JUSTICE GRAY: If it casts light on that issue, it does not matter whether it has been referred to or whether it has

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not.

MR RAMPTON: It has to do with numbers in the East. I can give you the numbers. Numbers given for people subjected to Sonderbehandlung before it was edited.

MR JUSTICE GRAY: Can you, Mr Rampton, very quickly remind me who Korherr is?

MR RAMPTON: He was Himmler's statistician. Is that right?

A: Correct.

MR JUSTICE GRAY: I had forgotten that.

MR RAMPTON: He is Dr Rickard Korherr, he is an anorak and he crunches numbers for Himmler. Anyhow, the numbers he gave, if you remember, I will read them out, are for people deported from the eastern provinces subjected to Sonderbehandlung 1,274,166; for people in the Warthegau, and this is at the 23rd March 1943, 145,301, making a grand total of 1,419,467. Now, as at that date, 23rd March 1943, do those numbers seem surprising to you?

A: No. If anything, I would have thought they would have been slightly higher, because at that point in these regions the first sweep through the ghettos has already taken place, so this is a very cautious estimate.

Q: By this date, speaking from your general knowledge of the subject and your detailed knowledge, end of March 43, roughly speaking, how many people do you think have been Sonderbehandelt in the three Reinhardt camps? Roughly.

A: Roughly. I would say that would be the lower estimate and

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it might be 100 or 200,000 higher. Basically, the question is how many Polish Jews do we still know are in other places and they are in the work camps in Lublin, there is still 50 to 60,000 in the Warsaw ghetto. They have not liquidated the remnant ghettos. So, when they made the first sweep, they would take between 70, 80, 90 per cent and there would be remaining then in the ghettos a smaller group that would be left for work. Then the sweep through those ghettos came in 43. So most of the Polish Jewry has been destroyed but there is still a segment that has not.

Q: I was going to ask you that as my final question on this part of numbers. We saw that Hans Frank estimated between 2 and a half and 3 and a half million Jews or people with Jewish connections on 16th September 1941.

A: Yes.

Q: Is it known how many Jews were left in Poland by the end of the war?

A: First, I should say those who have looked at real statistics and not Frank talking off the top of his head would not accept the 2.5 to 3.5 in the Generalgouvernement. I should say in Poland the pre 1941, that is the German share of Generalgouvernement and to the West, I believe German demographers who made reports thought it was close to 2 million Polish Jews who were there. Galicia has another 500,000. Bialystok I believe

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has 200,000 or 300,000, and then of course the unknown question is just how many managed to flee. And of those who fled were they then killed in White Russia or the Ukraine?

Q: I am coming to some fleeing along the line because we had that yesterday in report number 81, I think. What shall we say then? 3 million? We are talking about Warthegau, Generalgouvernement, Bialystok and Galicia in the southeast. Total 3 million? Three and a half?

A: I would say that the prewar population has been estimated about 3.3 million for all of Poland but in terms of the Generalgouvernement, Galicia, Bialystok, that would leave us I think around 3.

Q: Can I repeat the question? You are quite right not to adopt Frank's figure and to give us what one might call a real figure. Has anybody done work to estimate how many Jews were left in this area of Europe after the war?

A: This is the difficult question because you had a constant flow of Jews who survived fleeing

from Poland to Germany so you always have a moving target.

Q: They flowed westward as well, did they?

A: After the war they fled westward. Most of the immigration to Palestine came in fact via Germany. Jews returning from hiding who came back to Polish towns felt very insecure in the atmosphere, where it was feared they would be reclaiming their property and this kind of thing, and

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so they moved out of Poland very quickly.

Q: So population lost figures are not necessarily a very reliable means to an accurate answer?

A: We get an approximate figure by subtracting the postwar from the prewar to get an approximate number of Polish casualties. So we generally say out of 3.3 million probably 3 million were murdered and 300,000 survived, but those are rough figures.

Q: Yes. I am only asking for what you Americans call ball park figures.

MR JUSTICE GRAY: Are they worth anything, these ball park figures?

A: Yes, I think those are accurate as ball park figures, but they could easily be off 100 thousand on either side, I would think.

MR RAMPTON: Yes.

A: Where the ball park figures are very uncertain is for the Soviet Union.

Q: Now I am afraid I shall need some help from people in court. This has to do with three different things that arose during your cross-examination, Professor. The first thing is to go back, if you will, to 19A in the Browning document section of file L1, which is tab 7. Please could somebody find the Professor file H1(vii) please? That file hunting can stop now because Miss Rogers has done the trick with a little file of documents which can go into

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this section. I would like to start with the Muller message of 1st August 1941, the first sentence of which says something like this, does it not, Professor: Running reports on the work of the Einsatzgruppen in the East are to be placed, or will be placed, before the Fuhrer from here"?

A: Yes.

Q: Yes. I am sorry about my translation. That is roughly what it says, is it not? Then can you have a look, please, at what I think is probably the first of the documents in that little clip, which is the situation report number 80 dated 11th September 1941?

MR JUSTICE GRAY: In English?

MR RAMPTON: This is an English translation. The German is there too and I shall need to ask you about that in a moment.

MR IRVING: My Lord, I am unhappy about this introduction of documents in this way when I have no chance to re-examine on them.

MR JUSTICE GRAY: You will be offered the opportunity to follow up any new points, but this is entirely legitimate re-examination.

MR RAMPTON: Yes.

MR JUSTICE GRAY: Because it arises in relation to a topic that you have cross-examined on.

MR RAMPTON: Indeed. It arises, if I may say so, in relation

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to three topics. It arises in relation to what information Hitler was being given, about which the

Professor was cross-examined. It arises in relation to the disappearing Jews that ran across the Urals, which we had yesterday, and it arises in relation to the translation given by Mr Irving for Hitler's table talk on 25th October 1941, where he translates the word "Schrecken" as "rumour", if I have the right German, but anyhow he gives "public rumour" as the translation. So all three of those points arise from these documents.

MR JUSTICE GRAY: Yes.

MR RAMPTON: Can I ask to you look at report number 80 in English, September 11th 1941. Have you got that one?

A: Yes.

Q: Good. The second paragraph read as follows. I ask you to note the words carefully. "The rumour that the Germans shoot to kill all the Jews has advantages. This is probably the reason why all the time the EK's encounter fewer Jews. Thus it should be noted that everywhere more than 70 to 90 per cent of the original local Jews have fled. In contrast to the past this concerns not only those Jews who once held influential positions". This comes I think from Einsatzgruppen C, which had which area under its jurisdiction?

A: Ukraine.

Q: Then, just in passing, please note the other side of the

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page, which has a 129 at the bottom, "Notwithstanding that those people had, as it were, done a bunk, we still find something like 30,000 Jews shot by the 11th September 1941". Do you see that?

A: Yes, at the bottom.

Q: I have done the arithmetic for you.

A: The Kommandant, he mentions already 23,600, then Sonderkommando A had reached a figure of 7,000 so the cumulative is 30,000.

Q: 31,000, something like that, and notwithstanding that some had been able, most had been able, to get away, they still found 23,600 which they managed to shoot in three days yes.

Q: Now I would like you to look at the German of that document, if you will, and the relevant passage, if you have this thing, this one is marked Geheim Reichssacher. It looks like a 60 on the front but it is not in fact, it is an 80, and you can see the date 11th September 1941 on the top right hand corner. Have you got that one?

A: Yes.

Q: Can you turn to page 9, please, and look at the last paragraph on the page?

A: Yes.

Q: It reads: (German - document not provided) Please translate that for me.

A: It turns out to be beneficial. The rumour turns out to be

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beneficial, that all the Jews are shot by the Germans.

Q: If you were asked to translate the word "rumour" into English, what word would you use?

A: Well gerucht would be the common one.

Q: Finally this, and do you still have Dr Longerich's report up there with you?

A: Yes.

Q: Could you turn to page 59?

MR IRVING: My Lord, I fail to see under what wangle Mr Rampton is being allowed to produce this document to put it in? It has had no relevance at all of the cross-examination that I

conducted.

MR JUSTICE GRAY: We may not have quite got to it yet. It is certainly relevant on the questioning so far on whether Schrecken is properly translated as "public rumour", which was one of the points we went through this morning.

MR IRVING: A very tiny shoe horn for such a long document, my Lord.

MR JUSTICE GRAY: I can promise you I am not going to plough through it unless I am shown other bits of it that are worth ploughing through.

MR IRVING: This document was one of the ones that was put to Hitler.

MR JUSTICE GRAY: This is, as I understand it, one that is suggested was generated by the request.

MR IRVING: I think the witness should be asked if there is any

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evidence that this document was one of the ones that was put to him.

MR JUSTICE GRAY: I think that is a fair point. I think that question should be asked, whether there is any evidence that this particular situation----

MR RAMPTON: I am going to come to that.

MR JUSTICE GRAY: I think you may have jumped the gun, Mr Irving.

MR RAMPTON: These documents, taken in conjunction, affect three questions, Mr Irving's ----

MR JUSTICE GRAY: We have through them. I remember them.

MR RAMPTON: They all arise directly out of cross-examination.

MR JUSTICE GRAY: I think that is right.

MR RAMPTON: I mentioned, Professor, that you have also got there report number 81 about which Mr Irving cross-examined you yesterday without producing the document. He has not got it there, but I can tell you. On page 14 it makes similar remarks about the 72, 90 per cent of the people having fled across the Urals?

A: This was one that was cited yesterday?

Q: It is the day after. It is 12th September. We will hand those in later, if we may, my Lord. Can you turn to page 59 of Longerich, part I?

MR JUSTICE GRAY: Mr Rampton, before we leave this, I am taking it that the reference to 70 to 90 per cent of the original refugees having fled is a reference supporting one of

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Mr Irving's points, which is that that was what happened to quite a lot of the local Jews, namely they went into Russia.

MR RAMPTON: I do not think we dispute that at all.

MR JUSTICE GRAY: No. We are agreed about that.

MR RAMPTON: Oh absolutely. How many Jews do you think there were in the Ukraine before the Germans got there?

A: I do not know, but the total Soviet population of Jews was probably around 5 million, and of course only the question of whether one or two million of those were murdered is really where you get the difference between five and six million victims of the Holocaust.

Q: In your mind, I know this is probably a matter for his Lordship than for me, but maybe I can ask this. In your mind does it matter whether it is one million or two million?

MR JUSTICE GRAY: I think that is for me, is it not?

MR RAMPTON: Well, except in so far as it may impinge on the question of system, but I think that has been conceded so I need not pursue that. Page 59 of part I of Dr Longerich, do you have

that?

A: Yes.

Q: Paragraph 16.4.

A: Yes.

Q: He writes this: "On 25th October, the year is 41, Hitler made the following remark at his table talk after he had

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once again made mention of his prophecy of 30th January 1939. 'This criminal race has the 2 million dead from the world war on its conscience, now hundreds of thousand. No one can say to me we cannot send them into the morass. Who then cares about our people? It is good if the terror we are exterminating Jewry goes before us', and the word for terror is Schrecken in German.

You saw in report No. 80 the words the rumour that the Germans shoot to kill all the Jews has advantages. You notice that that comes about a month and a bit before Hitler's table talk on the 25th. You have seen the Muller order of 1st August 1941. Is it legitimate in your mind as an historian to draw any inference about Hitler's reception and knowledge of these reports from that information?

A: We could say that there is a certain resonance. It is not a direct one, but it is an inference that the materials were getting to him and that the Table Talk might be a reflection of having read that.

Q: If we are good, cautious historians, we do not need leap to giant conclusions from little inferential sketches like that, do we?

A: We would say that this a possible inference.

Q: Yes. Thank you. The Barbarossa guidelines are on -- if you have got Dr Longerich's report, can you turn to the second part of it on page 5 where in paragraph 2 he sets

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out a part of the guidelines for the conduct of the troops in Russia of 19th May. That is about a month before Barbarossa is actually launched, is it not?

A: Yes.

Q: He translates it as: "Bolshevism is the mortal enemy of the National Socialist German people ... (reading to the words) ... Germany's struggle. 2. This struggle demands ruthless, energetic and drastic measures against the Bolshevik agitators, guerillas saboteurs and Jews as well as the complete removal of all active and passive resistance". The German is at footnote 10 at the bottom of the page and I have two questions about this. Professor Longerich translates the German as "Those Jews were a separate or disjunctive category from all the rest of them". Do you understand?

A: Yes.

Q: Can you look at the German at the bottom of page 10 and tell me whether you think he is right write about that?

A: That is the way I would translate it too.

MR JUSTICE GRAY: How else could you do it?

MR RAMPTON: I do not know.

MR JUSTICE GRAY: I am not sure ----

MR RAMPTON: I do not know.

MR JUSTICE GRAY: --- is this a bit of an Aunt Sally? I mean, I am not sure what Mr Irving

has made of this.

MR RAMPTON: I do not know. I have not heard what he says

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about this. I know that he does not ----

MR JUSTICE GRAY: Well, it is re-examination.

MR RAMPTON: No, this arose in the course of cross-examination, this document.

MR JUSTICE GRAY: Yes, I know it did, but this point about whether Jews are disjunctive as a category.

MR RAMPTON: Yes. Professor Browning said in his cross-examination Jews are a separate category.

MR JUSTICE GRAY: Yes.

MR RAMPTON: So I wanted to check with him against the German whether he thought that Longerich had translated it correctly.

MR JUSTICE GRAY: Yes, I see.

MR RAMPTON: He did not have it in front of him at the time when he said it, I think, actually.

A: Yes, I was doing that from memory and now I am looking at the document.

MR RAMPTON: The second question is this. Again, this is said to be a document directed at the Vermacht, not at the SS or anybody else like that or the Gestapo. Who would have written it?

A: These would have been prepared in the General Staff, I think.

Q: Somebody underneath Jodl?

A: Yes, or even further down but in the Armed Forces, yes.

Q: Now, the numbers -- page 38 of your report, please,

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Professor, now -- this is the famous 97,000, I should say "notorious". We do not need the German for this. I am going to excuse the motor mechanic who is not good at German grammar.

Page 38: "Since December 1941, for example, 97,000 were processed by three trucks in action, without any defects in the vehicles being encountered".

How many trucks did they use during this period, December to June 1942?

A: They had two trucks that were there constantly. Another truck came and that is the one that had the accident that blew up. So most of time they had two trucks running, part of the time a third truck.

Q: I am going to use some arithmetic, then I will ask you further questions, if may? I do not know whether 1941 was a leap year or not, but there are from 1st December '41 to 1st June 1942, 172 or 173 days.

A: Yes.

Q: So let us assume it was not a leap year and it is 172. If you divide 97,000 by 172, that means they are processing 564 people a day. If you divide that by three trucks -- I know this is rough stuff and maybe the trucks did not have equal capacities -- that means roughly 188 people per truck per day. If they did, say, four trips a day, that would be 47 people per trip and that would mean -- when I say "a day" I mean on a 24-hour basis?

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A: Yes.

Q: That would mean there would be six hours, roughly speaking, five and a bit, between each trip. Does that seem feasible?

A: We know the Saurer truck was much bigger than 40. We do not know the size ----

Q: What do you think its capacity was?

A: The Saurer truck was, depending on, you know, women and children or adults, would be between 50 and 80.

Q: Right.

A: But, in general, you know, I mean, I think as they show that the number per day is not beyond the capacity of the two and three trucks.

Q: Right. So four trips a day, that would actually cover the numbers involved, would it not?

A: Yes, we know in Semlin when they made -- they could do two trips a day and that would be all the way across Belgrade to a burial site that was much further away than the distance between the burial grounds and the Chelmno camp here.

Q: I mean, how long does it take to drive 20 kilometres in one of these trucks?

A: We are talking about driving about two or three kilometres from the camp.

Q: Two or three? That is a matter of minutes?

A: Yes. The longer period would be the period to gas. That

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is why the motors had to run inside the camp before they left or the passengers would not be dead when they arrived.

Q: From start to finish of the operation, what is your estimate of how long it would have taken?

A: Well, would you have to let the desired number of people into the basement of the main building where they would be undressed, force them up ramp into the truck, close the truck doors, run the motor for probably 20 minutes, and then drive, given the issue of undressing and the driving, on the generous side, we would say an hour, and then you must empty the van and clean it out and drive back.

MR IRVING: My Lord, this is purely speculative. He is not an expert on gassing operating ----

MR JUSTICE GRAY: No, Mr Irving, you must understand if you ask almost identical questions in cross-examination, Mr Rampton must be entitled to ask the same sort of questions in re-examination.

MR IRVING: Well, I was objecting really to the question that was asked about how long would it take to gas them and...

MR JUSTICE GRAY: But you went into the arithmetic, Mr Irving. That opens the issue for Mr Rampton. I am afraid you have to take that as being the rule.

MR IRVING: Well, I asked a slightly vaguer question. He asked a specific expert question.

MR JUSTICE GRAY: Again that is legitimate, I am afraid.

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A: I would say this is not speculation in the sense that I have read through virtually all the testimony of the Chelmno trial and have seen a number of descriptions of the operations, so to call what I have said speculation would be unfair characterization.

MR JUSTICE GRAY: Well, it is speculation in the sense it is reconstruction.

A: Correct.

MR RAMPTON: Yes, reconstruction. My real question is this. Those sorts of rates, whether it is two or three trucks in operation at any one time, whether it is 40 or 50 people in the truck at a

time, whether there are three or four or five trips a day for each truck, does the figure of 97,000 seem to you to be credible?

A: It is entirely credible.

Q: Can we please turn back to your L1 tab 7 documents and turn to page 74 where I think you were accused -- this is Hans Frank on 16th December accused by Mr Irving of deliberately suppressing significant parts of the German. It is the paragraph that begins "Die Juden"?

A: Yes.

Q: I only want you to look at the sentence, the next sentence, which begins: "[German - document not provided]". What would you say if you were going to say "gas" there?

A: "Vergasung".

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Q: "Vergasung". So he cannot shoot them, he cannot poison them, then he says "verden aber", that means "but", does it not?

A: Yes.

Q: [German], what does that mean?

A: Well, "Verden aber" would be in the sense "but nonetheless".

Q: "Nonetheless"?

A: And "eingriffa" would be, you know, "steps would be undertaken".

Q: Yes, [German] "We can do something"?

A: Yes.

Q: And then it says: "Die [German - document not provided]" That means what?

A: That is "one way or another", "in some way".

Q: [German] and then the word "vernichtung erfolch". What does that mean?

A: "That would lead to a successful", literally in the way Germans combine words it means "a destruction success" and an English translation usually would be, we would invert those and say "a successful destruction".

Q: So "We will find a way to bring about a successful destruction"?

A: Correct.

Q: "One way or another"?

A: Yes, yes.

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Q: Then I think you will be pleased, Professor, that that is that, but I would like, if you can give me the answer -- what is this? Finally, I would like a little bit of history from you. You were asked about the Wannsee conference?

A: Yes.

Q: Was the date in January, 20th January, I think it was, '42, its original date?

A: No, it was originally scheduled for December 8 or 9.

Q: And when was it cancelled, do you know, or postponed?

A: Just right before that, basically at the time of the Russian counter offensive around Moscow on 5th and Pearl Harbour on the 7th. I forget the exact date. The notices of -- when the marginal note that Rademacher makes on the invitation, you know, that he hears it has been cancelled, I do not remember the exact date, but it comes just before.

Q: So does one know the reason why it was cancelled?

A: They do not stipulate -- they do not specify, but I think a probable inference is that at that point a crisis is going on and the people who are invited have too many other things to do.

MR IRVING: It says "because of intervening events", I think, does it not?

A: It would suggest that the 5th and 7th were very important events that suddenly did not allow -- that Heydrich's

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schedule had to be changed.

MR RAMPTON: Right. Thank you very much, Professor. My Lord, those are all the questions I have in re-examination.

MR JUSTICE GRAY: Mr Irving, if you think there is anything raised by the re-examination would you like to further question the Professor about, feel free.

FURTHER CROSS-EXAMINED BY MR IRVING.

MR IRVING: My Lord, going in reverse order, the "We cannot shoot them, we cannot poison them", what would the objections to shooting and poisoning have been that would not also have applied to gassing, if any?

A: The shooting of 3 million or 2 million in this case very possibly would have, simply it would have been much too public. I do not know why Frank would have said they were impossible. He is not the one that has been charged with trying to figure out how to do it. This is an extraordinary thing that is to about to take place, and the mind boggles that Frank could not conceive immediately of how this would be done strikes me as ----

Q: He was not talking from a script, was he?

A: No.

Q: Finally, on this document which has been put to which I have not seen mentioned before, which is the Event Report No. 80.

A: Yes.

Q: You will notice it has the top State Secret classification

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on it?

A: This has Geheim, yes.

Q: Would I be right in saying that all SS documents are very picky about the classification of security on them, and that the Foreign Office and other bodies were less picky about the security grade placed on them?

A: I do not think I could say that. I notice here that this is 48 copies. They may have wanted to stamp it so those who were getting, given the number in circulation, that they would be very careful with it. That is speculation, but I do not know that SS had a tendency to use the Top Secret stamp more than the Foreign Office.

Q: Is this document typed in the special Fuhrer typewriter?

A: No, it is not.

Q: Have you ever seen any Event Reports typed in this special Fuhrer typewriter for submission to Hitler?

A: Nothing, except the No. 51 we have talked about.

Q: Is that called an Event Report?

A: No.

Q: Or is it called Meldung Fuhrer?

A: That is a report to the Fuhrer.

Q: Is there any indication on this document that it was shown to the Fuhrer or submitted to the Fuhrer, like vorgelegt?

A: No.

Q: Thank you.

MR JUSTICE GRAY: Why would just the one document have been

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typed out in the large type for the Fuhrer and marked vorgelegt?

A: Why were these not typed out?

Q: Sorry, that was a rather badly phrased question. Does the fact that there is only one such document extant indicate that there only ever was one document?

A: Given the destruction of documents, particularly, say, in Eichmann's office and in the SS, it leaves open the question that there was a file of such things, and they were destroyed. We do not know.

MR IRVING: My Lord, I answer that. There is in fact an extensive file of such reports to the Fuhrer, but they cover everything like the midget torpedo attack on Turpids. It is the whole gamut.

MR JUSTICE GRAY: I am sure there are. I was talking only about reports from the Einsatzgruppen.

MR IRVING: That is only one I have seen also.

MR JUSTICE GRAY: I appreciate it is the only one anyone knows about. I was wondering whether that suggested that there only ever was one, but the Professor says not. No more questions?

MR IRVING: No further questions.

MR JUSTICE GRAY: Professor Browning, thank you very much. You are free to go.

(The witness stood down).

MR JUSTICE GRAY: We are going to resume at 10.30 on ----

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MR RAMPTON: I think Professor Evans will be here on Thursday.

MR JUSTICE GRAY: Are you wanting to interpolate some witness of your own before him?

MR IRVING: We have Dr John Fox.

MR RAMPTON: Whatever you like.

MR IRVING: I am only going to ask Mr Rampton whether he was going to cross-examine me further and, if so, when?

MR RAMPTON: I will not only say when but I hope what, because it is the last things I have to ask about. I was hoping to do it on Friday, so as to get it out of the way, but I am in other people's hands.

MR IRVING: Can you say about how long you will be cross-examining?

MR RAMPTON: I do not think it will take all that long.

MR JUSTICE GRAY: What are the topics?

MR RAMPTON: The topics are, well, there is the question of Mr Irving's knowledge of that Muller signal to the Einsatzgruppen. I do not accept his answer that he has not seen it before, and there is a reason for that which I shall not say what it is now, apart from the fact that it appears to

have been in the public domain for nearly 20 years.

MR IRVING: I have been in the public domain for 62 years.

MR JUSTICE GRAY: We are not going to have the cross-examination now.

MR RAMPTON: That I think we have dealt with. So that has

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gone. There is Zamus report of 16th December 1942 which appeared and then disappeared because your Lordship said Mr Irving needed more time.

MR IRVING: Also you should reveal where it came from.

MR RAMPTON: That is happening and I hope that will be in place by Friday. There is Anne Frank that I forgot about out of Evans and also van Pelt, and I think I ought to ask a couple of questions, it is quite short. Then there is, again which I hope I can keep quite short, the question of Mr Irving's associates, if I may call them that.

MR JUSTICE GRAY: Yes.

MR RAMPTON: That will certainly be completed in a day or perhaps less.

MR JUSTICE GRAY: My slight feeling, and it is up to Mr Irving in the end, well, I suppose it is up to me in the end, but I wonder whether it is right to interrupt his cross-examination ----

MR RAMPTON: I agree.

MR JUSTICE GRAY: --- of really your major witness,.

MR IRVING: May I suggest that I bring Dr Fox on Thursday?

MR JUSTICE GRAY: If you are going to do that bring him first off.

MR RAMPTON: Can I say not, because I think I told your Lordship Professor Evans is in real difficulty on Friday.

MR JUSTICE GRAY: Yes.

MR RAMPTON: Which is why I am proposing -- if your Lordship

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wants to leave Friday blank I quite understand the reason why, nothing personally, but from Mr Irving' point of view, then he has three clear days to gather himself again for a renewed assault on Professor Evans on Monday. Alternatively Dr. Fox might come on Friday, but it seems a bit of a -

MR JUSTICE GRAY: That I would not have so much difficulty with, because Fox, frankly, I do not quite know what he is going to say, but he has not a major problem for Mr Irving in terms of preparation.

MR RAMPTON: Absolutely certainly not, and none for me because I am not going to cross-examine him.

MR IRVING: You do not what he is going to say yet.

MR RAMPTON: Of course I do. I have read his witness statement.

MR JUSTICE GRAY: So I have but I have forgotten what is in it.

MR RAMPTON: Something about free speech I think.

MR JUSTICE GRAY: Shall we just plan the timetable? On Thursday we will have Evans all day. On Friday we will Fox for as long as he takes. Then we will resume with Evans on Monday. We will have the cross-examination of yourself at a later date to be fixed.

MR RAMPTON: That means only one more day and a tiny bit in court this week I think.

MR JUSTICE GRAY: Which I think at this stage of the case is not such a bad thing.

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MR IRVING: Preparation of Evans is complicated by the fact that I now have to shoe-horn the material which I have prepared for Levin and Eatwell into the Evans cross-examination.

MR JUSTICE GRAY: We are giving you a day tomorrow and then you are going to have most of Friday.

MR IRVING: Very well.

MR JUSTICE GRAY: Are you happy with that because tell me if you are not?

MR IRVING: So Fox on Thursday?

MR JUSTICE GRAY: Fox on Friday morning.

MR RAMPTON: If he can manage it.

MR JUSTICE GRAY: Tell me if it turns out to create any problems for you.

MR RAMPTON: We do not mind, my Lord. If Mr Irving would rather have Dr Fox here on Thursday we do not mind.

MR IRVING: No.

MR JUSTICE GRAY: I think it is quite a good idea to have him on Friday. So we are not sitting tomorrow but we are sitting on Thursday.

(The court adjourned until Thursday, 19th February 2000)