

IN THE HIGH COURT OF JUSTICE 1996 -I- 1113

QUEEN'S BENCH DIVISION

Before:

The Hon. Mr. Justice Gray

B E T W E E N:

DAVID JOHN CADWELL IRVING

Claimant

-and-

PENGUIN BOOKS LIMITED

1st Defendant

DEBORAH E. LIPSTADT

2nd Defendant

MR. DAVID IRVING (appeared in person).

MR. RICHARD RAMPTON QC (instructed by Messrs Davenport Lyons and Mishcon de Reya) appeared on behalf of the first and second Defendants.

MISS HEATHER ROGERS (instructed by Messrs Davenport Lyons)

appeared on behalf of the first Defendant, Penguin Books Limited.

MR ANTHONY JULIUS (instructed by Messrs Mishcon de Reya)

appeared on behalf of the second Defendant, Deborah Lipstadt.

I direct pursuant to CPR Part 39 P.D. 6.1. that no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

-
Mr. Justice Gray

18 April 2000

Index

Paragraph Page

I. INTRODUCTION 6

1.1 A summary of the main issues 6

1.4 The parties 7

II. THE WORDS COMPLAINED OF AND THEIR MEANING 8

2.1 The passages complained of 8

2.6 The issue of identification 15

2.9 The issue of interpretation or meaning 16

III. THE NATURE OF IRVING'S CLAIM FOR DAMAGES 21

IV. THE DEFENCE OF JUSTIFICATION: AN OVERVIEW 25

V. JUSTIFICATION: THE DEFENDANTS'

HISTORIOGRAPHICAL CRITICISMS OF IRVING'S

PORTRAYAL OF HITLER IN PARTICULAR IN

REGARD TO HIS ATTITUDE TOWARDS THE JEWISH

QUESTION 31

5.1 Introduction 31

5.2 The general case for the Defendants 31

5.9 Irving's general response 33

?? The specific criticisms made by the Defendants of Irving's
historiography: 35

17. Hitler's trial in 1924 36

29. Crime statistics for Berlin in 1932 39

37. The events of Kristallnacht in November 1938 40

73. The aftermath of Kristallnacht 53

90. Expulsion of Jews from Berlin in 1941 59
- 5.111 Shooting of the Jews in Riga 66
123. Hitler's views on the Jewish question 69
151. The timing of the "final solution" to the Jewish problem:
the 'Schlegelberger note' 80
- 5.170 Goebbels's diary entry for 27 March 1942 85
- 5.187 Himmler minute of 22 September 1942 92
- 5.194 Himmler's note for his meeting with Hitler on
10 December 1942 94
199. Hitler's meetings with Antonescu and Horthy in April 1943 95
215. The deportation and murder of Jews in Rome in October
1. 100

Paragraph Page

222. Himmler's speeches on 6 October 1943, 5 and 24 May
1944 102
- 5.231 Hitler's speech on 26 May 1944 105
235. Ribbentrop's testimony and evidence from his cell at
Nuremberg 105
- 5.240 Marie Vaillant-Couturier 107
- 5.245 Kurt Aumeier 108
- VI. JUSTIFICATION: EVIDENCE OF THE ATTITUDE OF
HITLER TOWARDS THE JEWS AND OF THE EXTENT,
IF ANY, OF HIS KNOWLEDGE OF AND
RESPONSIBILITY FOR THE EVOLVING POLICY OF
EXTERMINATION 110

6.1 Preamble 110

6.3 Hitler's anti-semitism 111

6.10 The policy of shooting of Jews 114

6.60 The policy of deporting the Jews 132

6.68 Genesis of gassing programme 134

?? The Defendants' case as to the scale on which Jews were gassed to death at camps excluding Auschwitz and the extent, if any, of Hitler's knowledge of and complicity in the killing 136

6.106 Irving's response: the scale of the killings by gassing 147

?? Irving's response: Hitler's knowledge of the gassing at the Reinhard Camps 150

?? Irving's response: Hitler's knowledge of and complicity in the gassing programme 156

VII. AUSCHWITZ 160

7.1 Description of the camp and overview of the principal issue 160

7.6 The case for the Defendants in summary 162

7.8 Irving's case in summary 162

?? The evidence relied on by the Defendants as demonstrating that gas chambers were constructed at Auschwitz and operated there to kill a vast number of Jews: 164

7.16 Early reports 164

?? Evidence gathered by the investigation under the aegis of the Soviet State Extraordinary Commission 165

?? Evidence gathered by the Polish Central Commission for Investigation of German Crimes in Poland 1945-7 166

- ?? The Olere drawings 166
- ?? Eye-witness evidence from camp officials and employees 167
- ?? Eye-witness evidence from inmates at Auschwitz 170

Paragraph Page

- ?? Evidence from the Nuremberg trial 174
- ?? Evidence from the Eichmann trial 174
- ?? Evidence from other trials (Kremer; Mulka and others;

Dejaco and Ertl) 175

- ?? Documentary evidence relating to the design and construction of the chambers 176
- ?? Photographic evidence 180
- ?? Material evidence found at Auschwitz 181
- ?? Conclusions to be drawn from the evidence, according to

The Defendants' experts 182

- ?? Irving's reasons for rejecting the evidence relied on by the Defendants as to the existence at Auschwitz of gas chambers for killing Jews: 182

7.77 Irving as expert witness at the trial of Zundel 182

7.79 The impact of the Leuchter Report 183

7.90 Replication of Leuchter's findings 186

- ?? The absence of chimneys protruding through of morgue 1 of crematorium 2 186

- ?? The reason for the alterations to crematorium 2: fumigation or alternatively air-raid shelter 188

7.98 The purpose of the supplies of Zyklon-B 189

?? The logistical impossibility of extermination on the scale
contended for by the Defendants 189

7.102 Irving's investigation of the documentary evidence 190

7.109 Irving's response to the eye-witness evidence 192

7.113 The Defendants' arguments in rebuttal: 194

7.113 The Defendants' critique of the Leuchter Report 194

?? The Defendants' case as to the absence of signs of
chimneys in the roof of Leichenkeller 1 195

7.121 The redesign of crematorium 2 196

7.123 The quantity of Zyklon-B required 197

7.124 The Defendants' response to Irving's logistical argument 197

127. The Defendants' response to Irving's argument in
relation to the documentary evidence 198

VIII. JUSTIFICATION: THE CLAIM THAT IRVING IS A "HOLOCAUST DENIER" 199

8.1 What is meant by the term "Holocaust denier" 199

?? The question whether the statements made by Irving qualify
him as a "Holocaust denier" in the above sense 201

Paragraph Page

?? The oral and written statements made by Irving which are relied
on by the Defendants for their contention that he is a Holocaust
denier and the evidence relied on by the Defendants for their
assertion that Irving's denials are false: 203

?? The existence of gas chambers at Auschwitz or elsewhere 204

?? The existence of a systematic programme or policy for killing Jews 215

8.20 The numbers of Jews killed 217

?? The assertion that the gas chambers were a propaganda lie invented by the British 222

IX. JUSTIFICATION: THE ALLEGATION THAT IRVING

IS AN ANTI-SEMITE AND A RACIST 227

9.1 Relevance of the allegation 227

9.4 The material relied on by the Defendants 227

9.8 Irving's denial that he is anti-semitic or a racist: 248

9.9 Anti-semitism 248

9.19 Racism 251

X. JUSTIFICATION: THE CLAIM THAT IRVING

ASSOCIATES WITH RIGHT WING EXTREMISTS 252

10.1 Introductory 252

10.4 Case for the Defendants 253

10.26 Irving's response 259

XI. JUSTIFICATION: THE BOMBING OF DRESDEN 261

11.1 Introduction 261

11.5 The Defendants' criticisms of Irving's account of the bombing 262

11.6 Numbers killed – Irving's claims 262

9. The Defendants' claim that Irving relied on forged evidence 264

29. Irving's case as to use of TB47 269

11.41 The claim that Irving attached credence to unreliable evidence 273

11.45 The allegation that Irving has bent reliable evidence and falsified

statistics 274

11.48 The allegation that Irving suppressed or failed to take account of reliable evidence 275

11.54 The allegation that Irving has misrepresented evidence 276

Paragraph Page

XII. JUSTIFICATION: IRVING'S CONDUCT IN RELATION TO THE GOEBBELS DIARIES IN THE MOSCOW ARCHIVE 276

12.1 Introduction 276

?? The claim that Irving broke an agreement with the Moscow Archive and risked damage to the glass plates 278

4. The allegation as formulated in the Defendants' statements of case 278

?? The evidence relied on by the Defendants for the allegation of breach of an agreement 279

12.12 The evidence relied on by the Defendants for the risk of damage to the plates 280

12.15 Irving's case that there was no breach of agreement 280

12.19 Irving's denial that the plates were put at risk of damage 281

XIII. FINDINGS ON JUSTIFICATION 282

13.1 Scheme of this section of the judgment 282

7. The allegation that Irving has falsified and misrepresented the
Historical evidence 283

13.7 Irving the historian 283

13.9 The specific historiographical criticisms of Irving 284

52. Evidence of Hitler's attitude towards the Jews and the extent,
if any, of his knowledge of and responsibility for the evolving
policy of extermination 297

13.68 Auschwitz 303

13.92 Whether Irving is a "Holocaust denier" 310

13.100 Whether Irving is an anti-semite and a racist 313

13.109 Irving's alleged association with right-wing extremists 315

13.116 Irving's accounts of the bombing of Dresden 317

128. Irving's conduct in relation to the Goebbels diaries in
the Moscow archive 321

13.136 Assessment of Irving as an historian 323

13.164 Finding in relation to the defence of justification 332

XIV. VERDICT 333

I. INTRODUCTION

A summary of the main issues

1.1 In this action the Claimant, David Irving, maintains that he has been libelled in a book entitled "*Denying the Holocaust – The Growing Assault on Truth and Memory*", which was published by Penguin Books Limited and written by Professor Deborah Lipstadt, who are respectively the First and Second Defendants in the action. (For the sake of brevity I shall refer to them, as in due course I shall refer to the expert witnesses, by their last names).

1.2 The essential issues in the action can be summarised as follows: Irving complains that certain passages in the Defendants' book accuse him of being a Nazi apologist and an admirer of Hitler, who has resorted to the distortion of facts and to the manipulation of documents in support of his contention that the Holocaust did not take place. He contends that the Defendants' book is part of a concerted attempt to ruin his reputation as an historian and he seeks damages accordingly. The Defendants, whilst they do not accept the interpretation which Irving places on the passages complained of, assert that it is true that Irving is discredited as an historian by reason of his denial of the Holocaust and by reason of his persistent distortion of the historical record so as to depict Hitler in a favourable light. The Defendants maintain that the claim for damages for libel must in consequence fail.

1.3 Needless to say, the context in which these issues fall to be determined is one which arouses the strongest passions. On that account, it is important that I stress at the outset of this judgment that I do not regard it as being any part of my function as the trial judge to make findings of fact as to what did and what did not occur during the Nazi regime in Germany. It will be necessary for me to rehearse, at some length, certain historical data. The need for this arises because I must evaluate the criticisms of or (as Irving would put it) the attack upon his conduct as an historian in the light of the available historical evidence. But it is not for me to form, still less to express, a judgement about what happened. That is a task for historians. It is important that those reading this judgment should bear well in mind the distinction between my judicial role in resolving the issues arising between these parties and the role of the historian seeking to provide an accurate narrative of past events.

The parties

1.4 David Irving, the Claimant, embarked on his career as an author in the early 1960s shortly after he left Imperial College London. He is the author of over 30 books, most of which are concerned with the events of and leading up to the Second World War (some of which were written and published in Germany). Amongst the better known titles are *The Destruction of Dresden*, *Hitler's War* (1977 and 1991 editions), *Goebbels - Mastermind of the Third Reich*, *Goering - a Biography* and *Nuremberg – The Last Battle*.

1.5 As these titles suggest, Irving has specialised in the history of the Third Reich. He describes himself as an expert in the principal Nazi leaders (although in his opening he was at pains to make clear that he does not regard himself as an historian of the Holocaust). Many of his works have been published by houses of the highest standing

and have attracted favourable reviews. It is beyond dispute that over the years (Irving is now aged 62), he has devoted an enormous amount of time to researching and chronicling the history of the Third Reich. The books themselves are eloquent testimony to his industry and diligence.

1.6 Apart from his books Irving has written numerous articles and, particularly in recent years, lectured and spoken both in Europe and the Americas and participated in numerous radio and television broadcasts. He emphasises that his reputation as an historian is founded upon his output of books.

1.7 As to his political beliefs, he describes himself as a Conservative with *laissez-faire* views. He mentions that he has not applauded the uncontrolled tide of Commonwealth immigration.

1.8 The 2nd Defendant, Deborah Lipstadt, lives and works in the United States. She was raised in a traditional Jewish home (her parents having migrated from Germany and Poland). She attended City College of New York and spent a year at the Hebrew University in Jerusalem, where she took a series of courses on the history of the Holocaust, subsequently staying on for a further year. On her return to the United States she completed an M.A. and a Ph.D. in Jewish Studies.

1.9 Since then Lipstadt has pursued an academic career teaching modern Jewish history with an emphasis on the Holocaust. In 1993 she moved to Emory University, a research institution in Atlanta, Georgia, where she is Professor of Modern Jewish and Holocaust Studies. She has written two books about the responses to the Holocaust, *Beyond Belief: the American Press and the Coming of the Holocaust 1933-1945* and the book which has given rise to the present action, *Denying the Holocaust*. The latter was published by Penguin Books in an American edition and thereafter in an English paperback edition.

1.10 I should for the sake of completeness add that initially a number of individuals were joined as additional Defendants. The action is not pursued against them.

II. THE WORDS COMPLAINED OF AND THEIR MEANING

The passages complained of

2.1 In *Denying the Holocaust* Lipstadt examines the origins and subsequent growth in the scope and intensity of what she describes as the phenomenon of Holocaust denial. She identifies several adherents of the revisionist movement and examines the basis for their beliefs, their methodology and the manner in which they deploy their arguments. She argues that "the deniers" represent a clear and present danger that the lessons to be learned by future generations from the terrible events of the 1930s and 40s will be obfuscated.

2.2 Irving regards himself as being the victim of an orchestrated campaign of boycotting, hounding and persecution by organisations in the UK and elsewhere. He considers *Denying the Holocaust* to be one of the principal instruments deployed in the campaign to destroy him.

2.3 He has selected for complaint a number of passages from *Denying the Holocaust*. (I was told that the passages complained of represent in total no more than five pages from a book which runs to more than two hundred pages). This is a course which he is entitled to take, providing of course that the removal of the passages from the context in which they appear in the book does not affect their interpretation. The Defendants are accordingly entitled to invite attention to the context in which the passages complained of appear in support of a submission that the context alters the meaning of the allegedly libellous passages. In the present case I do not understand the Defendants to be maintaining that the context materially affects the interpretation of any of the passages which Mr Irving has selected for complaint.

2.4 I shall therefore confine myself to setting out, with pagination, the passages which Irving contends are libellous of him (as well as highly damaging to his reputation as a serious historian):

Cover and title page:

"Denying the Holocaust

The Growing Assault on Truth and Memory"

Page 14:

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

Page 111:

Nolte contended that Weizmann's official declaration at the outbreak of hostilities gave Hitler good reason "to be convinced of his enemies' determination to annihilate him much earlier than when the first information about Auschwitz came to the knowledge of the world"[...] When Nolte was criticized on this point in light of prewar Nazi persecution of Jews, he said that he was only quoting David Irving, the right-wing writer of historical works. How quoting Irving justified using such a historically invalid point remains unexplained [...] As we shall see in subsequent chapters, Irving [...] has become a holocaust denier.

These works demonstrate how deniers misstate, misquote, falsify statistics and falsely attribute conclusions to reliable sources. They rely on books that directly contradict their arguments, quoting in a manner that completely distorts the authors' objectives. Deniers count on the fact that the vast majority of readers will not have access to the documentation or make the effort to determine how they have falsified or misconstrued information.

Page 161:

At the second trial Christie and Faurisson were joined by David Irving, who flew to Toronto in January 1988 to assist in the preparation of Zundel's second defense and to testify on his behalf. Scholars have described Irving as a "Hitler partisan wearing blinkers" and have accused him of distorting evidence and manipulating documents to serve his own purposes. He is best known for his thesis that Hitler did not know about the Final Solution, an idea that scholars have dismissed. The prominent British historian Hugh Trevor-Roper depicted Irving as a man who "seizes on a small and dubious part particle of 'evidence'" using it to dismiss far-more substantial evidence that may not support his thesis. His work has been described as "closer to theology or mythology than to history," and he has been accused of skewing documents and misrepresenting data in order to reach historically untenable conclusions, particularly those that exonerate Hitler. An ardent admirer of the Nazi leader, Irving placed a self-portrait of Hitler over his desk, described his visit to Hitler's mountaintop retreat as a spiritual experience, and declared that Hitler repeatedly reached out to help the Jews. In 1981 Irving, a self-described "moderate fascist", established his own right-wing political party, founded on his belief that he was meant to be a future leader of Britain. He is an ultra-nationalist who believes that Britain has been on a steady path of decline accelerated by its decision to launch a war against Nazi Germany. He has advocated that Rudolf Hess should have received the Nobel Prize for his efforts to try to stop war between Britain and Germany. On some level Irving seems to conceive himself as carrying on Hitler's legacy.

[...] Prior to participating in Zundel's trial, Irving had appeared at IHR conferences [...] but he had never denied the annihilation of the Jews. That changed in 1988 as a result of the events in Toronto.

Both Irving and Faurisson advocated inviting an American prison warden who had performed gas executions to testify in Zundel's defense, arguing that this would be the best tactic for proving that the gas chambers were a fraud and too primitive to operate safely. They solicited help from Bill Armontrout, warden of the Missouri State Penitentiary, who agreed to testify and suggested they also contact Fred A. Leuchter, an "engineer" residing in Boston who specialized in constructing and installing execution apparatus. Irving and Faurisson immediately flew off to meet Leuchter. Irving, who had long hovered on the edge of Holocaust denial, believed that Leuchter's testimony could provide the documentation he needed to prove the Holocaust a myth. According to Faurisson, when he first met Leuchter, the Bostonian accepted the "standard notion of the 'Holocaust'". After spending two days with him, Faurisson declared that Leuchter was convinced that it was chemically and physically impossible for the Germans to have conducted gassings. Having agreed to serve as an expert witness for the defense, Leuchter then went to Toronto to meet with Zundel and Christie and to examine the materials they had gathered for the trial.

Page 179:

David Irving, who during the Zundel trial declared himself converted by Leuchter's work to Holocaust denial and to the idea that the gas chambers were a myth, described himself as conducting a "one man intifada" against the official history of the Holocaust.

In his forward to his publication of the Leuchter Report, Irving wrote that there was no doubt as to Leuchter's "integrity" and "scrupulous methods". He made no mention of Leuchter's lack of technical expertise or of the many holes that had been poked in his findings. Most important, Irving wrote, "Nobody likes to be swindled, still less where considerable sums of money are involved." Irving identified Israel as the swindler, claiming that West Germany had given it more than ninety billion deutsche marks in voluntary reparations, "essentially in atonement for the 'gas chambers of Auschwitz'". According to Irving the problem was that the latter was a myth that would "not die easily". He subsequently set off to promulgate Holocaust denial notions in various countries. Fined for doing so in Germany, in his court room appeal against the fine he called on the court to "fight a battle for the German people and put an end to the blood lie of the Holocaust which has been told against this country for fifty years." He dismissed the memorial to the dead at Auschwitz as a "tourist attraction". He traced the origins of the myth to an "ingenious plan" of the British Psychological Warfare Executive, which decided in 1942 to spread the propaganda story that Germans were "using 'gas chambers' to kill millions of Jews and other 'undesirables'".

Branding Irving and Leuchter "Hitler's heirs", the British House of Commons denounced the former as a "Nazi propagandist and long time Hitler apologist" and the latter's report as a "fascist publication". One might have assumed that would have marked the end of Irving's reputation in England, but it did not. Condemned in the Times of London in 1989 as "a man for whom Hitler is something of a hero and almost everything of an innocent and for whom Auschwitz is a Jewish deception", Irving may have had his reputation revived in 1992 by the London Sunday Times. The paper hired Irving to translate the Goebbels diaries, which had been discovered in a Russian archive and, it was assumed, would shed light on the conduct of the Final Solution. The paper paid Irving a significant sum plus a percentage of the syndication fees.*

[Footnote] * The Russian archives granted Irving permission to copy two microfiche plates, each of which held about forty-five pages of the diaries. Irving immediately violated his agreement, took many plates, transported them abroad, and had them copied without archival permission. There is serious concern in archival circles that he may have significantly damaged the plates when he did so, rendering them of limited use to subsequent researchers.

Irving believes Jews are "very foolish not to abandon the gas chamber theory while they still have time." He "foresees [a] new wave of anti-semitism" due to Jews' exploitation of the Holocaust "myth", C.C. Aronsfeld, "Holocaust revisionists are Busy in Britain," *Midstream*, Jan. 1993, p.29.

Journalists and scholars alike were shocked that the Times chose such a discredited figure to do this work. Showered with criticism, the editor of the Sunday Times, Andrew Neil, denounced Irving's view as "reprehensible" but defended engaging Irving because he was only being used as a "transcribing technician". Peter Pulzer, a professor of politics at Oxford and an expert on the Third Reich, observed that it was ludicrous for Neil to refer to Irving as a "mere technician", arguing that when you hired someone to edit a "set of documents others had not seen you took on the whole man".

However the matter is ultimately resolved, the Sunday Times had rescued Irving's reputation from the ignominy to which it had been consigned by the House of Commons. In the interest of a journalistic scoop, this British paper was willing to throw its task as a gatekeeper of the truth and of journalistic ethics to the winds. By resuscitating Irving's reputation, it also gave new life to the Leuchter Report.

Page 181:

A similar attitude is evident in the media reviews of David Irving's books: Most rarely address his neofascist or denial connections.

Irving is one of the most dangerous spokespersons for Holocaust denial. Familiar with historical evidence, he bends it until it conforms with his ideological leanings and political agenda. A man who is convinced that Britain's great decline was accelerated by its decision to go to war with Germany, he is *mist facile* at taking accurate information and shaping it to confirm his conclusions. A review of his recent book, *Churchill's War*, which appeared in *New York Review of Books*, accurately analyzed his practice of applying a double standard of evidence. He demands "absolute documentary proof" when it comes to proving the Germans guilty, but he relies on highly circumstantial evidence to condemn the Allies. This is an accurate description not only of Irving's tactics, but of those of deniers in general.

Page 213:

As we have seen above, Nolte echoing David Irving, argues that the Nazi "internment" of Jews was justified because of Chaim Weizmann's September 1939 declaration that the Jews of the world would fight Nazism.

Page 221:

Another legal maneuver has been adopted by a growing number of countries. They have barred entry rights to known deniers. David Irving, for example, has been barred from Germany, Austria, Italy and Canada. Australia is apparently also considering barring him.

2.5 These are the passages which (to quote Irving's opening) "vandalised [his] legitimacy as an historian".

The issue of identification

2.6 It is incumbent on Irving as Claimant to establish that these passages would have been understood by readers of *Denying the Holocaust* to refer to him. In their statement of case, the Defendants take issue with Irving's assertion that those passages refer to him.

2.7 To the extent that he is named in the passages cited above, readers would of course have taken them to be referring to Irving. With the exception of the title page, all the passages complained of do make mention of Irving by name. I am satisfied that readers would have understood all those passages to refer to Irving. The Defendants have not sought in the course of the trial to suggest otherwise.

2.8 I add the rider that the assertions, to be found principally at pages 111, 181 and 221, that Irving is a Holocaust "denier" and a spokesperson for Holocaust denial will in my judgment cause readers to understand references to "deniers" elsewhere in the passages complained of as importing a reference to Irving individually. Accordingly I am satisfied that readers of *Denying the Holocaust* would have understood Irving to be one of those who (to quote from page 111) "misstate, misquote, falsify statistics and falsely attribute conclusions to reliable sources".

The issue of interpretation or meaning

Irving's case on meaning

2.9 Of greater substance is the question of what interpretation readers would have placed upon the references to Irving in Lipstadt's book. The burden rests on Irving to establish that, as a matter of probability, the passages of which he complains are defamatory of him, that is, that the ordinary reasonable reader of *Denying the Holocaust* would think the worse of him as a result of reading those passages. Irving is further required, as a matter of practice, to spell out what he contends are the specific defamatory meanings borne by those passages.

2.10 The contention of Irving is that the passages in question would in their natural and ordinary meaning (that is, without imputing any special extraneous knowledge to the reader) have been understood to bear the following defamatory meanings:

- i. that the (Claimant) is a dangerous spokesman for Holocaust denial forces who deliberately and knowingly consorts and consorted with anti-Israel, anti-Semitic, and Holocaust denial forces and who contracted to attend a world anti-Zionist conference in Sweden in November 1992 thereby agreeing to appear in public in support of and alongside violent and extremist speakers including representatives of the violent and extremist anti-Semitic Russian group Pamyat and of the Iranian backed Hezbollah and of the fundamentalist Islamic organisation Hamas and including the black Muslim minister Louis Farrakhan, born Louis Eugene Walcott, who is known as a Jew-baiting black agitator, as a leader of the U.S. Nation of Islam, as an admirer of Hitler and who is in the pay of Colonel Muammar Gaddafi;
- ?? that the (Claimant) is an historian who has inexplicably misled academic historians like Ernst Nolte into quoting historically invalid points contained in his writings and who applauds the internment of Jews in Nazi concentration camps;
- ?? that the (Claimant) routinely perversely and by way of his profession but essentially in order to serve his own reprehensible purposes ideological meanings and/or political agenda

- ?? distorts accurate historical evidence and information
- ?? misstates
- ?? misconstrues
- ?? misquotes
- ?? falsifies statistics
- ?? falsely attributes conclusions to reliable sources
- ?? manipulates documents
- ?? wrongfully quotes from books that directly contradict his arguments in such a manner as completely to distort the their authors' objectives and while counting on the ignorance or indolence of the majority of readers not to realise this;
- ?? that the (Claimant) is an Adolf Hitler partisan who wears blinkers and skews documents and misrepresents data in order to reach historically untenable conclusions specifically those that exonerate Hitler;
- ?? that the (Claimant) is an ardent admirer of the Nazi leader Adolf Hitler and conceives himself as carrying on Hitler's criminal legacy and had placed a self-portrait of Hitler over his desk and has described a visit to Hitler's mountain-top retreat as a spiritual experience and had described himself as a moderate fascist;
- ?? that before Zundel's trial began in 1988 in Toronto the (Claimant), compromising his integrity as an historian and in an attempt to pervert the course of justice, and one Faurisson wrongfully and/or fraudulently conspired together to invite an American prison warden and thereafter one Fred A. Leuchter an engineer who is depicted by the Defendants as a charlatan to testify as a tactic for proving that the gas chambers were a myth.
- ?? That the (Claimant) after attending Zundel's trial in 1988 in Toronto having previously hovered on the brink now denies the murder by the Nazis of the Jews;
- ?? That the (Claimant) described the memorial to the dead at Auschwitz as a "tourist attraction".
- ?? That the (Claimant) was branded by the British House of Commons as "Hitler's heir" and denounced as a "Nazi propagandist and long time Hitler apologist" and accused by them of publishing a "fascist publication" and that this marked the end of the (Claimant's) reputation in England.
- ?? That some other person had discovered in a Russian archive in 1992 the Goebbels diaries and that it was assumed that these would shed light on the

conduct of the Final Solution but that the (Claimant) was hired and paid a significant sum by the London *Sunday Times* to transcribe and translate them although he was a discredited and ignominious figure and although by hiring the (Claimant) the newspaper threw its task as a gatekeeper of the truth and of journalistic ethics to the winds and thereby increased the danger that the (Claimant) would in order to serve his own reprehensible purposes misstate, construe misquote falsify distort and/or manipulate these sets of documents which others had not seen in order to propagate his reprehensible views and that the (Claimant) was unfit to perform such a function for this newspaper.

- ?? That the (Claimant) violated an agreement with the Russian archives and took and copied many plates without permission causing significant damage them and rendering them of limited use to subsequent researchers.

2.11 Irving contends in the alternative that the passages bear by innuendo, that is, by virtue of extrinsic facts which would have been known to readers or to some of them, the meaning that he is a person unfit to be allowed access to archival collections and that he is a person who should properly be banned from foreign countries. The extrinsic facts on which he relies in support of the innuendo meanings are in essence as follows:

- ?? that a Holocaust denier is someone who wilfully, perversely and in disregard of the evidence denies the mass murder by whatever means of the Jewish people;
- ?? that Hezbollah is an international terrorist organisation whose guerillas kill Israeli civilians and soldiers;
- ?? that Hamas is an Islamic fundamentalist terrorist organisation

In support of his argument that readers of the book would have known these extrinsic facts Irving produced a collection of press cuttings, which, I am satisfied, establish the extrinsic facts on which he relies.

The Defendants' case on meaning

2.12 The Defendants are also obliged to set out the defamatory meanings which they contend are borne by the passages in question (and which they seek to justify). These meanings are set out in paragraph 6 of their Defences in the following terms:

- ?? that the (Claimant) has on numerous occasions (in the manner hereinafter particularised) denied the Holocaust, the deliberate planned extermination of Europe's Jewish population by the Nazis, and denied that gas chambers were used by the Nazis as a means of carrying out that extermination;
- ?? that the (Claimant) holds extremist views, and has allied himself with others who do so, including individuals such as Dr. Robert Faurisson, and Ernst Zundel;

- ?? that the (Claimant), driven by his obsession with Hitler, distorts, manipulates and falsifies history in order to put Hitler in a more favourable light, thereby demonstrating a lack of the detachment, rationality and judgement necessary for an historian;
- ?? that there are grounds to suspect that the (Claimant) has removed certain microfiches of Goebbels' diaries contained in the Moscow archives, from the said archives without permission; and that the (Claimant) lied and/or exaggerated the position with regard to the unpublished diaries of Goebbels on microfiche contained in the Moscow archives, and used by him in the Goebbels book;
- ?? that in all the premises, the (Claimant) is discredited as an historian and user of source material, and that there was an increased risk that the (Claimant) would for his own purposes, distort, and manipulate the contents of the said microfiches in pursuance of his said obsession.

Approach to the issue of meaning

2.13 For the purpose of deciding this issue, it matters not what Lipstadt intended to convey to her readers; nor does it matter in what sense Irving understood them. I am not bound to accept the contentions of either party. My task is to arrive, without over-elaborate analysis, at the meaning or meanings which the notional typical reader of the publication in question, reading the book in ordinary circumstances, would have understood the words complained of, in their context, to bear. Such a reader is to be presumed to be fair-minded and not prone to jumping to conclusions but to be capable of a certain amount of loose thinking.

Conclusion on meaning

2.14 I shall set out my findings as to the defamatory meanings borne by the passages complained of. In doing so, I will not allocate separate meanings to the individual passages selected for complaint because it is to be assumed that the reader's understanding as to what is being conveyed about Irving will be derived from his or her reading of the book as a whole including the passages to which objection is taken. I do not believe that it is necessary or desirable to set out the meanings in the order in which it may be said that they emerge in the book.

2.15 Adopting the approach set out earlier, my conclusion is that the passages complained of in their context and read collectively bear the following meanings all of which are defamatory of him:

- ?? that Irving is an apologist for and partisan of Hitler, who has resorted to the distortion of evidence; the manipulation and skewing of documents; the misrepresentation of data and the application of double standards to the evidence, in order to serve his own purpose of exonerating Hitler and portraying him as sympathetic towards the Jews;
- ?? that Irving is one of the most dangerous spokespersons for Holocaust denial, who has on numerous occasions denied that the Nazis embarked upon the

deliberate planned extermination of Jews and has alleged that it is a Jewish deception that gas chambers were used by the Nazis at Auschwitz as a means of carrying out such extermination;

- ?? that Irving, in denying that the Holocaust happened, has misstated evidence; misquoted sources; falsified statistics; misconstrued information and bent historical evidence so that it conforms to his neo-fascist political agenda and ideological beliefs;
- ?? that Irving has allied himself with representatives of a variety of extremist and anti-semitic groups and individuals and on one occasion agreed to participate in a conference at which representatives of terrorist organisations were due to speak;
- ?? that Irving, in breach of an agreement which he had made and without permission, removed and transported abroad certain microfiches of Goebbels's diaries, thereby exposing them to a real risk of damage.
- ?? that Irving is discredited as an historian.

2.16 I add two comments in relation to the meanings which I have found. The first is that I do not accept the contention of Irving that the passage at p14 of the book means that he supports violent groups. But I do consider that passage to be defamatory of him in suggesting that he agreed to take part in a meeting at which representatives of such groups would be present. My second comment is that I do not accept that the reference to Irving at p213 of the book, when read in the context of the other references to him, bears the meaning that he applauds the internment of Jews in Nazi concentration camps.

III. THE NATURE OF IRVING'S CLAIM FOR DAMAGES

Relevant considerations

3.1 Where the publication of defamatory words is proved and no substantive defence has been established, English law presumes that damage will have been done to the reputation of the person defamed. The amount of the damages recoverable by a particular claimant, if successful on liability, will depend on a variety of factors including the nature and gravity of the libel; the extent of its dissemination; the standing of the claimant; the injury to his or her feelings; the extent of any additional injury inflicted by the conduct of the defendants; and so on. It is possible to claim pecuniary loss but no such claim arises here. Damages maybe reduced, perhaps even to vanishing point, to the extent that the defendants succeed in partially justifying the defamatory imputations complained of.

Irving's case on damages

3.2 Irving contends that Lipstadt in *Denying the Holocaust* makes an attack not only upon his competence as an historian but also upon his motivation. As I have already found, the book accuses Irving, amongst other things, of deliberate perversion of the historical evidence. I readily accept that, to any serious historian, his or her integrity is

vital. That is no doubt why, in his evidence, Irving said that for him his reputation as a truth-seeking historian is more important than anything else. The other meanings which I have found the passages complained of to bear are also serious, although in my judgment less so. Irving is entitled to regard the passages in the book of which he complains as containing grave imputations against him in both his professional and personal capacity.

3.3 The Defendants admit that *Denying the Holocaust* has been published within the jurisdiction. Although not specifically so pleaded, I bear in mind the evidence of Irving that the book has been put on the Internet and widely circulated to libraries.

3.4 In relation to his own standing as an historian, Irving described his career as a writer and commentator on the Third Reich. He is the author of a great number of serious historical works, most of which have been favourably received. Irving referred to the favourable reviews accorded to his works by eminent historians such as Lord Dacre. He was understandably reluctant to sing his own praises. But he claimed credit for the amount of original research he has done and for the number of documents which he has discovered in the archives. Irving supplemented his own evidence with that of Professor Donald Watt (whom I describe in section 4 below), who testified that, in those areas where his political convictions are not involved, he is most impressed by Irving's scholarship. Whilst he might not place Irving in the top class of military historians, his book *Hitler's War* was a work which deserved to be taken seriously. Watt also noted that Irving had stimulated debate and research into the Holocaust. Sir John Keegan (also described below) gave evidence that he adhered to a view which he had expressed some years ago that *Hitler's War* was one of two outstanding books on World War II.

3.5 On the other hand account must also be taken of the view expressed by one of the Defendants' experts, Professor Evans, that Irving has had "a generally low reputation amongst professional historians since the end of the 1980s and at all times amongst those who have direct experience of researching in the areas with which he concerns himself". Both Professor Watt and Sir John Keegan regarded as unacceptable the views expressed by Irving about the Holocaust and Hitler's knowledge of it.

3.6 It was abundantly plain from his conduct of the trial that the factor to which Irving attaches the greatest importance in connection with the issue of the damages is the conduct of the Defendants and the impact which that conduct has had on himself, both personally and professionally, as well as on his family. Irving made plain in his opening, on repeated occasions during the trial and in his written and closing submissions that he regards himself as the target of a well-funded and unscrupulous conspiracy on the part of "our traditional enemies" aimed at preventing the dissemination of his books, ensuring that he is banned from as many countries as possible and stifling his right to freedom of expression. Although Irving at one stage disputed the point, it was reasonably clear that the "traditional enemies" were the members of the Jewish community. His claim is that he is the victim of an international Jewish conspiracy determined to silence him. Irving's argument was supported, in general terms, by Professor Macdonald (whom I shall describe later) but the assistance which I derived from his evidence was limited.

3.7 The Defendants are critical of the latitude which I allowed Irving in developing this theme. They contend, correctly, that in the ordinary run of litigation, the rules of evidence would have prevented him advancing any such case. However, for a number of reasons, I thought it right not to take too strict a line. Irving has represented himself throughout (demonstrating, if I may so, very considerable ability and showing commendable restraint). This has not been a trial where it has been possible or appropriate to observe strict rules of evidence. Furthermore Irving has been greatly hampered in presenting this aspect of his case by the unexpected decision of the Defendants, in full knowledge of the allegations which Irving was making about the conduct of Lipstadt, not to call her to give evidence and to be cross-examined by Irving. It goes without saying that the Defendants were perfectly entitled to adopt this tactic but it did place Irving, acting in person, at a disadvantage.

3.8 I explained to Irving that, in order to be able to obtain increased damages on this account, it would be necessary for him to prove on the balance of probability that both the Defendants were implicated in the alleged conspiracy. Irving did not hesitate to accuse Lipstadt of having been a prime mover. He claimed that her book was part of a sinister international campaign to discredit him. He alleged that she was acting in league with the Anti Defamation League, the Board of Deputies of Jews and other organisations intent on targeting him. He called Professor Kevin Macdonald, a professor of psychology, to testify as to the machinations of the "traditional enemies of free speech" (ie the Jews). Irving alleged that the passages to which he takes objection in *Denying the Holocaust* were inserted by Lipstadt at a late stage for the purpose of discrediting him. He complained that she made no attempt whatever to verify the allegations by contacting him or otherwise. He testified that it became apparent to him some three years after *Denying the Holocaust* was published that a concerted attempt was being made to persuade bookshops to cease stocking his work. According to Irving, Lipstadt was instrumental in procuring the decision of his American publishers not to go ahead with the publication of his most recent work, the biography of Goebbels, to which he had devoted no less than nine years work. He claimed, by implication at least, that she was also complicit in bringing pressure to bear on Irving's UK publishers to repudiate their contract to publish his *Goebbels* biography (at considerable cost to Irving). He claims that Lipstadt has been deeply involved in the campaign of intimidation against him and that she has actively sought to destroy him as an historian.

3.9 In assessing these claims by Irving, whose suspicions and indignation are obviously genuine, I must act on evidence and not assertion. On the evidence of the contents of the book itself, I accept that it does indeed represent a deliberate attack on Irving, mounted in order to discredit him as an historian and so to undermine any credence which might otherwise be given to his denials of the Holocaust. That is a factor which is to be taken into account, if the issue of damages arises. Beyond that finding, however, I do not consider that Irving's claim to have been the victim of a conspiracy in which both Defendants were implicated is established by the evidence placed before me.

3.10 The question of damages will arise if, and only if, the substantive defence relied on by the Defendants fails. I therefore turn to that defence.

IV. THE DEFENCE OF JUSTIFICATION: AN OVERVIEW

The parties' statements of case

4.1 Irving having established, as I have found, that *Denying the Holocaust* contains passages which are defamatory of him, it is necessary for the Defendants, if they are to avoid liability, to establish a defence. The burden of doing so rests, under the English system of law, upon the Defendants.

4.2 The substantive defence relied on by both Defendants is justification, that is, that in their natural and ordinary meaning the passages of which Mr Irving complains are substantially true. I have already recited, in section II above, the so-called *Lucas-Box* meanings or propositions the truth of which the Defendants seek to establish in order to make good their defences of justification.

4.3 As practice requires the Defendants also set out in their formal statement of case, served in February 1997, the detailed particulars on which they rely in support of their defence of justification. In November 1999 the Defendants served a revised document entitled *Defendants' Summary of Case*. This document comprehensively rearranges, supplements and in some cases abandons the particulars previously served. Irving has, in my view sensibly, raised no objection to this recasting of the Defendants' case of justification.

4.4 It is to be noted that in the particulars of their case of justification the Defendants do not confine themselves to the specific assertions made by Lipstadt in her book. To give but one example: no mention is made in *Denying the Holocaust* of the bombing of Dresden by the Allies in 1945. Yet section 5 of the Defendants' Summary of Case contains detailed particulars on that topic criticising Irving's treatment of the subject in his book *Apocalypse 1945: the Destruction of Dresden*. No objection has been taken or, in my judgment, could be taken to this course since the Defendants are entitled to rely on Irving's account of the bombing of Dresden in support of their contention that he falsifies data and misrepresents evidence. The same applies to other matters raised by the Defendants in their *Summary of Case* which are not mentioned in *Denying the Holocaust*.

4.5 For his part Irving has, in compliance with the rules, set out in summary form in his Replies to the Defences of the Defendants his answer to the allegations and criticisms advanced by the Defendants in justification of what was published. In October 1999 the Defendants sought from Irving answers to a series of detailed requests for further information about his case. Unfortunately most of those requests went unanswered. In the result much of Irving's case in rebuttal of the defence of justification emerged in the course of his evidence at trial and in the course of his cross-examination of the witnesses called by the Defendants. The Defendants, in my view rightly, felt themselves unable to object.

4.6 The Replies also include an allegation of malice against both Defendants, apparently introduced in the mistaken belief that they were relying also upon the defence of fair comment on a matter of public interest. Malice may nonetheless be relevant to the issue of damages, if that arises.

What has to be proved in order for the defence of justification to succeed

4.7 As I have already mentioned, the burden of proving the defence of justification rests upon the publishers. Defamatory words are presumed under English law to be untrue. It is not incumbent on defendants to prove the truth of every detail of the defamatory words published: what has to be proved is the *substantial* truth of the defamatory imputations published about the claimant. As it is sometimes expressed, what must be proved is the truth of the sting of the defamatory charges made.

4.8 Section 5 of the Defamation Act, 1952 provides:

Justification. In an action for libel ... in respect of words containing two or more distinct charges against the [claimant], a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the [claimant's] reputation having regard to the truth of the remaining charges.

It may accordingly be necessary, in a case like the present where a number of defamatory imputations are the subject of complaint, to consider whether such imputations (if any) as the Defendants have failed to prove to be true materially injure the reputation of the claimant in the light of those imputations against him which have been proved to be true.

4.9 The contention for the Defendants is that they have proved the substantial truth of what was published, so that the defence of justification succeeds without the need for resort to section 5. Irving, however, points out that there are imputations which the Defendants made in the book which they have not sought to prove to be true. The principal such imputation is that Irving agreed to participate in a conference at which representatives of violent and extremist groups such as Hezbollah were due to speak. Irving contends that this defamatory imputation is so serious that the Defendants' failure to prove it or even to attempt to prove it is fatal to their plea of justification. The Defendants on the other hand argue that by virtue of section 5 of the 1952 Act their defence of justification should succeed notwithstanding their failure to prove the truth of this imputation because, relative to the other serious imputations which they maintain they have proved to be true, it has no significant deleterious effect on the reputation of Irving.

4.10 The standard of proof in civil cases is normally that parties must prove their claims or defences, as the case may be, on the balance of probabilities. In the present case Irving argued, however, that, since the imputations

against him were so grave, a higher standard of proof should be applied to the case of the justification advanced by the Defendants. There is a line of authority which establishes that, whilst the standard of proof remains the civil standard, the more serious the allegation the less likely it is that the event occurred and hence the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. I will adopt that approach when deciding if the truth of the defamatory imputations made against Irving has been established.

Pattern of the judgment on the issue of justification

4.11 It is convenient, in order that the pattern of the succeeding sections of this judgment is clear, that at this stage I explain how I propose to deal with the matters raised by the defence by way of justification. For the most part they relate to the period of the Third Reich. In geographical terms the events with which it is necessary to deal are centred on Berlin but they extend to most of the countries conquered by the Nazis. The Defendants rely in addition on the publications, utterances and conduct of Irving over the last thirty years. The number of documents involved is huge. The volume of evidence, mostly expert evidence, is massive. In these circumstances it has proved necessary, for purely practical reasons, to divide up the allegations made by the Defendants into a series of separate headings.

4.12 In the next eight sections of this judgment I shall attempt to summarise in some detail the arguments deployed by the parties in relation to the allegations made under those headings. I shall not attempt to rehearse each and every point taken in the reports submitted by the Defendants' experts. Some of the criticisms made of Irving's historiography appear rather pedantic. In any case both sides have agreed that I should confine myself to the issues which have been ventilated by one side or the other in cross-examination. Whilst I will deal with the Defendants' case on justification under the separate headings which I have mentioned, it is important to note that it is an essential feature of the Defendants' case that the allegations on which they rely overlap and (as the Defendants put it) converge, thus providing the foundation of their defence of justification.

4.13 Having summarised the parties' rival contentions, I shall then in a separate section of the judgement set out my conclusions on the central issue whether or not the defence of justification succeeds.

Evidence adduced in relation to the issue of justification

4.14 Before setting out the arguments and evidence, I will identify the witnesses whose evidence was tendered on each side in relation to the defence of justification.

4.15 I start with the evidence for the Defendants. As I have already said, Professor Lipstadt did not give evidence (although a witness statement from her had been served).

4.16 The only witness of fact for the Defendants was Ms Rebecca Guttman who is employed by the American Jewish Committee as an executive assistant. Her statement, admitted under the Civil Evidence Act, related to an event arranged by an allegedly right-wing organisation in the US with which Irving is said to have connections.

4.17 The main corpus of evidence for the Defendants was provided by academic historians whose evidence was by consent admitted as expert evidence. Written and oral evidence was submitted by the following:

(i) Professor Richard Evans, who is Professor of Modern History at the University of Cambridge and has written many historical works about Germany. He gave evidence principally about Irving's historiography, his exculpation of Hitler and his denial of the Holocaust.

(ii) Professor Robert Jan van Pelt, who is a Professor of Architecture in the School of Architecture, University of Waterloo in Canada. Professor van Pelt is an acknowledged authority on Auschwitz, about which he has written extensively, and this was the subject of his evidence.

(iii) Professor Christopher Browning, who is a Professor of History at Pacific Lutheran University, Tacoma, Washington. He gave evidence on the evidence about the implementation of the Final Solution, covering the shooting of Jews and others in the East and the gassing of Jews in death camps (apart from Auschwitz).

(iv) Dr Peter Longerich, who is Reader in the Department of German at the Royal Holloway College, University of London and a specialist in the Nazi era. He gave evidence of Hitler's role in the persecution of the Jews under the Nazi regime and of the systematic character of the Nazi policy for the extermination of the Jews.

(v) Professor Hajo Funke, who is Professor of Political Science at the Free University of Berlin. He gave evidence of Irving's alleged association with right-wing and neo-Nazi groups and individuals in Germany.

The reports submitted by these experts ran to a total of more than two thousand pages

4.18 Not unnaturally (since it is his views and his conduct as an historian which are being attacked by the Defendants) evidence in rebuttal of the case of the Defendants on justification came predominantly from Irving himself. The course which was taken with his evidence was as follows: he submitted a brief witness statement, which did not address the majority of the particulars relied on by the Defendants in support of their plea of justification. He provided some elaboration of his response to that plea in the course of his opening and in the course of answers to my questions. But it was mainly in the course of his answers in cross-examination and his cross-examination of the Defendants' witnesses that the detail of his case emerged.

4.19 In support of his denial of the allegation that he broke an agreement in relation to the microfiches in the Moscow archive containing the diaries of Goebbels, Irving called Peter Millar, a freelance journalist, who at the time of the discovery of those diaries in 1992 was acting for *The Sunday Times*.

4.20 Irving summoned to give evidence on his behalf two historians who were unwilling to testify voluntarily. Their evidence was directed primarily to the question of Irving's standing as an historian (in which connection I have already mentioned them) rather than to the plea of justification. The first was Professor Donald Watt, who is an Emeritus Professor at the London School of Economics and was described by Irving as "the doyen of diplomatic historians". Professor Watt was invited by Irving to give evidence about the evaluation of wartime documentation and about Irving's reputation and ability as an historian. The other witness summoned by Irving to give evidence on his behalf was Sir John Keegan, the Defence Editor for Telegraph Newspapers whose knighthood was for services to military history. He too dealt with Irving's standing as an historian. Another witness who gave evidence for Irving, in his case voluntarily, was Professor Kevin Macdonald, who is a Professor of Psychology at California State University-Long Beach. He gave evidence on what he termed "Jewish-gentile interactions" from the perspective of evolutionary biology. There was no cross-examination by the Defendants' counsel of any of these witnesses.

4.21 In the course of my summary of the evidence and arguments on the issue of justification, I shall need to make frequent reference to the distinguished academic experts whom, I have identified above. I hope that they will understand if, in referring to them, I dispense with their academic titles (as I have done with in the case of Professor Lipstadt). No disrespect is intended: it simply makes for easier reading.

V. JUSTIFICATION: THE DEFENDANTS' HISTORIOGRAPHICAL CRITICISMS OF IRVING'S PORTRAYAL OF HITLER IN PARTICULAR IN REGARD TO HIS ATTITUDE TOWARDS THE JEWISH QUESTION

Introduction

5.1 A central tenet of Irving's historical writing about the Nazi era is that Hitler was not the vehement and ruthless persecutor of the Jews that he is usually portrayed to have been. Irving has on occasion gone so far as to say that Hitler was "one of the best friends the Jews ever had in the Third Reich". Even if that can be disregarded as hyperbole, Irving would not, I think, dispute that he has on many occasions put forward the contentious view that, at least from the date when he seized power in 1933, Hitler lost interest in his former anti-semitism and that his interventions thereafter in relation to the Jewish question were consistently designed to protect them from the murderous inclinations of other Nazis.

The general case for the Defendants

5.2 At p161 of *Denying the Holocaust* Lipstadt attributes to scholars the description of Irving as a "Hitler partisan wearing blinkers". That phrase, importing the suggestion that Irving deliberately ignores what is revealed by the historical record, encapsulates

one of the main defamatory meanings of which Irving complains and which the Defendants seek to justify.

5.3 The way in which the Defendants summarise their plea of justification on this part of the case is as follows:

"that the [Claimant], driven by his obsession with Hitler, distorts, manipulates and falsifies history in order to put Hitler in a more favourable light, thereby demonstrating a lack of the detachment, rationality and judgment necessary for an historian".

In their Summary of Case the Defendants highlight claims made by Irving as to Hitler's friendship for and leniency towards Jews, which claims they assert ignore a large and powerful body of contradictory evidence. The Defendants contend that Irving

"misstates, misquotes, falsifies statistics, falsely attributes conclusions to reliable sources, relies on books and sources that directly contradict his arguments, quoting in a manner that completely distorts the author's objectives, manipulates documents to serve his own purposes, skews documents and misrepresents data in order to reach historically untenable conclusions, bends historical evidence until it conforms to his ideological leanings and political agenda, takes accurate information and shapes it to confirm his conclusion and constantly suppresses or deliberately overlooks sources with which he is familiar because they contradict the line of argument which he wishes to advance".

5.4 The Defendants advance a similar case against Irving in relation to his account of the Nazi persecution of the Jews, culminating in the genocide which they assert took place in the gas chambers, and his claims as to the extent of Hitler's involvement in that persecution. I shall deal with that part of the defendants' plea of justification in sections VI to VIII below. The present section is confined to certain specific instances where the Defendants attack Irving's historiography.

5.5 The principal protagonist amongst the Defendants' witnesses of the view that Irving persistently and deliberately falsifies history is Evans. In seeking to make good this full-blooded assault on Irving's historiographical approach, Evans included in his lengthy written report multiple examples of the way in which in his opinion Irving portrays Hitler in a manner which is utterly at odds with the available evidence. He cited numerous occasions when, so he alleged, Irving distorted the historical record by one means or another; suppressed evidence; made uncritical use of unreliable sources and arrived at perverse irrational conclusions about events and documents. Evans also drew attention to occasions when Irving has written in inappropriately flattering terms about him. One example is Irving's description of the *Fuhrer* in *Hitler's War* as "a friend of the arts, benefactor of the impoverished, defender of the innocent, persecutor of the delinquent". Evans considers that the consistent bias in favour of Hitler which is manifested in Irving's works may stem in part from Irving's identification with Hitler and from his professed intention to write *Hitler's War* from Hitler's perspective. Irving has himself written that he sees himself as having acted as Hitler's "ambassador to the afterlife" when he was engaged upon writing his biography of Hitler. On the evidence of what Irving has written and what he has said in his talks

and speeches, Evans concludes that Irving remains an ardent admirer of Hitler despite the overwhelming evidence which condemns him.

5.6 Evans does not stand alone in making these harsh criticisms of Irving's historical method. In the narrower fields covered by their evidence van Pelt, Browning and Longerich level similar criticisms at him.

5.7 The Defendants based their attack on Irving's historiography upon a number of selected episodes. They contend that a detailed analysis of the evidence which was available to Irving supports their case that in his account of those episodes Irving has persistently and deliberately falsified, manipulated and suppressed documents so as to presents a picture which is skewed and misleading. The Defendants focus their attention on a "chain of documents" which Irving has relied, initially on BBC television in June 1977 and on several later occasions, in support of his view that Hitler opposed the persecution of the Jews and sought to protect them from the excesses advocated by other Nazis. I shall consider the parties' arguments in relation to each of the incidents to which the chain of documents relates.

5.8 Evans's detailed examination of those documents reveals, so he alleged, consistent falsification of the historical record on the part of Irving. Evans expressed the opinion that what he described as Irving's "egregious errors" were calculated and deliberate. He accepted that anyone can make mistakes but pointed out (as did Browning) that, where all the so-called mistakes are exculpatory of Hitler, the natural inference is that the falsification of the record is intentional. Evans did not resile in his oral evidence from the view expressed in his written report that Irving does not deserve to be called an historian.

Irving's general response

5.9 As I have already observed, Irving regards the imputation that he has deliberately falsified the historical record as one of the most serious which can be levelled against an historian. He testified that he had never knowingly or wilfully misrepresented a document or misquoted or suppressed any document which would run counter to his case. He repudiated each and every one of the Defendants' allegations of misquoting, misconstruing, mistranslating, distorting or manipulating the evidence.

5.10 Irving denied any obsession with Hitler, as he denied any falsification of history so as to portray Hitler in a more favourable light. Irving argued that he has every right to praise Hitler where praise is merited. Other historians, such as AJP Taylor, have taken a similar line. Irving also resents the claim made by Lipstadt that he has placed above his desk a self-portrait of Hitler. In fact it is nothing more than a postcard-sized sketch which is not on display, although he occasionally shows it to visitors.

5.11 Irving drew attention to the fact that in *Hitler's War*, as well as in his other published works, he frequently includes material to the discredit of Hitler and other senior Nazis and makes criticism of them. He pointed out that he has expressly drawn his readers' attention to crimes committed by Hitler. In his closing submission he included a list of derogatory references which has made about Hitler. He refuted the notion that these critical references were inserted for tactical purposes, that is, to enable him to point to them in the event of commentators accusing him of being a

Hitler partisan. He has made no attempt to conceal from his readers the rabid anti-semitism displayed by Hitler in the early days. In his use of material obtained in his interviews with Hitler's former adjutants or their widows, he has included information provided by them which reflects adversely on Hitler.

5.12 As Evans acknowledged, Irving has uncovered much new material about the Third *Reich*. He has researched documents not previously visited by historians, for example the Himmler papers in Washington and the Goebbels diaries in Moscow. He has tracked down and interviewed individuals (such as Hitler's adjutants or their widows) who participated in or observed some of the events which took place during Hitler's regime. Irving pointed out that, when he uncovers new documents or sources, he habitually makes them publicly available by placing them on his website or by some other means. Irving argues that no duplicitous historian would behave in this way, for he would be providing the evidence of his own duplicity to other historians. Irving advances a similar general argument in rebuttal of the claim that he has deliberately misrepresented or skewed or mistranslated documents. Irving said that he invariably indicates in a footnote where the document is to be found and often quotes the document in the original German. Irving contended that a historian intent on misleading his readers would not so forthcoming with the evidence of his own disreputable conduct.

5.13 Irving rejected the attack upon his historiography mounted by Evans: the criticisms are sweeping but the instances cited in support of them are, he claimed, relatively insignificant. Evans takes no account, Irving complained, of the quality of the historical work displayed in his many published works many of which have been favourably reviewed by fellow historians. Irving was critical of frequency with which Evans resorted to "the consensus amongst historians" by way of support for his attack on Irving. He suggested that many of the criticisms advanced by Evans were derived by him from the work of Professor Broszat, who had personal reasons for writing corrosively about him. Irving stressed that he should be judged by the use which he made of the evidence which was available to him at the time of writing and not by reference to evidence which has come to light more recently.

5.14 Irving was, understandably, indignant that Evans included in his report a reference to his having been required by the British Museum to read *Hitler's War* in the section of the library reserved for pornographic material. By way of rejoinder he stated that the librarian of the Widener Library in New York apparently thinks well enough of him to stock forty-seven of his books.

5.15 Irving's general response to this part of the Defendants' case of justification is that, when the pertinent documentary evidence is subjected to "rigid historical criteria" (i.e. when due account is taken of the authenticity and the reliability of the evidence, the reason for its existence and the vantage point of the source or author), a relatively slim dossier of evidence emerges which does indeed show Hitler intervening in every instance to mitigate or lessen the wrongdoing against the Jews. Few, if any, documents point in the opposite direction.

The specific criticisms made by the Defendants of Irving's historiography

5.16 In dealing with the Defendants' examples of Irving's alleged distortions of the historical record, I shall adopt the approach taken by the Defendants in their Summary of Case and deal with them one by one and, so far as practicable, in a chronological order. In each case I shall start with a brief account of the relevant historical background. Then I shall by setting out in summary the criticisms made by the Defendants of the use made by Irving of the evidence available to him in relation to the particular episode and thereafter I will summarise Irving's response to those criticisms.

i. ***Hitler's trial in 1924***

Introduction

5.17 In 1924 Hitler was tried and, following his conviction, imprisoned for his role in the Nazi uprising in Munich in November 1923.

5.18 At p18 of the 1991 edition of *Hitler's War* Irving makes a passing reference to Hitler's attempted *putsch*, on which occasion, according to Irving, Hitler "disciplined a Nazi squad for having looted a Jewish delicatessen".

5.19 A more detailed account of Hitler's role in the putsch is given at p59 of *Goering*, where Irving writes:

"Meanwhile Hitler acted to maintain order. Learning that one Nazi squad had ransacked a kosher grocery store during the night, he sent for the ex-Army lieutenant who led the raid. 'We took off our Nazi insignia first!' expostulated the officer – to no avail, as Hitler dismissed him from the party on the spot. 'I shall see that no other nationalist unit allows you to join either!' Goring goggled at this exchange, as did a police sergeant who testified to it at the Hitler trial a few weeks later".

Case for the Defendants

5.20 Evans noted that, whereas in *Hitler's War* it is claimed by Irving that the whole squad which was involved in the looting was disciplined by Hitler, in *Goering* it is just the ex-army lieutenant. The reader who seeks to resolve the inconsistency is not assisted by any footnote identifying either the police sergeant who is said by Irving to have witnessed the dismissal or the occasion when he gave his evidence (as would be conventional practice for a reputable historian). Irving says at p518 that his account is knitted together from eye-witness evidence at the trial.

5.21 Evans managed to track down the identity of the police officer, who was called Hofmann. The Defendants criticise Irving for his failure to inform the reader that Hofmann was a loyal member of the Nazi party who participated in the *putsch* and who was on that account likely, when testifying on his behalf at his criminal trial, to give a favourable account of the conduct of his *Fuhrer* in his testimony and to depict him as a law-abiding citizen.

5.22 According to Evans, examination of the transcript of Hofmann's

testimony reveals several inaccuracies in Irving's account. There is no support for the claim that Hitler summoned or "sent for" the former lieutenant or that either the police sergeant officer or Goering "goggled" when Hitler admonished him for raiding the Jewish shop. The admonition took place before the *putsch* and so cannot have formed any part of an attempt by Hitler to maintain order during it.

5.23 Irving's account is also criticised for misrepresenting the nature of Hitler's concern about the raid on the Jewish shop. The record of the evidence given at the trial demonstrates that Hitler's concern was not to punish the officer for victimising a Jewish shopkeeper but rather that the incident might convey a bad impression of his new party.

5.24 Evans maintained that, far from acting to protect Jewish property during the *putsch*, there is reliable evidence that Hitler (as he himself admitted at his trial) ordered a raid on a Jewish printing house by armed Storm Division troops, who under threat of violence stole 14.5 billion marks. This robbery is presented by Irving at p59 of *Goering* as a "requisition" of "funds".

5.25 The Defendants maintain that in the respects which I have summarised, in his account of Hitler's reaction to the raid on the Jewish delicatessen and the evidence given at his trial, Irving persistently twists and embroiders the facts so as to exculpate Hitler and portray him as having acted sympathetically towards the Jews. Evans emphasised that it is essential for any historian to pay close attention to the background of any source he intends to quote so as to ensure that he is a reliable witness. He concluded that Irving deliberately suppressed the information as to Hofmann's background, preferring instead to present him to the reader as an objective and trustworthy source, when to Irving's knowledge he was nothing of the kind.

Irving's response

5.26 In the course of his own evidence and his cross-examination of Evans Irving made a number of claims about his treatment of Hofmann's evidence.

He repudiated the suggestion that he had deliberately provided a footnote for Hofmann's evidence which would make it difficult for anyone so minded to track it down. By way of explanation, he explained that his publisher had called for cuts to be made in the text, so he had abbreviated the footnotes with the result that they are not as helpful as they might otherwise have been.

5.27 Irving initially excused his version of events by saying that what he wrote was based on the microfiches of Hofmann's testimony rather than the verbatim transcript of the evidence given at the trial. But Evans pointed out that the contents of both were the same. Irving next claimed that he had no way of knowing that Hofmann was a longstanding member of the Nazi party and so likely to present Hitler in a favourable light. Evans responded that this would have been apparent on the face of Hofmann's testimony, which Irving read on microfiches and which recounted his close relationship with Hitler and his involvement in the *putsch*. Moreover the Judge is recorded on the transcript as having congratulated Hofmann for speaking out on behalf of his *Fuhrer*. Irving responded that he had not had the transcript of Hofmann's evidence when he wrote *Goering* or, if he had, he had not read that section of the

testimony which related to Hofmann's membership of the Nazi party. When it was the pointed out to Irving that, in the course of his own cross-examination, he had said that he had read the whole transcript of Hofmann's evidence (which was only five pages
lo