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The Court allowed intimidating newspaper coverage

Under the 1981 Contempt of Court Act newspapers are guilty of contempt if they publish material that creates “a substantial risk” that justice in the proceedings will be “seriously impeded or prejudiced.” Throughout *DJC Irving vs Penguin & Lipstadt* the London press sustained a hysterical editorial onslaught against Mr Irving with the intention and effect of intimidating him and his witnesses, and the Court, and encouraging the Defendants’ experts to be unresponsive to cross-examination. Ordering the trial of the Leeds footballers abandoned on April 9, 2001 because of *The Sunday Mirror’s* press coverage, Mr Justice Poole stated: “In my judgment, justice cannot be done in *the sort of atmosphere created by such publication*” (*The Daily Telegraph*, April 10, 2001.) It is the atmosphere that counts – Mr Irving referred to the “waves of hatred” being generated in the courtroom by the daily press coverage..

On several occasions early in the trial Mr Irving handed to the Court newspaper articles and invited appropriate comments of Gray J.

Irving repeatedly protested

Day 2: January 12, 2000, page 196

MR IRVING: My Lord, before you resume your examination or your questioning, can I raise just two points?

MR JUSTICE GRAY: Of course, yes.

A. I drew your Lordship's attention to a newspaper, a leading article which appeared in *The Independent* this morning.

Q. Which I have read. I cannot lay my hands on it at the moment?

A. I have it here, my Lord. I personally found it pushing the envelope of what is permissible, but maybe, in view of the fact that either I am a litigant in person or we are sitting without a jury, this kind of comment is permitted.

MR JUSTICE GRAY: I think the position really is this, Mr Irving. I understand what you say, but I can really only intervene if I were to take the view that in some shape or form it amounts to a contempt. I do not. I am fairly clearly of that view. But if it helps at all, I totally disregard it.

A. Thank you very much, my Lord.

Q. I think I will not say any more about it.

Day 4: January 17, 2000, page 100, line 7

A. While it is being fetched, my Lord, can I ask you, do you read the newspaper accounts that are published at all of this action?

Q. Not much, no.

A. Not much?

Q. Well, if you have been there, there is not much point in reading about it.

A. I agree, but the newspapers sometimes report things that have not been dealt with in the courtroom.

Q. Yes, I know. Why do you mention that at this stage?

A. Well, over the weekend I have been studying some of the accounts, and it would disturb me if I thought you were accepting what the press reported about things.

*Guardian Newspapers Ltd among the worst offenders
(because they had a special interest in Irving's defeat)*

Day 18: February 10, 2000, page 7, line 7

Q. I have been held up by the defence in this case to obloquy around the world. In yesterday's *Guardian* there is this photograph of me and the headline which his Lordship can read, "THE BOGEY MAN IN THE NURSERY", the *Guardian* newspaper again.

MR JUSTICE GRAY: I do not think that is legitimate. I think I have asked the question that can be asked.

Day 16: February 7, 2000, page 17

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

MR JUSTICE GRAY: Yes.

MR IRVING: I do not know how far I am testing your Lordship's patience on this matter, but I am a litigant in person and I certainly need education on this matter and possibly members of the press also need education as to what is permissible and what is not in a non-jury action.

MR JUSTICE GRAY: Well, show me.

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

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

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

The Guardian,
March 4, 2000



have also highlighted “Niemals Wieder “ [never again] and “Wehret den Anfängen”, (stop it at the start, what used to be called in Latin I believe *principii obstat*). The repugnance of those articles is that of course Guardian Newspapers are Defendants in a second action I am bringing of a very similar nature, which they maintain is of a similar nature, and they have a clear and vested interest, in fact, in trying to see me knocked out in this action. Then, slightly more sinister and more difficult to control, I appreciate, by your Lordship are the articles being written by London journalists for the foreign press which then come bouncing back to us through Cyber space.

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

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

MR JUSTICE GRAY: Which bit in this?

MR IRVING: Well, the whole article is sinister in as much as it also incorporates a number of items that have so far not been produced in court, including privileged items, and this morning in today’s *Ottawa Sun*, I believe, there were also quotations from Professor Richard Evans’ report, which is a highly libelous and defamatory document and it is

privileged only when used in connection with a report in the case.

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

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

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

MR IRVING: They are accessible with a password. There is a health warning that flaps down so that anybody who looks at it is warned in advance that the contents are deemed to be defamatory and untrue, and will be established when we have Evans in the box. amenable to this court's jurisdiction, albeit that the publication in question occurred abroad. But beyond that I am slightly reluctant to get into this because it is a bit of a diversion. I can certainly understand you get fed up with it. It is not going to affect my mind, that is the point.

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

MR JUSTICE GRAY: Yes.

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

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

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

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

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

MR JUSTICE GRAY: Yes.

MR RAMPTON: It is also of course if they were saying terrible thing about your Lordship. That could theoretically become contempt, but I do not believe that is what we are talking about. Otherwise not.

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

ing shot over the bows.

MR RAMPTON: It would depend on the content.

MR JUSTICE GRAY: Of course.

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

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

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

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

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

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

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

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

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

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

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

MR JUSTICE GRAY: I have not read it.

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

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

Gray J refused to halt the mudslide

“Holocaust denial”

Definition

[We object to the definitions provided by Evans]

Day ¥: January ¥, 2000, page ¥, line ¥¥

Prof. Christopher Browning [one of the defence experts]:
“[Hans] Mommsen and [Martin] Broszat have argued for a long time, as you have, they do not think that Hitler gave an explicit or formal order.”

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

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

How many deaths at Auschwitz?



Expert witness Prof. Richard Evans defined [Report, page ••] that anybody diminishing the numbers killed in the Holocaust is a “Holocaust denier”. [Get quote] But the post-war plaque at Auschwitz which commemorated four million dead has been removed and replaced with another. Even the new figure is controversial.



The Poles' own Auschwitz Trial judgment in 1948 spoke of "up to 300,000 dead" from all nations.

An eighty-second excerpt from the Allied-controlled post-war German newsreel *Welt im Film* No. 137 dated January 8, 1948: "Sühne für Auschwitz" (Punishment for Auschwitz.)

The original newsreel can be viewed on Irving's website at www.focal.org/wochenschau1948.avi. It was put in evidence in Court.

German original soundtrack:

„In Krakau ging vor einem polnischen Gerichtshof der Prozeß gegen die Hauptverantwortlichen für das Konzentrationslager Auschwitz zu Ende. Die Angeklagten sind deutsche Lagerwachen oder Angehörige des deutschen Verwaltungspersonals. Es wurden ihnen unerhörte Greuelthaten gegen die Lagerinsassen nachgewiesen, besonders gegen weibliche Gefangene. Insgesamt kamen nahezu 300.000 Menschen verschiedenster Nationen im Konzentrationslager Auschwitz um. Das Gericht verurteilte 23 Angeklagte zum Tode, 6 zu lebenslänglichem Gefängnis, 10 zu längeren Gefängnisstrafen, einer wurde freigesprochen. Das Konzentrationslager Auschwitz bleibt als Mahnmal der Schande so erhalten, wie es heute steht, zum bleibenden Gedenken an seine 300.000 Opfer.“



Pictures are screen-captures from the newsreel

Translation of soundtrack:

“IN KRAKOW the trial of the principal culprits for the Auschwitz concentration camp came to an end before a Polish court. The defendants were German camp guards or members of the German camp administration staff. Unheard-of atrocities against the camp inmates, particularly against female prisoners, were proved against them. Altogether nearly 300,000 people from the most different nations died in the Auschwitz concentration camp. The court sentenced 23 of the accused to death, six to life sentences, and ten to lengthy jail terms; one was acquitted. The Auschwitz concentration camp remains as it stands today, as a monument of shame to the lasting memory of its three hundred thousand victims.”

The New York Times, November 25, 1947 [complete story, put in evidence]:

Poles Open Trial of Nazis

CRACOW, Poland, Nov. 24 (AP) – Forty former Nazi officials at notorious Oswiecim extermination camp – accused of responsibility for the killing of 300,000 prisoners from a dozen European countries – went on trial today before the Supreme National Tribunal. More than 100 witnesses, including many from Czechoslovakia, France, Belgium, Italy, Yugoslavia, Hungary and other Nazi-occupied countries were on hand to testify about German atrocities.

*In 1989 the Moscow archives unexpectedly release the
Auschwitz death books*



In 1989 the Russian authorities released the Auschwitz death books (*Totenbücher*). The following is the Tass agency communiqué dated September 21, 1989.

Picture from *Die Welt*, March 2, 1990.

Red Cross Agency.

The Names of 130,000 Oswiecim prisoners Established.

“Moscow, September 21. [TASS] The fate of people of many countries – victims of the Second World War – is to be determined from the personnel records of 130,000 prisoners of Oswiecim and the death lists of this concentration camp. Because these papers have now turned up in the Soviet archives. In 46 large file binders the details were minutely recorded day by day. Death records were filled in for over 74,000 people giving their precise birthdate and parents’ names as well.

“Tass correspondent Valentina Fatyukhina reports on this. The head of the Soviet Red Cross tracing service will according to Valentina Fatyukhina hand over these records to representatives of the International Red Cross. It had been known for some time that these records were preserved in the Soviet Union – in fact since 1964 when the trial of concentration camp guards from this camp took place in Frankfurt am Main. A Soviet representative produced several of these files on that occasion. Valentina Fatyukhina reports further that when Europe was liberated from Fascism by the Soviet Army these documentary materials ended up in the Soviet Union and landed in various archives. This obviously impeded the search for them.

“Valentina Fatyukhina spared no trouble in her search. She directed countless inquiries and applications to official quarters. But at that time many archives remained closed. Only in the last eighteen months, as access to the archives was permitted, were these records uncovered. Nobody suspected the presence of 130,000 personnel cards in the archives. The International Red Cross intends to exploit these records as rapidly as possible.”

Remarks of a Canadian barrister Barbara Kulaszka involved in several cases on Holocaust denial

Kulaszka, a Canadian solicitor and barrister, wrote this as an Introduction to *Report of the Evidence in the Canadian "False News" Trial of Ernst Zündel, 1988* (Toronto, 1992). It offers examples. It was in evidence in Mr Irving's Bundle F before the court.

CRIMINAL PROSECUTION OF "HOLOCAUST DENIAL"

Within minutes of the release of the Supreme Court of Canada's decision overturning the conviction of Ernst Zündel and striking down the "false news" law, representatives of Canadian Jewish organizations appeared before television cameras with dire predictions that they would make sure that Zündel would be charged under the "hate" provisions of the Criminal Code if he continued with his Holocaust denial activities.

There is nothing new in the demand of the Jewish organizations that "Holocaust denial" be prosecuted as "hate" under the criminal law. In a letter published in the *Globe & Mail* on Jan. 22, 1992, David Matas, Senior Counsel for the League for Human Rights of B'nai Brith Canada, called for the prosecution of Malcolm Ross for "Holocaust denial." Wrote Matas: "The Holocaust was the murder of six million Jews, including two million children. Holocaust denial is a second murder of those same six million. First their lives were extinguished; then their deaths. A person who denies the Holocaust becomes part of the crime of the Holocaust itself."

But before Crown authorities commit themselves to any further criminal charges against Zündel or anyone else because they are allegedly "Holocaust deniers" they should ask two important questions – what is the "Holocaust" and what will constitute "denial"?

Will someone be a "Holocaust denier" because he does not believe that the six million Jews referred to by David Matas died during World War II? Certainly, the six million figure was cited

by the International Military Tribunal at Nuremberg. It found that

“the policy pursued [by the Nazis] resulted in the killing of six million Jews, of which four million were killed in the extermination institutions.”

Yet if that is so, then several of the most prominent Holocaust historians would be subject to criminal prosecution. Professor Raul Hilberg, the author of *The Destruction of the European Jews*, doesn't believe that six million Jews died. He puts the total at 5.1 million. Gerald Reitlinger, the author of *The Final Solution*, didn't believe in the six million either. He estimated the figure to be a high of 4.6 million and admitted that the figure was conjectural due to lack of reliable information.

Will someone be a “Holocaust denier” if he says that the Nazis didn't use Jewish fat to make soap? The International Military Tribunal, which had all the evidence before it to be able to decide whether this allegation was true or not (including actual bars of soap), held in its judgment of October 1, 1946 that “in some instances attempts were made to utilize the fat from the bodies of the victims in the commercial manufacture of soap.” Then, in 1990, Israeli historians at Yad Vashem (Israel's Holocaust Remembrance Authority) admitted that the soap story wasn't true.

“Historians have concluded that soap was not made from human fat. When so many people deny the Holocaust ever happened, why give them something to use against the truth?”, said Shmuel Krakowski of Yad Vashem. (*Globe & Mail*, April 25, 1990)

Will someone be a “Holocaust denier” if he says that the meeting of Nazi bureaucrats at Wannsee on January 20, 1942, was not a meeting for the purpose of coordinating the systematic mass murder of Europe's Jews? Gunther Plaut of Holy Blossom

Temple in Toronto recently wrote on the fiftieth anniversary of this meeting that it was

“a conference, surely the most macabre in recorded history . . . calmly discussing a task. Rounding up millions of men, women and children”

who were ultimately murdered in “extermination camps.” If Plaut is right, then Israeli Holocaust historian Yehuda Bauer must be wrong and a “Holocaust denier” to boot. With people like Plaut probably in mind, Bauer was quoted as saying at a recent London conference:

“The public still repeats, time after time, the silly story that at Wannsee the extermination of the Jews was arrived at.”

In Bauer’s opinion, Wannsee was a meeting but “hardly a conference” and “little of what was said there was executed in detail.” (*Canadian Jewish News*, Jan. 30, 1992)

Will someone be a “Holocaust denier” if he says that there was no policy to exterminate the Jews because no Hitler order for such a policy exists? Once upon a time the answer would have been ‘yes’. In 1961, for example, Raul Hilberg wrote in his book, *The Destruction of the European Jews* that there were two Hitler orders for the destruction of Europe’s Jews, the first given in the spring of 1941 and the second shortly thereafter. But by 1985 and the publication of his second, revised edition. Hilberg was not so sure. In a review of Hilberg’s revised edition, historian Christopher Browning wrote:

“In the new edition, all references in the text to a Hitler decision or Hitler order for the ‘Final Solution’ have been systematically excised. Buried at the bottom of a single footnote stands the solitary reference: ‘Chronology and

circumstances point to a Hitler decision before the summer ended.' In the new edition, decisions were not made and orders were not given." ("The Revised Hilberg". *Simon Wiesenthal Annual*, Vol. 3 (1986), p. 294).

The controversy over the lack of a written Hitler order has fractured Holocaust historians into the intentionalists" and the "functionalists"; the former believing there was a premeditated plan with Hitler at the top and the latter believing that Nazi Jewish policy evolved at lower levels in response to circumstances. But the point is. they cannot show either a plan or an order notwithstanding the capture of literally tons of German documents after the war. This was admitted by Hilberg at Zündel's trial.

So what will constitute "Holocaust denial"? Surely. if one claimed that most people at Auschwitz died from disease and not systematic extermination in gas chambers. this would be cause for prosecution. But perhaps not. Jewish historian, Arno J. Mayer, of Princeton University in his 1988 book *Why Did The Heaven sins Nor Darken?: The "Final Solution" in History* writes at page 365:

“. . .from 1942 to 1945, certainly at Auschwitz, but probably overall, more Jews were killed by so-called 'natural' causes than by 'unnatural' ones."

Even the number of people who died at Auschwitz, the main alleged extermination centre, is not clear-cut. For 45 years after World War II, the monument at Auschwitz read: "Four Million People Suffered and Died Here at the Hands of the Nazi Murderers Between the Years 1940 and 1945." During a visit to the camp in June of 1979, Pope John Paul II stood before this monument and blessed the 4 million victims. Would it be "Holocaust denial" to deny these four million deaths? Not today. In 1990, the Ausch-

witz Museum removed the words from the stone monument, admitting that the 4 million figure was grossly exaggerated. The toll has been tentatively put at 1.1 million, but the release by the Soviet Union in 1990 of the Auschwitz death register books has complicated matters further. They show a death toll in the camp during the war of approximately 74,000 people. Arno Mayer admits these are open questions. At page 366 of his book he states:

“...many questions remain open...All in all, how many bodies were cremated in Auschwitz? How many died there all told? What was the national, religious, and ethnic breakdown in this commonwealth of victims? How many of them were condemned to die a ‘natural’ death and how many were deliberately slaughtered? And what was the proportion of Jews among those murdered in cold blood – among these gassed? We have simply no answers to these questions at this time.”

How about denial that “gas chambers” existed? Here too, Mayer makes a startling statement at page 362 of his book:

“Sources for the study of the gas chambers are at once rare and unreliable.”

Mayer believes there is no question that gas chambers did exist at Auschwitz, but points out that

“[m]ost of what is known is based on the depositions of Nazi officials and executioners at postwar trials and on the memory of survivors and bystanders. This testimony must be screened carefully, since it can be influenced by subjective factors of great complexity.”

One example of this might be the evidence of Rudolf Hoess,

one of the three commandants of Auschwitz. At Nuremberg, the International Military Tribunal quoted from Hoess' evidence at length in its judgment to support its findings of extermination. But today, with the publication of the book *Legions of Death* by Rupert Butler (Hamlyn Paperbacks, Great Britain, 1983), it is now known that Hoess was beaten almost to death prior to making the statements relied upon by the Nuremberg Tribunal. His wife and children were threatened with the firing squad and with deportation to Siberia. In Canada today, Hoess' statement would not be admissible in any court of law. He claimed that an extermination camp called "Wolzek" existed; it is now known there was no such camp. He claimed 2,500,000 people were exterminated in Auschwitz and that a further 500,000 died of disease; today, no historian can uphold these figures. It is obvious that Hoess was willing to say anything, sign anything and do anything to stop the torture and to try to save himself and his family.

Mayer also calls for "excavations at the killing sites and in their immediate environs to determine more about the gas chambers. Two such forensic studies have now been made. The first was conducted in 1988 by execution equipment consultant, Fred A. Leuchter, Jr., of Boston, Massachusetts. Leuchter was commissioned by Zündel during his 1988 "false news" trial to examine Auschwitz, Birkenau and Majdanek to determine if the places alleged to have been gas chambers could in fact have been used as such.

Leuchter's conclusion, based on examination of the alleged gas chambers and the analysis of samples taken from the walls and floors, was that the sites could not have been used and were not used as homicidal gas chambers. Analysis of the samples taken from the walls of the alleged gas chambers showed either no or extremely small traces (1.1 to 7.9 mg/kg) of cyanide, the chief component of Zyklon B, the insecticide allegedly used by the Nazis to murder the victims.

A forensic examination and subsequent report commissioned by the Auschwitz Museum has confirmed Leuchter's findings that minimal or no traces of cyanide can be found in the sites alleged to have been gas chambers. The significance of this is evident when forensic examination of disinfection facilities at Auschwitz where Zyklon B was used to delouse mattresses and clothing, showed massive traces of cyanide (1050 mg/kg) in the walls and floor. The Auschwitz Museum still maintains that the sites were used as gas chambers, but obviously the results of these forensic reports has thrown the issue open to further investigation. In fact, further examinations are being planned by Polish authorities. A third study of the problem was made this year by the Austrian engineer Walter Luftl. Luftl called the alleged mass extermination of Jews in gas chambers "technically impossible." Luftl is not a right-wing fanatic. He is the president of Austria's Chamber of Engineers and a respected expert witness in court cases.

So what will constitute "Holocaust denial"? Those who so vehemently advocate criminal prosecution of "Holocaust deniers" seem to be living still in the world of 1946 where the Nuremberg Tribunal has just given its judgment concerning what happened to the Jews during World War II. But the findings of the Nuremberg Tribunal can no longer be assumed to be valid today. Because it relied upon such questionable evidence, as that of Rudolf Hoess, more and more of its basic findings are being debunked. The courts of Canada are not the place to resolve historical debates. Why should the taxpayers of Canada in these recessionary times be handed yet another massive bill in the millions of dollars to finance historical debates in criminal courtrooms because some special interest group doesn't like someone's opinion? Whether it is politically correct or not, there is a growing controversy over what happened to the Jews during World War III. Let this matter be resolved as all other historical controversies are resolved: with free and open inquiry and debate in our journals, newspapers and classrooms. – *Barbara Kulaszka*

The Argument: Should Court have delved into History?

Gray J. did not consider it essential.

D D Guttenplan, *The Holocaust on Trial* (London, 2001), page 148:

Gray J. [to Rampton]: “If your case is that Mr. Irving deliberately shut his eyes to that corpus of evidence and his case is, ‘Well, I was not an Holocaust historian. Maybe I knew that some of that evidence was there, but I did not think it was any part of my function to go and trawl through it,’ then —”

Rampton: “Then he should have —”

Gray J.: “Then we do not need to trawl through it in this trial, do we?”

Rampton: “My Lord, [only] if he will accept that his denial is false.”

Gray J.: “I am not sure whether I see why you are now saying, rather contrary to what you have been saying before, that we have to make a finding of fact as to what happened in Auschwitz.”

Rampton: “No, absolutely, I have never said that. I am not saying that.”

D D Guttenplan, *ibid.*, page 150:

[Days later:]

Gray J. rules, “It is, in my judgment, legitimate for Mr. Rampton to deploy evidence about what happened at Auschwitz, even if it is Mr. Irving’s ease that he was unaware of it at the time he made his various pronouncements.”

Defects in Defendants' Discovery

We now know from Guttenplan's book and an article in The Guardian that the US publishers produced a libel reading report which warned that the book posed libel risks. No correspondence between Penguin and the US publisher about this seriously damaging and prejudicial document was disclosed to Mr Irving nor was any parallel UK report disclosed, if it existed, despite his repeated requests in writing for it. Both defendants intended to avoid answering questions on this aspect of their defective discovery by not testifying in court. I drew the obvious conclusion in my closing speech.



What kind of proof is acceptable

The Common Law Library Number 8: *Gatley on Libel And Slander* (Ninth Edition) (London, Sweet & Maxwell, 1998): pages 835-6.

Section 4. Proof of Justification

Evidence confined to particulars. The evidence that the defendant can lead in support of a plea of justification is governed by the particulars of justification; the ambit of admissible evidence will be defined by the content of these particulars.²⁵ If he wishes to give evidence of matters not pleaded he must seek leave to amend to add fresh particulars.²⁹ Furthermore, the plea of justification will usually include a statement as to the meaning of the words complained of which the defendant is by his plea seeking to justify,³⁰ and the defendant will be confined to establishing the truth of that meaning. The sufficiency of the plea of justification, whether incidents relied upon in the particulars are capable of justifying the charge or are admissible as part of the plea of justification, will normally be determined in the interlocutory stages after service of the defence.³¹

33.9

Onus and standard of proof. The onus is upon the defendant to prove the truth of the words in their natural and ordinary meaning, whatever the jury find that to be,³² or in such innuendo meaning contended for by the plaintiff and accepted by the jury. The plea of justification will succeed if the defendant proves the sting or substance of the defamatory words is true,³³ or, if the words contain two or more distinct charges, the defendant proves some of the charges to be true and those not so proved do not materially injure the plaintiffs reputation having regard to the truth of the other charges.³⁴ The standard of proof is the civil standard: on the balance of probabilities. And this is so even where the defamatory words and the plea of justification allege the commission of a criminal offence.³⁵ But “the gravity of the issue

33.10

becomes part of the circumstances which the court has to take into consideration in deciding whether or not the burden of proof has been discharged. The more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it.”³⁶

26 see *Hankison v. Bilby* (1847) 16 M. & W. 442; *Martin v. Loei* (1861) 2 F. & F. 654. It will be a major task to persuade a jury that nobody would have understood the words in their natural and ordinary meaning. See *Chiam See Tong v. Xin Zhang hang Restaurant* [1995] 3 S.L.R. 196 mentioned at §3.20 a. 90 above.

27 *Daines v. Hartley* (1848) 3 Exch. 200; *Simmons v. Mitchell* (1880) 6 App.Cas. 156 at 163.

28 *Yorkshire Provident Co. v. Gilbert* [1895] 2 Q.B. 148; and see R.S.C., Ord. 82, r. 3(2) and notes at 18/7/10.

29 *Williams v. Reason* [1988] 1 W.L.R. 96 (note), Stephenson L.J. at 100.

30 *Lucas-Box v. News Group* [1986] 1 W.L.R. 147; *Viscount De Lisle v. Times Newspapers* [1988] 1 W.L.R. 49. As part of the defence of justification the defendant will have to satisfy the jury that the words bore that meaning. See §27.7 above.

31 At the summons for directions or at a pre-trial review.

32 If the meaning sought to be justified is a different meaning, or a lesser defamatory meaning, the plea of justification cannot succeed.

33 *Edwards v. Bell* (1824) 1 Bing. 403; *Morrison v. Harmer* (1837) 3 Bing. NC. 759; *Sutherland v. Stopes* [1925] AC. 47.

34 s.5 of the Defamation Act 1952.

35 *Hornal v. Neuberger Products* [1957] 1 Q.B. 247. See Cross, *Evidence* (7th ed.), p. 156: “Hornal’s case may be taken to have settled the English law for the time being. An allegation of murder, need be established only on a preponderance of probability in a civil action.”

36 per Ungood-Thomas J. in *Re Dellow's Will Trust* [1964] 1 W.L.R. 451 at 455.

Colin Tapper, MA, BCL: Cross and Tapper on Evidence: Ninth edition (Butterworths,

Chapter III. Burden and proof

(i) General formulation

Some of the difficulty is created by the words in which the standard is formulated. In ordinary civil cases it is usually expressed as involving the ‘preponderance of probability’, the ‘balance of probabilities’, or the ‘preponderance of evidence’. It might be argued that the last of these seems to involve no more than the preponderance of the evidence adduced by the proponent of an issue over that adduced by its opponent.³ It is more common however to regard all of these terms as synonymous, and as connoting not merely relative preponderance over the evidence of the opponent but satisfaction of a prescribed level of probability.⁴ The House of Lords has pronounced any other view as being contrary to common sense since a judge should not be forced to find proved an occurrence which he regards on the evidence as extremely improbable.⁵

[The trial judge] adopted an erroneous approach to this case by regarding himself as compelled to choose between two theories, both of which he regarded as extremely improbable, or one of which he regarded as extremely improbable and the other of which he regarded as virtually impossible. He should have borne in mind, and considered carefully in his judgment, the third alternative which was open to him, namely that the evidence left him in doubt . . . , and that, in these circumstances, the shipowners had failed to discharge the burden of proof which was upon them.

3 Some support for this view can be gleaned from the speech of Viscount Simon in *Hickman v Peacey* [1945] AC 304, at 318, [1945] 2 All ER 215, at 220; and from that of Lord Reid in *S v S* [1972] AC 24, at 41, [1970] 3 All ER 107, at 109. It seems that even a very weak case may be pushed over the threshold by the failure of the opponent to adduce any relevant evidence: *Francisco v Diedrick* (1998) Times, 3 April; for a similar view in Ireland see *Anheuser-Busch Inc v Controller of Patents* [1996] 2 IR 242.

4 See *Ong Ah Chuan v Public Prosecutor* [1981] AC 648, at 669; *Larby v Armement L Hermans SA* [1956] 2 Lloyd's Rep 43, at 45. See also *Briginshaw v Briginshaw* (1938) 60 CLR 336. The same view prevails in the United States, see Devitt and Blackman Federal Jury Practice and Instructions (3rd edn, 1977) para 71.14. 'To establish by a preponderance of evidence means to prove that something is more likely so than not so.'

5 *Rhesa Shipping Co SA v Edmunds* [1985] 2 All ER 712, at 718, [1985] 1 WLR 948, at 956. Lord Brandon attributed the contrary view to an unjudicial dictum of Mr Sherlock Holmes.

Judge Gray showed lack of impartiality

Gray J repeatedly intervened to assist the Defence out of a hole, and he was singularly protective of Defence counsel Richard Rampton, QC. He indulged all of Rampton's interruptions, even allowing him to interrupt Mr Irving's closing statement to the Court and bring it prematurely to an end, and he only once (shortly before that) felt it necessary to rebuke Rampton for allowing his very large team to keep up a constant barrage of *sotto voce* heckling from their side of the courtroom.

Rampton raised the totally irrelevant allegations of anti-semitism, misogyny(!), and particularly racism, for no other purpose than as a frantic and improper attempt to prejudice press and public opinion against the Claimant (the allegations are not stated in the Work complained of, and were made part of the Defence only at the eleventh hour, after relevant rebuttal items had been knocked out of Mr Irving's Discovery in interlocutory action).

Gray allowed Mr. Irving no latitude whatever to defend his name against these difficult and vicious allegations under cross-examination – as he tried to, *e.g.* by pointing out, quite pertinently, that the Defendant Lipstadt's own books revealed her to be an unreconstructed racist (she had written articles and an entire book on the subject of intermarriage between races); and that Mr Rampton's own Defence team in Court had so far shown itself to be purest White (while Mr. Irving, as he pointed out, had no hesitation in hiring on several occasions Black and other ethnic minorities as his personal assistants in his home office if, as they did, they outshone the other applicants). Judge Gray savaged Mr. Irving so badly in Court for daring to make this obvious point, that Mr. Irving, shaken, felt bound to apologise after the adjournment.

Many observers commented on the extraordinary latitude which the Court allowed to the Defence witnesses, particularly Evans. Despite repeated protests by Mr. Irving to the Court that the witnesses were not being properly responsive to his properly raised questions in cross-examination, Gray never once asked the witnesses to answer the question as put, but allowed them to read into the record solid chunks of their reports, many pages long, and otherwise to

evade the direct *ex tempore* response that cross-examination calls for. On several occasions Mr. Irving raised matters which clearly revealed the stunning ignorance and incompetence of the witness – which is surely of importance, when expert opinion is set against opinion: e.g. the Third Reich historian Professor Evans admitted he was unfamiliar with the history of the strategic air war (which brought Germany to its knees); and that he was not familiar with one of Hitler's key ambassadors (Abetz, in Paris); on each such occasion, Gray J. moved swiftly to halt the cross-examination on that point although Mr. Irving had more than once explained why he needed to explore the ignorance of these witnesses.

Most seriously, although Evans made a key point about Mr. Irving's alleged misuse of the 1945 CSDIC interrogation (eavesdropping) transcript on General Walter Bruns, under cross examination he admitted that he was completely unfamiliar with this body of records in the Public Record Office (some 50,000 pages, about which Mr. Irving has written an entire book), and had never worked in it.

The following exchange shows how the witness was saved by the Court from admitting his ignorance:

Day 4: February 17, 2000, page 83, line 4

IRVING: Are you familiar with these CSDIC reports? Have you worked with them in any detail?

EVANS: I have not, no.

IRVING: You have not?

EVANS: No.

IRVING: There is something like 50,000 pages of these overheard conversations with top Nazis – and you never used them?

MR JUSTICE GRAY: Well, come on, Mr Irving, is that helpful?

Professor Richard Evans

D D Guttenplan, *The Holocaust on Trial* (London, 2001), page 163:

Yet it had been widely remarked that [. . .] the defense had somehow assembled a team consisting of two Germans, a Dutchman, a Welshman, and an American Protestant. After the trial Richard Evans, the Cambridge professor who coordinated expert testimony for the defense, said this had been deliberate : “We didn’t want to feed [Irving]’s anti-Semitic paranoia.”†

† Evans made this observation at a public forum on the trial sponsored by the Wiener Library in London. The next morning I received a telephone call from Anthony Julius, who also spoke. Declaring his indifference to Irving’s state of mind, Julius assured me that Evans was mistaken.

Prof. Evans wrote a libellous book on The Trial

Evans wrote for profit a book on the trial. Although – apart from one sentence in his opening statement which was prepared primarily for press consumption – Mr Rampton did not accuse Irving of lying; nor did the judge at any time during he trial or in his judgment make the charge, Evans called his book *Telling Lies about Hitler* The book as published in the USA by Basic Books in March 2001 was called *Lying about Hitler: History the Holocaust and the David Irving Trial* The publisher, a division of HarperCollins, announced a national marketing campaign, with the author touring the United States cities including new York, Boston, and Washington DC to promote the book. In the UK the rights were sold to William Heinemann Ltd., who announced however in March 2001 that they were withdrawing the book from publication on legal advice, as their lawyers advised them that Mr Irving could proceed against Evans in defamation.

In the Court of Appeal

Professor Robert Jan Von Pelt

Professor Christopher Browning

Browning had admitted under cross-examination by Douglas Christie in the Zündel trial (vol. 14, page 3334) that he was being paid about \$30,000 by Yad Vashem, an Israeli state body, for a 500-700 page book which he estimated would take ten years working part time to complete. Mr Irving put this to him in cross examination and Browning admitted he had not paid back the money or finished the book. This was a very pertinent point: because the same Yad Vashem commissioned and paid for the Lipstadt book. Now comes a “neutral” witness who admits, under my cross-examination, that he owes Yad Vashem \$30,000, which they are being very decent about and not demanding back. . . . Under further cross examination by Christie (vol.14, page 3290-1). , which Mr Irving also put to him, Browning denied that this made him a propagandist for or agent of the state of Israel.

In the Court of Appeal

Professor Peter Longerich

D J C Irving vs. Penguin Books Ltd & Lipstadt

Professor Hajo Funke

The Rudolf Report

First mentioned by David Irving

Day 11: January 11, 2000, page 11, line 11

Gray J: “And Leuchter?”

Irving: “Leuchter I think is something that I am not going to rely on at all.

As I said in my Introduction to *The Leuchter Report* the Leuchter report is flawed. We now have very much better expertise. Again mentioned by David Irving

Day 12: January 12, 2000, page 12, line 12

[Irving claims he has other studies which vindicate Leuchter’s results and that in any case “the whole purpose of the report [*The Leuchter report*] was to put the ball in the court of the other side they could come back and convince us”]

Gray J: “That is as may be, but I am interested to know what it was that emerged that told you that Leuchter was right, because at the moment it seems to me there is a fundamental problem with his report.”

[Rampton points out the document is 20 pages long, the German version is 120 pages].

Irving had emphasised The Rudolf Report to the Court.

Irving put in evidence to the Court the IHR's letter to Holocaust expert Prof. Gerald Fleming, July 26, 1996 (in a bundle, ca Feb 15, 2000).

INSTITUTE FOR HISTORICAL REVIEW

P.O. Box 2739, Newport Beach, CA 92659

Fri., 26 July 1996

Dear Dr. Fleming,

Thank you for your hand-written letter of 25 April, in which you advise us not to distribute *The Rudolf Report*. Please pardon this tardy response.

After receiving your letter, we contacted Anthony Hancock, director of Wilson Press (The Print Factory), the English publisher of the Report. He gave us a different view of the facts. What happened, according to Hancock, is this:

Degussa, a German chemical corporation, had been concerned because the original edition of *The Rudolf Report* contained a single-line acknowledgement by the author expressing thanks to "Degussa AG for providing information material about Prussian Blue (trade name Vossen-Blau)." Fearful of being associated, even so tenuously, with this publication, Degussa complained to the English publisher. In a letter to Hancock, the London law firm representing Degussa stated that the Report's contents are illegal in Germany, and that the author's passing mention of the company in the first edition "has had serious adverse consequences for Degussa's business, not only in Germany but also in the United States and Israel."

On March 30, 1994, Hancock and Degussa concluded a written agreement, a copy of which Hancock sent to us. In return for a pledge by Degussa that it would not bring legal proceedings against him, Hancock agreed to refrain from mentioning Degussa

in any future editions of the Report, and to destroy all existing copies of the Report with the word “Degussa.”

Contrary to what you suggested to me, Hancock did not agree to halt all publication of *The Rudolf Report*.

Your objections to the Report might be more convincing if Germar Rudolf were the only independent investigator to conclude that the supposed gas chamber facilities in Auschwitz and Birkenau were not used, and could not have been used, for killing prisoners as alleged. As you must know, at the time he wrote it, Rudolf was a certified chemist working at the renowned Max Planck research centre, as well as a doctoral candidate at the University of Stuttgart. He wrote his detailed Report on the basis of an on-site investigation, chemical analysis of samples, and meticulous research.

Rudolf reached essentially the same conclusion as had American gas chamber specialist Fred Leuchter in his 1988 forensic investigation of the alleged gas chambers of Auschwitz and Birkenau. You may also be aware that as a result of Leuchter’s findings, the Institute of Forensic Research in Krakow conducted a partial investigation, and that its forensic analysis, given in a confidential September 1990 report, corroborated Leuchter’s findings. (This report was published in the Summer 1991 Journal of Historical Review). Moreover, Austrian engineer Walter Luftl explicitly endorsed Leuchter’s findings in a detailed March 1992 report (published in the Winter 1992-93 Journal), and German engineer Wolfgang Schuster and American research chemist William Lindsey reached conclusions similar to those of Leuchter and Rudolf.[*]

If these researchers are wrong, it should not be difficult to demonstrate their error. Everyone should welcome an impartial, thorough forensic examination of all the evidence by an interna-

* This paragraph was emboldened in the copy put in evidence to the Court.

tional team of independent scholars, engineers and historians. As it is, courageous sceptics are routinely subjected to threats, smears, physical violence, arrest and legal persecution. In Germany, France, Austria, Israel and a few other countries, it is a crime to dispute the official version of Holocaust history. Leuchter's career has been destroyed, and Rudolf has been sentenced to 14 months imprisonment.

The vicious nature of the campaign against those who call into question aspects of the Holocaust extermination story implicitly supports the merit of their findings. What kind truth is it that must be defended with threats of arrest, fines and imprisonment?

I am disappointed that you seek to bolster your position by citing the legal persecution of researchers and historians who have reached conclusions at odds with the official Holocaust story. Indeed, you audaciously seek to enlist our co-operation in suppressing Rudolf's Report, citing a transparently false concern for the best interests of the printer and distributor. As a scholar, your duty should be to join with us in protesting against this outrageous campaign against free speech and open scholarly inquiry, and to defend victims such as Germar Rudolf.

Sincerely,
Mark Weber
Director

The faking of Auschwitz

There were never any holes in the roofs of the so-called gas chambers at Crematoria I (Auschwitz), II and III (Birkenau). “Eye-witnesses” who claim differently are lying (Pelt admits in his own report that the holes cannot be found in the still extant roof of Crematorium II, and he confirmed that under cross-examination). As for Crematorium I, which Gray J would not allow Mr Irving to cross-examine Pelt about, arguing that the Court was not interested in hearing what happened to the site after the war, the Poles now admit that what they show the tourists as a gas chamber was in fact built in 1948.

As Pressac describes (page 133) the holes on display in Crematorium I today were installed by Polish communist camp authorities after WW2 for propaganda purposes. At pages 131f and 156 Pressac publishes a photo of the ceiling immediately after the war; it does not have the hatches now shown to tourists, as they were installed years later..

Linda Grant in *The Guardian* (London), April 5, 1997:

“Now we will enter the gas chamber, my guide said . . . Later, I read in van Pelt and Dwórk that the gas chamber and crematorium I had refused to go into are reconstructions of those at Birkenau. This Auschwitz had no such facilities.”

“We cannot risk further claims of falsification”

David Cesarani: Preserving a death camp, *The Guardian*, November 29, 1993.

The *Stammlager* [Auschwitz I] had been equipped with a mortuary which late in 1941 the SS converted into a gas chamber, with adjacent crematorium. Tens of thousands of Jews were murdered there. Later, however, the SS turned the building into an air raid shelter and destroyed the crematorium, including the chimney.

In 1948 it was decided to reconstruct the gas chamber and the ovens along with a new, but effectively symbolic, chimney. Today no one is certain if the vents for inserting the poison gas are exactly where they were originally located.

This rebuilding work was a hostage to fortune, although the Russians and Poles in 1945–46 could hardly have been expected to foresee that one day Holocaust deniers, such as David Irving, would exploit the confusion over what is or is not authentic at Auschwitz.

The harsh climate and high water table soon had a severe effect on the crude and poor-quality wartime buildings at Birkenau. The bulk of the wooden huts where the prisoners slept were former German army prefabricated stables of First World War vintage. They had been assembled without any foundations or protection against damp.

In 1952, 38 teetering wooden barracks were torn down and 20 reconstructed from the original materials. Concerted restoration work at Birkenau only started six years later, with unhappy results. The brick barracks in one of the sections of Birkenau were left looking so wholesome that they had to be closed to the public. [...]

Nothing at the site indicates that it is, technically speaking, a reconstruction. But does this matter? What values are at stake here? These questions are urgent because a rolling programme of restoration work is making its way across the Birkenau site

that may change its appearance irrevocably.

For these reasons we cannot risk further claims of falsification through careless renovation or, conversely, loss of the site through the ravages of time. The future of Auschwitz–Birkenau should be opened to an international debate: we all have a stake in that place.

David Cesarani is director of the Institute of Contemporary History and the Wiener Library, Britain's largest collection of documents on the Holocaust.

“Construction of new buildings passed off as originals.”

From: Anthony Lerman, Auschwitz museum still fails to commemorate Jewish dead, The Jewish Chronicle, May 1, 1992

Auschwitz is, for non-Jews as well as Jews, the symbol of the Holocaust. But most people know only the roughest outline of what happened there. And today, the physical reality of Auschwitz bears little relation to what was like when it was a death camp.

Auschwitz attracts many visitors – more than 500,000 last year, half of them from outside Poland – underlining the site's crucial educational function.

The facts are stark enough. Up to 1.5 million Jews were murdered at Birkenau, the part of the Auschwitz complex where the mass executions took place. Ninety per cent of those who were killed there were Jews.

For almost 45 years, the Communist authorities in Poland deliberately avoided telling these simple truths. Instead, they used the Auschwitz museum for propaganda.

For Poles, Auschwitz represented the Nazi oppression of Poland. Auschwitz was therefore established as a state museum, in

1947, to present the evils of Fascism from a Communist perspective. Nazis intended to destroy Polish culture and national identity, so Auschwitz became a monument to Polish martyrdom. To state that most victims were Jews would have obscured this.

Visitors learned that the victims were simply “people” of 28 different nations, with Jews just one nationality among the others. Apart from the main exhibition in the Auschwitz base camp, the museum authorities set aside six barracks for exhibitions relating to different nationalities. Only in 1978 was a Jewish exhibition hut opened. But it failed to give an adequate overview of Jewish religion, society and culture.

The collapse of Communism in 1989 provided the opportunity for these distortions of history to be rectified. The Polish ministry of culture, which funds the museum, and the museum authorities expressed their willingness to make changes to show the central role of Auschwitz in the murder of European Jewry.

An International Auschwitz Council was set up, with Jewish representation; links were forged with institutions specialising in the study of the Holocaust; and wider Jewish input was invited. An informal group of Jewish scholars met two years ago in Oxford to suggest changes, and re-convened in Krakow and Auschwitz last month to weigh what had been done and make further proposals.

Some small steps have been taken. The guide book now explains that most of the victims were Jews; new signs present more apposite information; and three unsatisfactory national exhibitions have been closed. Museum staff promise further substantive changes, but progress is slow.

Overshadowing all such plans is the continuing physical deterioration of the site. US experts estimate \$45 million is needed merely to keep things as they are. This is a sum beyond Polish means. The April symposium of concerned scholars recommended that help be sought from UNESCO, Auschwitz-Birkenau being on its world heritage list.

The symposium also expressed its belief that the integrity and dignity of the site are vital to its educational and historical value and should be preserved, with original objects retained within the jurisdiction of the museum. The most notorious act in this regard was the removal of half of the last remaining original wooden barracks at Birkenau to the US National Holocaust Museum in Washington. **Integrity also means avoiding what an American conservation expert has referred to as “histopresto” - the construction of new buildings passed off as originals.**

Among the symposium’s other recommendations were the education of museum guides to enable them to understand the central role of Auschwitz in the murder of the Jews of Europe, and, since many Jews go there to remember the dead, the designation of a suitable location for a Jewish monument.

Such changes will depend largely on Polish political realities. Furthermore, Jewish concerns will never be the only things governing change at Auschwitz. Polish national interests did not disappear with Communism.

While participants in the symposium voiced their concern that Auschwitz-Birkenau should not become a horror theme-park, they deplored the museum’s continued failure to reflect fully what happened to the Jews and resolved to continue to press for constructive change.

Antony Lerman is the director of the London-based institute of Jewish Affairs

Why only Birkenau (Auschwitz II)?

In his Judgment, Gray J criticises Irving for ignoring the other killing centres. But Irving had made plain that his intention, to save time, would be to concentrate on Crematorium II, identified by Pelt, as the Court was shown, as the “absolute centre,” since as Pelt himself had agreed that if that building could be cleared as a mass killing centre then Auschwitz was not a factory of death after all; and if that was the case, then scepticism about the whole Holocaust history was not perverse or unreasonable.

Day ¶: January ¶¶, 2000, page ¶, line ¶

Irving to Gray J: “My recollection of the matter is that in order to speed the trial along we have streamlined a lot of the arguments and concentrated on certain institutions and centres, and left it like that.”

*SS man Föhl writes a letter from Krakow to his comrades
in June 1942 saying Jews are being sent on to White Russia*

G tz Aly & Susanne Heim, Vordenker der Vernichtung: Auschwitz und die deutsche
Pläne für eine neue europäische Ordnung, Fischer Taschenbuch Verlag: Frank-
furt M, 1997 (First publ.1991), pages 215-6:

Put to witness in Court on February . . . , 2001.

[. . .] Die Alltagsarbeit: seiner Abteilung dokumentiert ein
privater Brief des Stellvertretenden Leiters der Abteilung Bevöl-
kerungswesen und Fürsorge, Walter Föhl. Der Brief datiert vom
21. Juni 1942, seine Formulierungen zeigen deutliche Anklän-
ge

an das Protokoll der Wannseekonferenz:

»Wir nehmen jeden Tag Züge mir je über 1000 Juden aus ganz
Europa an und verarzten sie hier, bringen sie mehr oder weni-
ger provisorisch unter oder schieben sie meist weiter, hinein in
die weißruthenischen Sümpfe Richtung Eismeer, wo sie alle –
wenn sie es überleben (und das tun die Juden vom
Kurfürstendammoder aus Wien und Preßburg bestimmt nicht)–
gegen Kriegsende versammelt sind, nicht ohne einige Autostra-
ßen fertig gebaut zu haben. (Aber man soll nicht darüber spre-
chen!)«²⁹

²⁹ Brief Föhls an seine Berliner »SS-Kameraden « (2. Sturm/6.
Standarte) vom 21.6.1942; BDC, PA Walter Föhl. Im Protokoll der
Wannsee-Konferenz heisst es: » . . . werden die arbeitsfähigen Juden
straßenbauend in diese Gebiete geführt, wobei zweifellos ein
Grossteil durch natürliche Verminderung ausfallen wird.«[. . .]

needed: English text

Ahnert document highlights inconsistencies in the story

From Peter Longerich: *Die Ermordung der europäischen Juden* , page 241—2.

94 Vermerk des Mitarbeiters im Judenreferat in Paris, Ahnert: Tagung beim RSHA über Judenfragen, 1.9.1942:

Am 28.8.1942 fand im Dienstgebäude des Referates IV B 4 des RSHA Berlin eine Arbeitstagung über Judenfragen statt, an der in Vertretung von SS-Obersturmführer RÖTHKE der Unterzeichnete teilnahm. [. . .]

Mit den zuständigen Sachbearbeitern im RSHA wurden nach Beendigung der Tagung folgende Fragen besprochen: [. . .]

c) *Mitgabe von Decken, Schuhen und Eßgeschirren für die Transportteilnehmer.*

Vom Kommandant des Internierungslagers Auschwitz wurde gefordert, daß die erforderlichen Decken, Arbeitsschuhe und Eßgeschirre den Transporten unbedingt beizufügen sind. Soweit dies bisher unterblieben ist, sind sie dem Lager umgehend nachzusenden. [. . .]

e) *Barackenankauf.*

SS-Obersturmbannführer Eichmann ersuchte, den Ankauf der durch den Befehlshaber der Sicherheitspolizei Den Haag bestellten Baracken sofort vorzunehmen. Das Lager soll in Rußland errichtet werden. Der Abtransport der Baracken kann so vorgenommen werden , daß von jedem Transportzug 3-5 Baracken mitgeführt werden.

Seven thousand survivors, but only five “eye witnesses”

As Mr Justice Gray implied in his Judgment, with half a million killed in the “gas chamber” of Crematorium II, one assumed that objective, irrefutable evidence was easily produced.

Van Pelt estimated under cross-examination that seven thousand Auschwitz survivors existed in 1945. But only the same five witnesses are produced for the operation of this gas chamber. Their statements contain discrepancies, ambiguities, and confusions and partial impossibilities. It is strange that no attempt was made to produce living witnesses to help clarify these. The seven thousand survivors have been ignored in favor of written depositions by five deceased. This is the action of a litigant who does not want the version rendered by his witnesses competently challenged. The defendants admitted afterwards that this was a serious weakness of their case.

The “Eye-witnesses”

Defence refuse to call live witnesses of the alleged gassings for us to cross-examination, rely on postwar statements.

This was a deliberate decision, as Defendants now admit their witnesses would have failed under cross examination

D D Guttenplan, *The Holocaust on Trial* (London, 2001), page 96:

[. . .] There was an additional reason, , though both Libson and Julius are too tactful to mention it. As every police reporter knows, just because a witness isn't lying doesn't mean they are telling the truth. Deborah Lipstadt told me: “Lots of survivors who arrived at Auschwitz will tell you they were examined by [the infamous Dr. Josef] Mengele. Then you ask them the date of their arrival, and you say, ‘Well, Mengele wasn't in Auschwitz yet at that point.’ There were lots of doctors . . . [somehow] they all become Mengele.” One shaky witness, one survivor who, over half a century after Auschwitz, became confused about whether the crematoria at Birkenau had four ovens or five, whether the door to the gas chambers opened in or out, probably wouldn't lose Lipstadt her case. But it wouldn't help. Of atrocities, this would be the absolute centre.”

This problem was recognised by even the German court

The Court in the 1963 “Auschwitz Trial ” at Frankfurt expressed these misgivings about relying even on the witnesses that appeared before it:

Extract from the 1963 Auschwitz-Judgment, Case 50/4 Ks 2/63: page 109:

A further difficulty is that understandably the witnesses could only rarely make exact statements as to location and chronology of certain incidents. Even if it often seemed to be expecting and asking too much of the witnesses to ask them for concrete details of their experiences, the appearance of the SS men involved in the particular episodes, and the location and time of the events, and to demand an exact description of the locations, the Court still considered it necessary, in investigating the serious charges leveled against the accused, to obviate the danger of mistake identities and untruthful statements. The fact was that the Court lacked virtually all of the normal investigative means available in a normal murder trial to form an accurate picture of what actual happened at the time of the murder. There were no corpses of victims, no records of autopsies, no statements from experts on the cause and the hour of death; also lacking were any traces of the perpetrators, and the murder weapons, etc. Only in rare cases was it possible to cross-check the statements of the witnesses. The credibility of the witnesses had therefore to be particularly carefully tested. Where there were the slightest doubts, or the possibility of confusion could not be excluded, the Court has not used the statements of witnesses.*

* Original German Eine weitere Schwierigkeit bestand darin, daß die Zeugen — verständlicherweise — nur selten genaue Angaben über Ort und Zeitpunkt bestimmter Vorfälle machen konnten. Wenn es auch oft als eine Zumutung und Überforderung der Zeugen

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The problematic eye-witnesses

The artist, David Olère

Robert Van Pelt produced to the Court six drawings made in 1945 and 1946 by an artist, David Olère. It is pertinent now to ask: Did Olère actually see the events he portrays, or are his drawings based on descriptions publicly circulating after the war? Was his motive commercial? Was he indeed ever at Auschwitz? Inherent serious inaccuracies in the pictures invite that question.

Expert witness Robert Van Pelt describes him as a credible witness. Olère told Pressac however that the SS made sausage of human flesh in the crematoria (Pressac, 1989, page 554, right, fourth column on the page, lines 17-22).



Mr Irving submitted to the Court that the pictures were of no evidentiary worth; the artist had merely produced at some indeterminate time sketches suitable for commercial sale in post-war France or for Holocaust museums in Israel. Although the argument is that old, sick, weak and diseased prisoners (i.e., those one would wish to dispose of for purposes efficiency) were gassed en masse and their bodies burnt, the artist shows only young and nubile victims; this indicates a commercial motive of pandering to a soft-porn and sadomasochistic market. The victims, if Olère's memory is to be believed, appear to be entirely able-bodied and well-shaped young females and children.

There is, Mr Irving submits, a clear element of sado-masochistic sexual fantasy in the drawings.

As Mr Irving pointed out, the Olère pictures which Witness Van Pelt did not produce to the Court (like the first one reproduced on the facing page), tended to support his submission.

But even those selected were such flawed representations of the Auschwitz camp as to be worthless.

Gray J felt otherwise, and accepted that the third sketch in Pelt's series did show a wire-mesh Zyklon insertion tube in the background.

In view of the perverse importance which Gray attached to the Olère sketches, we reproduce them with our comments on the next pages.

Left: The Olère drawing that Van Pelt *did not* show the Court (Mr Irving did however). This 1950 Olère drawing has a strong sado-masochistic element. An SS man with a whip crowds young naked females and infants into a relatively small chamber; the prurient intent of the drawing is evident – the young woman in front instinctively crosses her arms but leaves her nipples exposed, which defeats the point of the gesture. Note the kitchen sink drain in the roof, whereby the Zyklon was apparently inserted. No other “eyewitness” makes such a claim. Pressac admits errors in this drawing but explains that Olère had come too far from his liberation to draw accurately.

Van Pelt report, page¥¥:

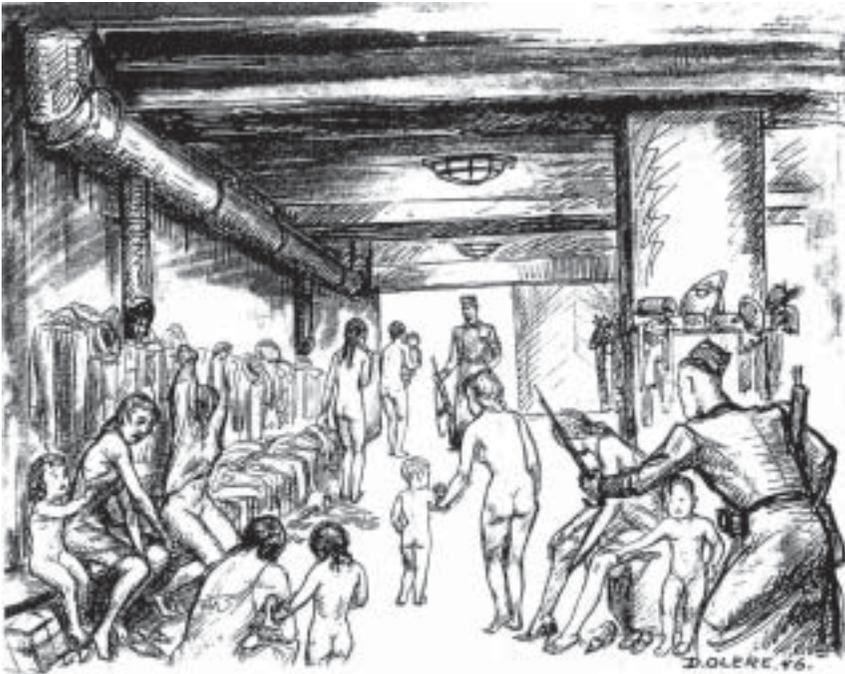
Crematorium III in action (see from the South-West [sic: Est=east?]) A car with a Red Cross brings the Zyklon B, while a column of those unable to work moves towards the back of the crematorium. In the right background, a truck for recuperation of the victims' clothes." 1945. 50x34 Ghetto Fighters House, Israel.

This and a later sketch show the chimney belching flames and smoke. Mr Irving cross-examined Van Pelt about the design of these state-of-the-art crematoria, which had flame and smoke suppression devices. There were no emissions of either smoke or flame. Nor are any visible on the many Allied aerial photos which are in evidence. The artist has again used his imagination.

Van Pelt report, page¥¥:

"In the undressing room of crematorium III." Fighters House, Israel [evidently the location which acquired this work].

According to the Defence, this portrays about twelve victims about to meet an uncertain fate. Once again they are made up of seven naked females and five naked children. The scene is one that could be seen in any delousing station, even in the Sauna at Birkenau. In itself it is not proof that Olère witnessed an extermination procedure. He could have produced the drawing on the basis of his observation of a delousing procedure, or of a verbal description of such a procedure. Presumably drawn from imagination, complete with SS guards with rifles and whips.



Van Pelt report, page¥¥:

“Collecting gold teeth and hair in the gas chamber. In the background, a vented vertical tube for the introduction of the gas into the gas chamber.” Olère Family [1946]



The French text says, “. . . *Dans le fond une colonne grillagée d'introduction du Zyklon B.*”

Mr Irving comments: The Kapos in this 1946 sketch are wearing striped outfits, but no gas masks. It is unlikely that four flimsy wire mesh columns could have prevented a frenzied mob of hundreds if not thousands from gaining access to the lethal canisters of Zyklon B. The mesh column referred to may equally well be an artist's pen-and-ink cross-hatching.

Alternatively, the alleged presence of wire mesh columns in gas chambers was already spoken of by 1945–1946. Therefore, post-war drawings depicting these things are not corroborative, but only supplementary.

There was common talk of the “wire mesh columns” by 1946 (see facsimile on facing page) of page 128 of Eugene Aroneanu, translated (1996) by Thomas Whiseen: *Inside the Concentration Camps: Eyewitness Accounts of the Life in Hitler’s Death Camps* (Praeger edition, Westport, Connecticut, 1996), at page 128.

This provides lurid extracts from 100 alleged “eye-witness accounts” and 17 official reports, with four expert reports on Auschwitz. Aroneanu’s preface is dated 1946; according to the 1996 edition’s preface, he originally compiled these data for the prosecution at Nuremberg:

“Through an opening in the ceiling the Germans dropped canisters into one of the wire mesh enclosed columns in the middle of the room. The canisters contained pellets of Zyklon B saturated in prussic acid.¹¹¹

Note 111: Maideneck [sic] Communiqué of the Special Polish-Russian Commission [the narrative however clearly indicates Auschwitz rather than Majdanek].

“Each canister had four holes through which the gas escaped. The wire mesh columns prevented the prisoners from getting close enough to a canister to touch it with their hands; so the gas poured forth freely and asphyxiated them.⁸⁶

Note 86: Samuel Steinberg, a physician.

work at his profession: doctors, engineers, lawyers, etc. So pull yourselves together, take off your clothes, and pile them up neatly so that you can find them again on the way out. Help us to disinfect you thoroughly, for you come from countries where epidemics are rampant. Move in closer to each other so that we don't have to repeat the process.' The prisoners obeyed. The last ones to be shoved into the chamber that time were the doctors. Before the door of the gas chamber was closed, the section leader called to them with a diabolical grin: 'And now you will die like cattle.'

"The established procedure for the proper utilization of the gas chambers mandated that men and women, now naked, were to be squeezed so tightly together they could not move. The SS men would then seize the children by the arms and legs and smash their heads against a rock. Their bodies would then be tossed in over the heads of their parents and the door shut." (123)

"Oh! My God, what an apocalyptic vision: The cries of mothers pleading for pity for their children who were either in the same chamber or an adjoining one. The children crying for their parents or for their brothers and sisters, begging God for mercy even though they were already on the threshold of death. The shrieks, the cries of desperation, the scratching of fingernails on the walls of these ghastly chambers—I will never forget it." (57)

"When finally all doors had been hermetically sealed, the air was pumped out in order to reduce the oxygen content and speed up the asphyxiation." (86)

"Through an opening in the ceiling the Germans dropped canisters into one of the wire-mesh enclosed columns in the middle of the room. The canisters contained pellets of Zyklon B saturated in prussic acid." (111)

"Each canister had four holes through which the gas escaped. The wire mesh columns prevented the prisoners from getting close enough to a canister to touch it with their hands; so the gas poured forth freely and asphyxiated them." (86)

"Fans were set in motion that accelerated the distribution of the gas around the room." (93)

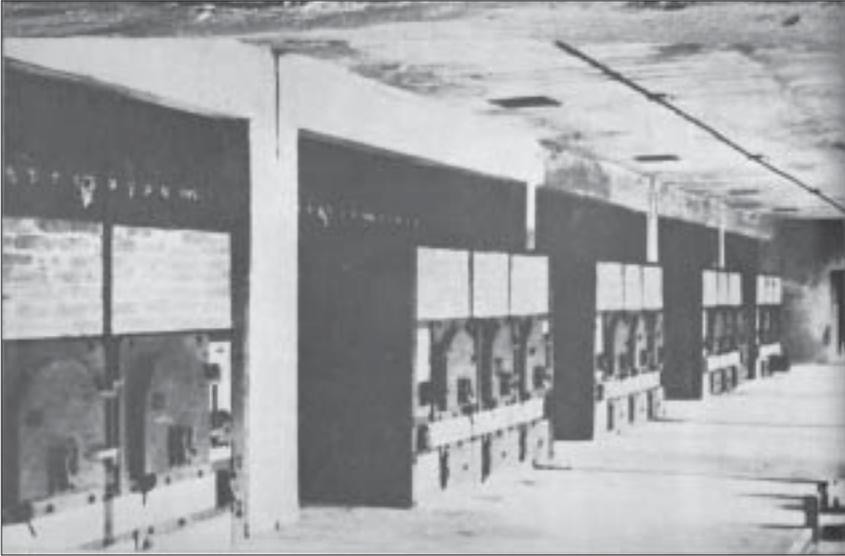
"The building, which was several stories high, was constructed of sturdy bricks with a cement floor and a 12-foot-deep underground vault the entire length of the building. The main floor contained an administrative office toward the front, a closet and a washroom for the SS personnel, which lay at the other end of the building, and finally the chamber with the ovens in the middle. Inside this chamber there were two enclosures, both of which contained three ovens, each with its own brick hearth. Each oven could hold three corpses for a total capacity of



Van Pelt report, page¥¥:

“The oven room (five 3-muffle furnaces) of crematorium III, on the West-East axis, with mechanical lift in the background and with a wet trough in front to pull the bodies to the ovens.” 1945. 58x38, Ghetto Fighters House, Israel.

Inaccuracies in the drawing – in which the dead appear again to be predominantly the naked young females that Olère is best at drawing – cast doubt on whether it is an eye-witness depiction. In this drawing of the interior of the cremation room of Crematorium III (a mirror image of Crematorium II), the openings to the ovens are 3 or 4 feet high. This exaggeration allows three corpses to be inserted simultaneously with room to spare. Comparison with a photograph of the actual furnaces of Crematorium II (the mirror image building) on page 330 of the witness Van Pelt’s book *Auschwitz 1270 to the Present*, (in evidence before the court) shows that the furnaces and doors were much smaller. The water-trough is pure



A wartime photograph of the fifteen crematory furnace doors of Crematorium II (identical to Crematorium III).

Source: The Kremer diary, as reproduced in Gerhard Schoenberner, *Der Gelbe Stern* (Hamburg 1960), page 136, which gives the Auschwitz Museum as the source. Note that the last two entries are not in sequence.

fantasy; the photo shows rails running in front of the furnaces, evidently for the trolleys transporting the corpses. A possible explanation is that Olère produced his drawing on the basis of an inaccurate verbal description or even had the photograph in front of him and took necessary liberties with the door-size.

Since Olère is one of the few witnesses relied on by the Defence, this is not a matter to be overlooked.

Van Pelt introduced this Olère sketch (left) to the Court late in the day, in the Auschwitz core file. (The alleged homicidal gas chamber, Morgue 1, where Van Pelt submits half a million people were gassed to death, protrudes vertically from the middle of the drawing.)

From its wealth of architectural detail – showing even hidden elements like the flues to the collective chimney – it appears to be strongly based on an actual architectural drawing of Crematorium II. (Mr Irving worked for a year in a steelworks on the furnace stage, yet he would be incapable of sketching the layout of the various hidden flues and tunnels of the fire-breathing contraption he ministered to.)

Gone in this new sketch are the uncertainties (*e.g.* the hills, and indifferent spellings) of other sketches; gone too is the water trough along which the corpses were floated from the elevator to the furnaces (see the previous pages).

But Olère now knows enough to sketch in four holes for the Zyklon B to be introduced through the roof – the famous “holes” which even Van Pelt testifies are nowhere to be found in that roof slab now. One problem is that according to the established “eye witness” legend, the holes were vertically above the “wire mesh columns” which were fastened to four of the seven load-bearing solid-concrete pillars which ran in a straight line down the centre of the vault. Olère’s “eye witness” version here has the right number, but they are staggered by many feet to either side of the centre line.

Van Pelt report, page 44:

“Bunker 2. A local farm transformed into a gas chamber. 1945”

The word **dezinfektion** on the building at the rear does not exist in German, and appears to be a confection by the artist. What is remarkably about this depiction of Bunker 2 by Olère is that the surrounding area appears to be quite hilly, whereas the whole Birkenau area is notoriously quite flat and low-lying as all the photos show. Any prisoner who had genuinely been there could never have drawn hills. Furthermore, accounts of Bunker 2 claim that there rail-lines running from the gas-chamber to the burial pits. The tree looks nothing like a birch (the only local trees were birches, hence the name Birkenau). These inaccuracies suggest that Olere drew this scene based on imagination and a verbal description. The misspelling of “Desinfektion”, is an indication that the drawing was produced from a verbal description. The misspelling is not one that one would expect from a francophone, since the word is spelled with an “s” in French as in German. The Russian word “dezinfektsiia” is certainly written with the Cyrillic equivalent of “z”. It may well be that there is a Polish word “dezinfekcja”, but you would need to seek advice from a Polish-speaker on that point.

The most likely explanation here is that a Polish-speaker heard the German “Desinfektion” spoken, and wrote it using a “z” as in his own language. That misspelling was then incorporated into a drawing of a sign bearing the German word; this of course suggests that the drawing was done by a Polish-speaker on the basis of a verbal description. If that is indeed the case, the drawing may not have been of Bunker 2, but of a delousing facility, which would normally have borne a sign saying “Desinfektion”. All of this suggests that Olere did not produce this particular drawing from his own observation, but based it at least in part on a previous drawing produced by a Polish-speaker who made the original misspelling that was copied by Olere. Alternatively, he may have produced the drawing on the basis of a written description containing the misspelled word.





Van Pelt report, page 44:

“The SS Moll [*sic*] slaughters young women and throws them into a cremation pit of crematorium V.”

Note the improbable crematorium building in the rear with its chimneys belching flames and smoke.

The Auschwitz doctor, Ada Bimko

Van Pelt relied heavily on this witness, a Jewish doctor, who had worked in the hospital at Auschwitz and admitted attending the “selections”. See pages 155ff of his Report. What is significant is what Pelt dishonestly and deliberately omits from the Bimko testimony at the Belsen Trial, given on September 21, 1945. This reflects both on Pelt’s neutrality and on Bimko’s truthfulness as a witness. Van Pelt writes on page 156:

Attached to the hospital in the women’s camp, Dr. Bimko was responsible for recovering the blankets which the naked prisoners used after having undressed in Block 25, the holding pen in the women’s camp for those selected for the gas chambers.

During the trial, she explained how this brought her into the crematoria.

Q.: “Have you ever been into one of the gas chambers?”

A.: “Yes. In August, 1944. I was working in a portion of the camp as a doctor. A new crowd of those selected for the gas chamber had arrived, and as they were sick they came covered with a blanket. After two days we were told to fetch all those blankets from the gas chamber. I took the opportunity, as I always wanted to see with my own eyes this illfamed gas chamber, and I went in. It was a brick building and there were trees around in a way as if it were camouflaged. In the first room I met a men who came from the same town as I do.

There was also an S.S. man with a rank of Unterscharführer, and he belonged to the Red Cross. I was told that in this first big room the people left their clothes, and from this room were led onto a second, and I gained the impression that hundreds and hundreds might go into this room, it was so large. It resembled the shower-baths or ablution rooms we had in the camp. There were many sprays all over the ceiling in rows which were parallel. All these people who went into this room were issued with a towel and a cake of soap so that they should have the impression that they were going to have a bath, but for anybody who looked it the floor it was quite clear that it was not so, because there were no drains. In this room there was a small door which opened to a room which was pitch dark and looked like a corridor. I saw a few

lines of rails with a small wagon which they called a lorry, and I was told that prisoners who were already gassed were put on these wagons and sent directly to the crematorium. I believe the crematorium was in the same building, but I myself did not see the stove.⁴³

Van Pelt however deliberately omits the immediately following passages of the Bimko testimony.

Raymond Phillips (ed.), *Trial of Josef Kramer and Forty-Four Others (The Belsen Trial)* (London, YEAR?), page 68,

“... but I myself did not see the stove. There was yet another room a few steps higher than this previous one with a very low ceiling, and I noticed two pipes which I was told contained the gas. There were also two huge metal containers containing gas.”

These facts were disputed as impossible at the Trial of Tesch and Weinbacher. Even if we discount the odd feature, an SS officer giving a guided tour of a gas chamber to a Polish Jewish prisoner, it has never been suggested, even by Pelt, that gaseous gas was used at Auschwitz other than in crystalline Zyklon B form, allegedly tipped in through “holes” in the ceiling from tin-cans. Mr Irving put this to Van Pelt in cross-examination.

Another feature of Bimko’s testimony which cast doubt on her truthfulness was her statement:

“One of those who took part in these Kommandos told me that other members of the Kommandos before being gassed had complete records of all these transports which arrived, and then eventually were destroyed. He himself, in fact, kept records also and he said that the number of Jews who were destroyed in this gas chamber would be about four million.” (*Belsen Trial*, page 68).

Van Pelt omitted the emphasised passage too. As he claims (at page •• of his Report) the “four-million” figure was invented by the Soviet investigation commission after the capture of Auschwitz in January 1945. So it is impossible that a member of a Sonderkommando

could in 1944 have had a record showing that 4 million Jews had been killed in just one gas chamber. Ergo, here too Bimko was lying under oath.

It is instructive to compare Bimko's above testimony with her previous affidavit (Pelt Report, page 740). There she says:

“I have examined the records of the numbers cremated and I say that the records show that about 4,000,000 persons were cremated at the camp. I say that from my own observation I have no doubt that at least this number were exterminated.”

So originally Bimko claimed to have seen the record herself, while in her testimony she covered herself and said that the record was held by someone else, who told her the figure. The course of events is fairly easy to reconstruct. Bimko must at some stage have heard of the figure published by the Soviets, and incorporated it into her own testimony. In order to give it credibility, she falsely claimed to have seen records showing it. In court, she distanced herself by saying that someone had told her the figure in 1944, while maintaining that it was found in the records.

One wonders how much else of Bimko's testimony was made up in this way.

The British defence counsel mounted a vigorous defence, and were not shy in accusing these witnesses of having colluded and falsified their testimony. The “eye witnesses” got away with their vengeful perjuries, as Auschwitz was in the Soviet occupation zone and inaccessible to the Court. Fifty years later, Van Pelt shares none of those British defence counsels' doubts.

The “eye witness” Pery Broad

Jean-Claude Pressac writes of Broad that his statement, of which we do not have an original, was slightly rewritten by the Poles and bears an aggressive anti-SS and proi-Polish tone that makes it very suspicious, because Broad, a native German, joined the SS voluntarily (page 126ff).

In his testimony at the Tesch–Weinbacher trial, quoted by Van Pelt (page ...), Pery Broad state that the number of victims at Auschwitz was between 2.5 and 3 million. What Pelt does not reveal is that this figure derives from Höss’s estimate (see Pelt, pages 398–9), which Höss later recanted. It is clearly an example of the “cross-pollination” between sources which Gray J. would not accept had occurred.

The “eye-witness” Henryk Tauber

Tauber asserted in his testimony that he was able to burn up to eight corpses at a time in one furnace muffle, and that he could light the corpses with a small fire in the ash-container. That the bodies then burned by themselves. That thick dark smoke rose from the crematorium chimneys, which he sued deliberately to draw the attention of allied bombers to the camps. That during open-air cremations huge amounts of fat was collected running off the burning bodies.

In fact only two or at most three bodies could be fitted into one muffle (which would slow down the burning process as air could not circulate). Bodies do not self combust (they are 70 percent water). If the fat ran off it would burn and could not be collected.

The “eye-witness Dr Bendel”

Another of Pelt’s eye witnesses was Dr Bendel who testified in the Belsen Trial (Philipps, page 132, half way down), which book he referenced. Pelt quoted it on page 271 of his report:

The the door was opened and the people were crowded into the gas chambers which gave the impression that the roof was falling on their heads, as it was so low.

The reference is to Krema IV, the building with the shutters in the side walls, which Van Pelt showed to the Court in a computer generated virtual-reality “walk-through“ produced by one of his students.

Pelt suppressed the other Belsen Trial testimonies which undermined his case.

Testimony of Sophia Litwinska, a Polish Jew, The Belsen Trial, pages 79-80.

Q. When you reached the crematorium what happened there?

A. The whole truck was tipped over in the way they do it sometimes with potatoes or coal loads, and we were led into a room which gave me the impression of a shower-bath. There were towels hanging round, and sprays, and even mirrors. I cannot say how many were in the room altogether, because I was so terrified, nor do I know if the doors were closed. People were in tears; people were shouting at each other; people were hitting each other. There were healthy people, strong people, weak people and sick people, and suddenly I saw fumes coming in through a very small window at the top. I had to cough very violently, tears were streaming from my eyes, and I had a sort of feeling in my throat as if I would be asphyxiated. I could not even look at the others because each of us concentrated on what happened to herself.

Q. What was the next thing you remember?

A. At that moment I heard my name called. I had not the strength to answer it, but I raised my arm. Then I felt someone take me and throw me out from that room. Hoessler [*deputy commandant*] put a blanket round me and took me on a motor cycle to the hospital, where I stayed six weeks. As a result of the gas I had still, quite frequently, headaches and heart trouble, and whenever I went into the fresh air my eyes were filled with tears. I was subsequently taken to the political department and apparently I had been taken out of the gas chamber because I had come from a prison in Lublin, which seemed to make a difference, and, apart from that, my husband was a Polish officer.

It may seem obvious why Van Pelt did not quote this vivid “eye-witness” to gassing.

Deposition by Regina Bialek, a Polish woman, The Belsen Trial, pages 77 :

“On 25th December, 1943, I was sick with typhus and was picked out at a selection made by Doctors Mengele and Tauber along with about 350 other women. I was made to undress and taken by lorry to a gas chamber. There were seven gas chambers

at Auschwitz. This particular one was underground and the lorry was able to run down the slope and straight into the chamber. Here we were tipped unceremoniously on the floor. The room was about 12 yards square and small lights on the wall dimly illuminated it.

When the room was full a hissing sound was heard coming from the centre point on the floor and gas came into the room. After what seemed about ten minutes some of the victims began to bite their hands and foam at the mouth and blood issued from their ears, eyes and mouth, and their faces went blue. I suffered from all these symptoms, together with a tight feeling at the throat.

I was half conscious when my number was called out by Dr Mengele and I was led from the chamber. I attribute my escape to the fact that the daughter of a friend of mine who was an Aryan and a doctor at Auschwitz had seen me being transported to the chamber and had told her mother, who immediately appealed to Dr Mengele. Apparently he realized that as a political prisoner I was of more value alive than dead, and I was released.”

Again, it may seem obvious why Van Pelt did not quote this vivid and direct “eye-witness” to gassing.

The SS officer Kurt Gerstein

Pelt and Browning relied on the unsworn statements made by Kurt Gerstein. Browning admitted that was not aware that Gerstein had made seven different statements in the months of his captivity before his suicide in French captivity and he reproduced none of his private letters which showed an unbalanced state of mind in this witness. In cross-examination, Irving asked Browning why he had deliberately omitted monstrous passages from the Gerstein report which clearly called its veracity into question, and had then buttered them back into a later edition of his report when he realised that he could not get away with it, claiming that the defence lawyers had mistakenly submitted the wrong version (which, even if true, does not explain the omissions). As in the case of Van Pelt, his deliberate omission of these passages throw doubt on his neutrality and objectivity.

Dr Johann Paul Kremer and his diary

The expert witness Van Pelt, and with him Gray J., relied heavily on the handwritten diary of the German doctor Johann Paul Kremer. Pelt references him *e.g.* on page 146, 149, 153, 155 , 258 of his report.

Kremer, an anatomy lecturer at Münster university, had volunteered for the SS and been drafted into Auschwitz in August 1942, and served there until November 1942 – *i.e.* one of the main epidemic periods. The Poles obtained his handwritten diary late in 1945. Pelt quite wrongly claimed that the diary provided proof of the use of Auschwitz as an extermination camp. On page 146 Pelt limits himself to saying that the diary “was immediately recognized as an important piece of evidence of the atrocities committed in Auschwitz.” On page 149 he adds that the diary provides “some direct German evidence that support the ‘gassing claim,’” but in fact it does nothing of the sort; he adds, “it lets us down in that it provides little factual knowledge of the gassing operations.” In fact it provides none at all. Typically, Pelt again claims on page 155: “Both Kremer’s diary, Broad’s report, and Aumeier’s explanations provided . . . important additional evidence about the history of Auschwitz as an extermination camp.” On page 258 he again insists: “[O]ne of the important contemporary pieces of evidence concerning the use of Auschwitz as an extermination camp is the war-time diary of Dr. Johann Paul Kremer. . .”

We shall shortly see what the diary *does* say. First, however many ways prisoners were dying at Auschwitz, there is nothing in the diary about exterminating human beings in gas chambers.

Second, the diary confirms that there are epidemics in Auschwitz. He writes of “typhus” and the references to flies, contaminated water, and diarrhea, indicate typhoid as well as typhus, a disease referred to in German as “spotted fever” or *Fleckfieber*. Typhus is transmitted by lice, not by contaminated water or flies. The entry of September 1 (“*Nachmittags bei der Vergasung eines Blocks mit Zyklon B gegen die Läuse*”) carries the only diary referenc to Zyklon B, and it

is being used for its original design-purpose – to kill lice. The diary also shows that Kremer was inoculated against both typhus and typhoid.

Von Berlin schriftlich Einberufung, Koppel 1. September 1942
und Zwangsträger angefordert. Nachmittags bei
der Vergasung eines Blocks mit Lyclo B gegen
die Säule.

Fünf 4. Male draußen um 3 Uhr früh 2. September 1942
bei einer Sonderaktion ausgehen. Für
Euphorie fürger, erscheint nicht das
hohe, tiefe Inferno fast wie eine po-
modie. Myriade wird Anschläge und das
Kaga der Verurteilung genannt!

Fünf 4. Male an der Luft im Lager von 3. September 1942
befallenden Durchfällen mit Orbschen
und Kolikartigen ebenfalls weissen Schweiß-
sen erkrankt. Da ich keinen Tropfen
Wasser getrunken, kann es hieran nicht
liegen. Auch das Brot kann es nicht sein
denn, da auch solche erkrankten, die nur
Pfefferbrot (Brot) zu sich genommen an-
haben. Hochstwahrscheinlich liegt's an
den ungelösten Hartzonen und
sehr trockenen Tropfenklima mit viel
Staub- und Inzestwasser (Hitzig).

Gegen die Durchfälle: Tag Schleimmittel 4. September 1942
mit Pfefferminzöl, das in die für eine
Körbe! (Körbe) durch die Lohle und kann
albin. Schon erhebliche Besserung.

Heute mittig bei einer Sonderaktion aus dem 5. September 1942
F. H. L. (Hilfsdienst): das Schrecklichste der
Schrecken. Koch. Philo hat Recht, wenn er mir
heute sagt, wir befinden uns hier am Aus-
mund. Abends gegen 8 Uhr wieder bei einer
Sonderaktion aus Holland. Wegen der dabei ab-
fallenden Sonderverpflegung, bestehend aus einem
Fünftel Fischebraten, 5 Zigaretten, 100 g Wurst
und Brot, drängen sich die Hämmer an solchen
Abtionen. Heute und morgen (Sonntag) Dienst.

Source: The Kremer diary, as reproduced in Gerhard Schoenberner, *Der Gelbe Stern* (Hamburg 1960), page 136, which gives the Auschwitz Museum as the source. Note that the last two entries are not in sequence.

Extracts from the Dr Kremer Diary before the Court

Source: the English translation which Van Pelt used: [pp. 146-149]

August 30, 1942. Departure from Prague 8.15 a.m. through Böhmisches Trübau, Olmütz, Prerau, Oderberg. Arrival at Concentration Camp Auschwitz at 5.36 p.m. Quarantine in camp on account of numerous contagious diseases (typhus, malaria, dysentery). Received to secret order through garrison physician *Hauptsturmführer* [Kurt] Uhlenbrock and accommodation in a room (no. 26) in the Waffen-SS club-house [Home].

August 31, 1942. Tropical climate with 28° Centigrade in the shade, dust and innumerable flies! Excellent food in the Home. This evening, for instance, we had sour duck livers for 0.40 RM, with stuffed tomatoes, tomato salad, etc. Water is infected, so we drink seltzer-water which is served free (mattoni). First inoculation against typhus. Had photo taken for the camp identity card.

September 1, 1942. Have ordered SS officer's cap, sword-belt and brace from Berlin by letter. In the afternoon was present at the gassing of a block with Zyklon B against lice.

September 2, 1942. Was present for the first time at a special action at 3 a.m. By comparison Dante's inferno seems almost a comedy. Auschwitz is justly called an extermination camp!²[*]

September 3, 1942. Was for the first time taken ill with the diarrhoea which attacks everybody in the camp here. Vomiting and colic-like paroxysmal pains. Water did not cause it as I had not drunk any. Neither was it the bread. People who take white bread only (diet) also fall ill. Most probably it is the unhealthy tropical climate, very dry and tropically hot, with clouds of dust and insects (flies).

* Above, Pelt takes major liberties with the translation of the German: "Zum 1. Male draussen um 3 Uhr früh bei einer Sonderaktion zugegen. Im Vergleich hierzu erscheint mir das Dante'sche Inferno fast wie eine Komödie. Umsonst wird Auschwitz nicht das Lager der Vernichtung genannt." Which is better translated as "Outside for the first time, present at a special action at 3 a.m. Compared with this, Dante's Inferno seems to me almost like a comedy. Auschwitz isn't called the camp of annihilation for nothing." Pelt, like most Holocaust historians, leaves the inconvenient word *draussen* unmentioned: the *Sonderaktion* witnessed by Kremer is *outside* the camp.

In the Court of Appeal

September 5, 1942. At noon was present at a special action in the women's camp (Moslems)* – the most horrible of all horrors. *Hschf.* Thilo, military surgeon, was right when he said to me today that we are located here in the *anus mundi*.[*] In the evening at about 8 p.m. another special action with a draft from Holland. Men compete to take part in such actions as they get additional rations – 1/5 litre vodka, 5 cigarettes, 100 grammes of sausage and bread. Today and tomorrow (Sunday) on duty.⁴

October 3, 1942. Today I preserved fresh material from the human liver, spleen and pancreas, also lice from persons infected with typhus, in pure alcohol. Whole streets at Auschwitz are down with typhus. I therefore took the first inoculation against abdominal typhus. *Obersturmbannführer* Schwarz ill with typhus!⁷

October 12, 1942. The second inoculation against typhus; strong reaction in the evening (fever). In spite of this was present at night at another special action with a draft from Holland (1,600 persons). Horrible scene in front of the last bunker! (Hössler!) This was the 10th special action.⁹

October 18, 1942. In wet and cold weather was on this Sunday morning present at the 11th special action (from Holland). Terrible scenes when 3 women begged merely to have their lives spared.¹¹

* The reference to “Moslems” on September 5 is (according to the German original) *Muselmänner*, the word used at Auschwitz to describe the pathetically thin terminally ill typhoid cases.

† Mr Irving's comment on the reference to Dante's *Inferno* and the description of the camp as *anus mundi*: given the diary's vivid image of the diarrhea and stench of the epidemics, we recall a passage in Canto XVIII of *Inferno*:

Quivi venimmo; e quindi giù nel fosso vidi gente attuffata in uno sterco che da li uman privadi pareva mosso.

E mentre ch'io là giù con l'occhio cerco, vidi un col capo sì di merda lordo, che non parëa s'era laico o cherco.

In the American poet Longfellow's translation:

Thither we came, and thence down in the moat I saw a people smothered in a filth / That out of human privies seemed to flow; / And whilst below there with mine eye I search, / I saw one with his head so foul with ordure, It was not clear if he were clerk or layman.

Van Pelt has used the English translation in *KL Auschwitz seen by the SS* (Interpress Publishers, Warsaw 1991), pages 160–169. This reproduces in footnotes the answers allegedly given by Kremer under interrogation while in Polish custody being held in a communist jail, and while on trial for his life in the 1947 Krakow trial; in these Kremer apparently expands on the diary entries and adds homicidal meanings to them, all describing the so-called “Bunker” gassings (i.e., none concerns Crematorium II). Absent the supporting material provided by the alleged interrogations, the Kremer diary provides no proof of exterminations. It is an interesting comment that while Kremer was no doubt deservedly sentenced to death in December 1947, this sentence was later commuted to ten years. As for the alleged statements, what Pelt does not mention is that Kremer immediately retracted them on his release from jail and return to the free world in 1958, with the result that the Germans again put him on trial (at the age of 77). Pelt uncritically accepts the prison protocol and does not inform the Court of their dubious nature.

Van Pelt also omits however literal descriptions by Kremer of being present in his official capacity at the execution of seven Polish civilians on October 13, 1942, and eleven more four days later, and of being present when six women “got the needle” on October 24. So why should he not have been equally frank about mass gassings in his diary? The inference is that the communist interrogations – which would not be permitted as evidence in a U.K. criminal trial (?) – are suspect.

The obvious question remains, what is the special action (*Sonderaktion*) taking place at 3 a.m., and “outside” that required him to be present? It is not a gassing: nobody claims that these took place outside. No wonder that Pelt and others prefer to suppress the word “*draussen*” from their translation.

As for the *anus mundi* entry dated September 5, 1942: Kremer and the military surgeon SS *Obersturmführer* Heinz Thilo have to be present when a fresh draft of Jews arrives from Holland.

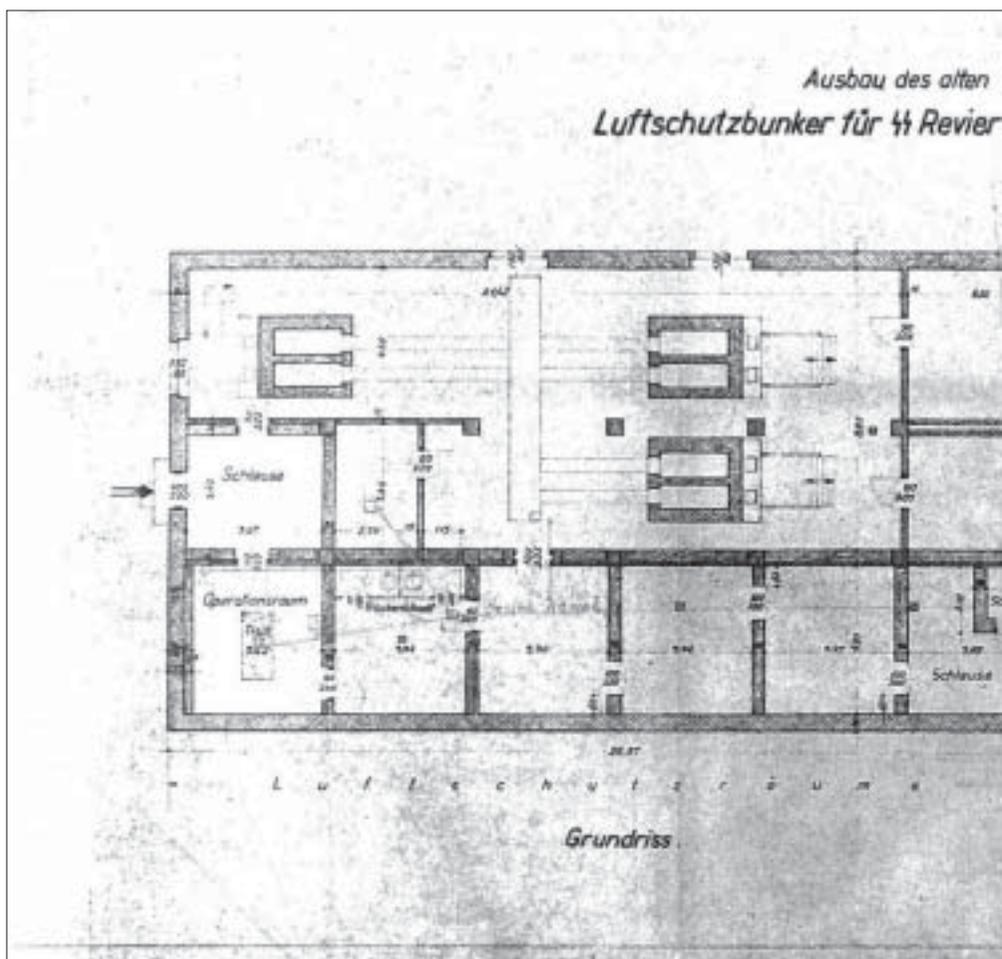
The reference is to the harrowing scenes of the unloading of the transport, and the separation of the arriving Jews from each other, their families, and their personal property. According to the standard version, the only people involved in any gassings were specially designated *Sonderkommandos* and not volunteers like those in the diary entry. The entry of October 12 speaks of a “horrible scene in front of the last bunker!” but we are not told what it was (except in the alleged interrogation). Six days later, “In wet and cold weather“ as another transport from Holland is unloaded, Kremer describes “terrible scenes” when “three women begged for their lives.” As the standard version has everybody being kept in the dark as to their immediate fate, (the “gas chambers”) the diary entry has no evidentiary value. Survivors commonly described how they believed they were going to be taken into fake shower baths. (The original German reads: “*Grässliche Szenen, bei drei Frauen, die ums nackte Leben flehen,*” and is best rendered, idiomatically, as “Three women make harrowing scenes begging for their bare lives.”)

That having been said, other records do show the death of over 15,000 registered inmates during Kremer’s brief (three-month) stay at Auschwitz; Kremer’s name appears on some ten thousand of the death certificates. Death was rampant in Auschwitz in those months and he himself admitted that it earned its fame as a camp of annihilation.

As for the three women “begging for their lives,” rumours of gassings and “showerbaths” were common in the autumn of 1942. The BBC broadcast the rumours to Holland (compare *The Diary of Anne Frank*). It is a reasonable deduction that neither of the October 1942 Kremer diary references is proof that prisoners were being gassed, whatever the arriving Dutch Jews thought. To argue otherwise would be to suggest that large numbers of Dutch Jews, indeed, the majority, were being killed in September and October, 1942, which is just the opposite of the treatment of Dutch intakes in July and August.

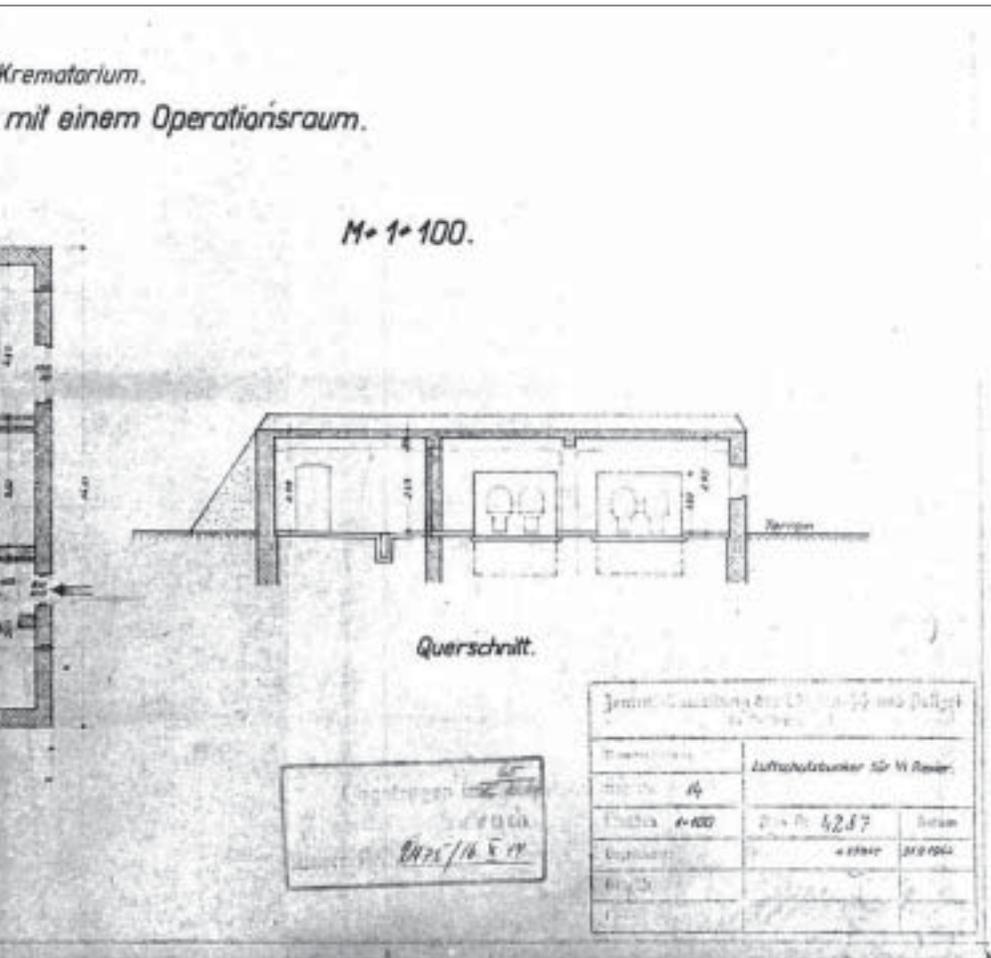
There are certain ways in which these matters could be clarified definitely. The diary of Dr. Kremer could be published in full. The death books for Kremer's stay at Auschwitz have been available since 1989: it would have been comparatively simple to compile the statistics for the days of the actions mentioned in the diary, took place, to see whether large numbers of Dutch had their deaths registered on those dates of their arrival. No such analyses were offered by defendants: like the "holes" in the roof, there is a determination not to look beneath the surface of the story.

When Mr Irving asked the Defendants to use their good offices to persuade the Wiener Library to provide a copy of the Kremer Diary to him, they did not do so and Dr David Cesarani, director of the Library made plain in writing that he would not comply.



Auschwitz I: crematorium converted to air raid shelter

As the air war against the Reich intensified (Hamburg firestorm: late July 1943), in September 1943 the Auschwitz building office drew up plans for the conversion of the old Crematorium I at the original Auschwitz camp into an air raid shelter (*Luftschutzbunker*) for the SS post. Perhaps they agreed with Gray J. that the facilities at Birkenau would be too far away. Note the provision of a *Schleuse* (gas-tight air lock) at each entrance. Why should the earlier (winter 1942/43) adaptation of the brand-new below-ground vaults at

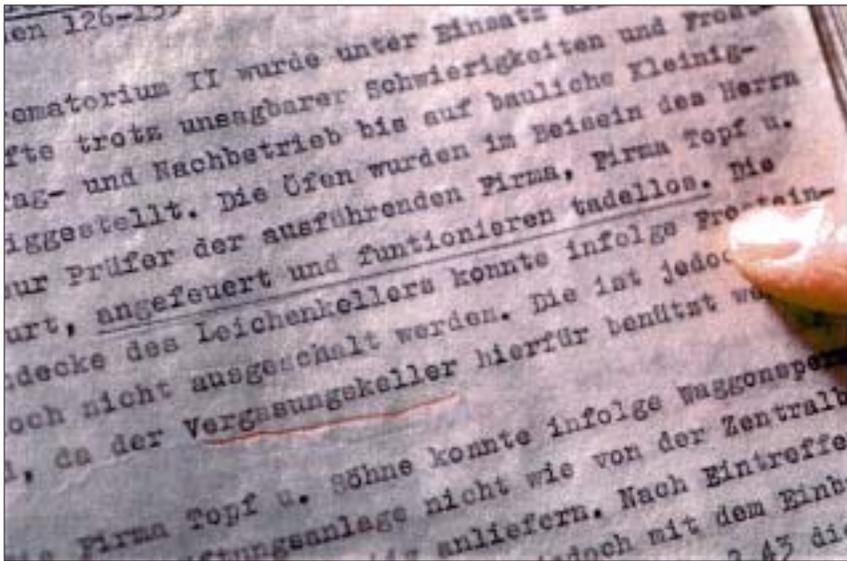


Birkenau (Auschwitz II) with similar air-raid shelter features such as gastight doors and shutters have evoked such mirth and scepticism from Rampton and Gray J.?

Source: Defence Expert Report, Auschwitz core file. Auschwitz archives.

The “Vergasungskeller” letter

For the Defence, Van Pelt is impressed by the letter No. 22250/43/Bi/L of January 29, 1943 in which Bischoff refers to a *Vergasungskeller*. The document has the sentence “Die[s?] ist jedoch unbedeutend, da der Vergasungskeller hierfuer benützt werden kann.” (But this is unimportant, since the gassing cellar can be used for this.) Pelt also stated [in Court?] and in videos that the word had been underlined in red and he speculated that the name Kirschneck at the top had also been underlined in the same red as a rebuke to him for using a revealing, non-euphemism word.



For the Defence, Van Pelt submitted in evidence a colour photograph, from which it is evident however that the underlining is in red ballpoint pen (*i.e.*, post-war) and that other underlinings in pencil have been removed.

B. 31
100

Abschrift

29. Januar 1943

PMO Archives
1060

Bftgb.Nr.: 22250/43/B1/L.

Betr.: Krematorium II. Bauzustand.
Bezug: Fernschreiben des W-NVHA Nr. 2648 vom 28.1.43.
Anlg.: 1 Prüfbericht

An
Antagruppenschef C,
SS-Brigadeführer und Generalmajor
der Waffen-SS Dr. Ing. Kommler,
Berlin-Lichterfelde-West
Unter den Eichen 126-135

Das Krematorium II wurde unter Einsatz aller verfügbaren Kräfte trotz unagbarer Schwierigkeiten und Frostwetter bei Tag- und Nachbetrieb bis auf heuliche Kleinigkeiten fertiggestellt. Die Öfen wurden im Beisein des Herrn Oberingenieur Prüfer der ausführenden Firma, Firma Topf u. Söhne, Erfurt, angefeuert und funktionieren tadellos. Die Eisenbetondecke des Leichenkollers konnte infolge Frosteinwirkung noch nicht ausgegalt werden. Die ist jedoch unbedeutend, da der Vergasungskeller hierfür benützt werden kann.

Die Firma Topf u. Söhne konnte infolge Waggon Sperre die He- und Entlüftungsanlage nicht wie von der Zentralbe-
leitung gefordert rechtzeitig anliefern. Nach Eintreffen der He- und Entlüftungsanlage wird jedoch mit dem Einbau sofort begonnen, sodass voraussichtlich am 26.2.43 die Anlage vollständig betriebsfertig ist.

Ein Bericht des Prüfingenieurs der Firma Topf u. Söhne, Erfurt, wird beigelegt.

Der Leiter der Zentralbe-
leitung der Waffen-SS und Polizei Auschwitz

Verteiler:
1 SS-Ostuf Janisch u. Kirschneck
1 Registratur (Akt Krematorium) SS-Hauptsturmführer

F. d. B. d. A. :
Janisch
SS-Ostuf. (P) 11

Source: an unsigned Abschrift (copy), PMO Archives, file BW 30/34, microfilm 1060, page 100. Cf. J.-C. Pressac, Auschwitz: Technique and Operation of the Gas Chambers, Beate Klarsfeld Foundation, New York 1989, p. 503.

Gray J. followed Pelt's arguments in his Judgment.

Mr Irving pointed out under cross-examination and in his final submissions that there is nothing uniquely "homicidal" about the word *Vergasungskeller*, since in all other documents where it is used it has a clear fumigation connotation.

If "*Vergasungsraum*" is accepted to mean a "fumigation chamber" then it is perverse and unreasonable to insist that *Vergasungskeller* can mean only a homicidal gas chamber. In addition to reminding the Court that (like all other key documents on which the defence relies in this aspect of the case) the document has no security-classification whatever. He also drew attention to several architectural drawings (reproduced by Pressac) in which there are clearly "*Vergasungs-*" rooms, quite obviously designed for fumigation purposes only (and not suggested by the Defence as being for homicidal purposes).

It was perverse of Gray J. to find otherwise.

There is no question but that Vergasung is “fumigation”

Primary sources in the Auschwitz archives are crammed with documents using the work *Vergasung* as fumigation. Some examples:

A 1941 drawing describes the area of the Bauwerk (BW) 5a complex, one of the known delousing complexes, as a *Vergasungsraum*.

Requisition for Zyklon from the Dessau works, Auust 1942, specifically for the *Vergasung* of the barracks against vermin.

Höss’s warning in Aug ust 1942 about the risks of using Zyklon for *Vergasung* of buildings because of the temporary lack of smell-agents.

Dr Kremer diary, September 1, 1942: “*Vergasung eines Blocks mit Zyklon B gegen die Läuse.*” (fumigation of a block with Zyklon B against lice).

The book by Jürgen Kalthoff *et al.*, *Die Händler des Zyklon B* (Hamburg, 1998), at page 124 quotes a document from German state archives (HstAW 36342-5), a circular from Dr Mrugowsky, head of the Waffen SS Hygiene institute, dated August 24, 1943:

“Die Belange der SS hinsichtlich der Verwendung von Blausäure beim Reichsminister für Bewaffnung und Munition [. . .] In Zukunft kann Blausäure nur noch zur Vergasung von Unterkünften bereitgestellt werden, wenn eine erhebliche Fleckfiebergefahr vorliegt. Nach bisherigen Erfahrungen ist eine solche Lage nur in Konzentrationslagern gegen. In Zukunft darf daher Blausäure nur noch zur Vergasung von Baracken in Konzentrationslagern verwendet werden.” [SS requirements of Minister of Munitions re usage of HCN . . . In future HCN can only be provided for fumigation (*Vergasung*) of accommodation if there is a serious risk of spotted fever. From current experience such a situation arises only in concentration camps. In future therefore

HCN can be used only for fumigation (*Vergasung*) of barracks in concentration camps.]

Note that in his May 1946 interrogation Auschwitz commandant Rudolf Höss uses the word *Vergasung* three times in one sentence in the context of fumigation.

The “Holes in the Roof”

Robert van Pelt describes Mortuary 1 of Crematorium II as being the absolute centre of human suffering:

Mr Irving introduced in evidence the 2000 documentary film by Errol Morris, *Mr Death*, and showed part to the Court on January 13th 2000. Excerpt from sound-track:

Robert Van Pelt: “In the 2, 500 square feet of this one room, more people lost their lives than in any other place on this planet. Five hundred thousand people were killed. If you would draw a map of human suffering, if you create a geography

In his report Van Pelt relies on eye witness descriptions of “wire-mesh” columns attached to, he says, four of the seven load-bearing columns running down the center of the Morgue I. The witness Kula (?) states that these were 20 centimetres square. They do not show on any architectural drawings (nor do the holes that would have been necessary in the roof above each mesh column). Knocking four twenty-centimeter square holes in a steel reinforced concrete roof next to the load bearing columns, without making any damp-proofing provision (there was a two foot layer of soil on top of the roof)? No real “architect” would testify to such modifications being made, especially since there is no trace of the holes in the roof now as he himself admits.

The concrete roof slab is still there. A vertical aerial colour photograph of it, 2ft by 4ft, was on an easel in evidence before the Court throughout the cross-examination of this witness. In his expert Report, Van Pelt admits that the holes are not in it.

“Today, these four small holes that connected the wire-mesh columns and the chimneys cannot be observed in the ruined remains of the concrete slab. Yet does this mean they were never there? We know that after the cessation of the gassings in the Fall of 1944 all the gassing equipment was removed, which implies both the wire-mesh columns and the chimneys. What would have remained would have been the four narrow holes in the slab. While there is not certainty in this particular matter, it would have been logical to attach at the location where the columns had been some formwork at the bottom of the gas chamber ceiling, and pour some concrete in the holes, and thus restore the slab.”

The premise that the Nazis, fleeing for their lives before the advancing Red Army tank columns, would have found time to send a man with a bucket of cement to make faultless and invisible repairs to all four large holes, either before or after the roof was dynamited, led to some pointed cross-examination by Mr Irving of this witness. The holes were not narrow; Pelt’s own “eye witness” refers to them as being 20 centimetres square.

The “holes” challenge

Irving offers to halt the case if Defence can find the holes even at this late date

Day ¥: January 28, 2000, pages 151 —2, line ¥

Mr Irving: And you do accept, do you not, that if you were to go to Auschwitz the day after tomorrow with a trowel and clean away the gravel and find a reinforced concrete hole where we anticipate it would be from your drawings, this would make an open-and-shut case and I would happily abandon my action immediately?

Witness Van Pelt: I think I cannot comment on this. I am an expert on Auschwitz and not on the way you want to run your case.

Mr Irving: There is my offer. I would say that that would drive such a hole through my case that I would have no possible chance of defending it any further.

Mr Justice Gray: That is not really a question, is it?

Mr Irving Well, I am asking, the point I am making, my Lord, is that he has been to Auschwitz once a year for a number of years. The temptation must have occurred to him to go there with a trowel and scrape away the gravel and look for the hole, not just one but three of them, and he page 152 : assures us that they were built-in holes, not just casual holes.

Mr Justice Gray I think if he had been digging around with a trowel he would have got into trouble with the authorities, would he not?

Mr Irving: It has been done by others, my Lord, I understand.

Mr Justice Gray: Well, with their permission. I do not think that is really a question in a way. You have made the point and I understand it, that nobody has actually done the excavation work or whatever you like to call it.

Mr Irving: This is, obviously, not the time to make submissions, so I will not, my Lord, and with that I will end my cross-examination of this witness with my many thanks. I wish you a pleasant flight home.

The snow-covered roof shows no trace of “holes”

Mr Irving produced to Witness Van Pelt a ground-level view of the flat roof of Morgue 1 covered with snow and showing no evidence of four protuberances. [page 318 of what] Jean-Claude Pressac stated that the photo was taken in January 1943, which is reasonable. Memoranda from November 1942 and the Vergasungskeller letter of January 1943 [page 317 of what] indicated that Morgue 1 was considered finished by this time. Here is a completed “gas chamber” then without any evidence of the holes in the roof testified to by the defence’s written “eye witness” evidence.

The roof of Leichenkeller II is not fragmented, but intact and available for inspection (which is however banned)

Prof van Pelt avers [where? Report or Jan 28?] that the condition of the site is such that it is unlikely that an intact slab will be found to inspect.

This forms an important part of the orthodox denial. The morgue is not a mere pile of rubble; to suggest it is, is quite untrue as witness the excellent recent vertical photograph of the entire slab taken from a helicopter. The explosion only cracked the concrete, the reinforcing steel mesh held at all points. The slab still exists in original but mosaic form, the concrete pieces held tightly together by the steel mesh. It simply settled downward in its original location in very nearly its original dimensions. One can clearly and quickly see that there were never any “Zyklon-introduction” holes knocked through into it. The roof slab will not stand up on inspection by the defendants and they know it.

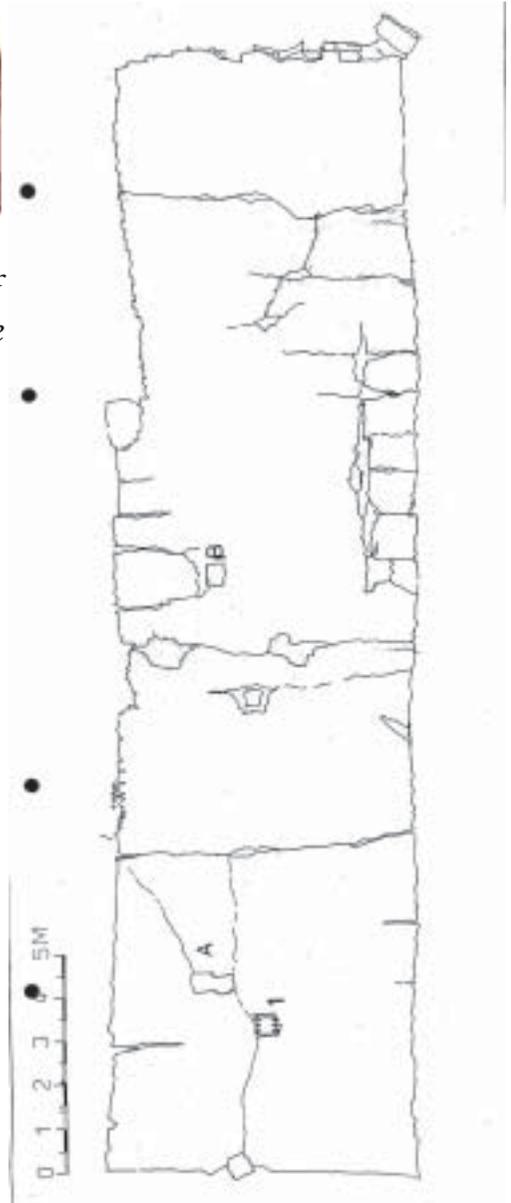
Judgment dismisses “holes” argument

Judgment: page ¥, line ¥

“The apparent absence of evidence of holes in the roof of Morgue 1 at Crematorium 2 falls far short of being a good reason for rejecting the cumulative effect of the evidence.”



Air photos (1998) of the roof of Morgue I: where is the line of four 20cm “holes”?





Aerial photos of the roof in summer and winter 1998 (also available as 3-foot enlarged original, as produced in Court as evidence)

The wire mesh insertion devices

Pelt found a document referring to a *Drahtnetzeinschiebevorrichtung* and translated it as a wire mesh insertion device (did he?), and he related this to his four mythical wire-mesh columns fastened to the supporting pillars as described by “eye-witnesses” as a “wire mesh (cyanide pellets) insertion device.

Drahtnetz wire net

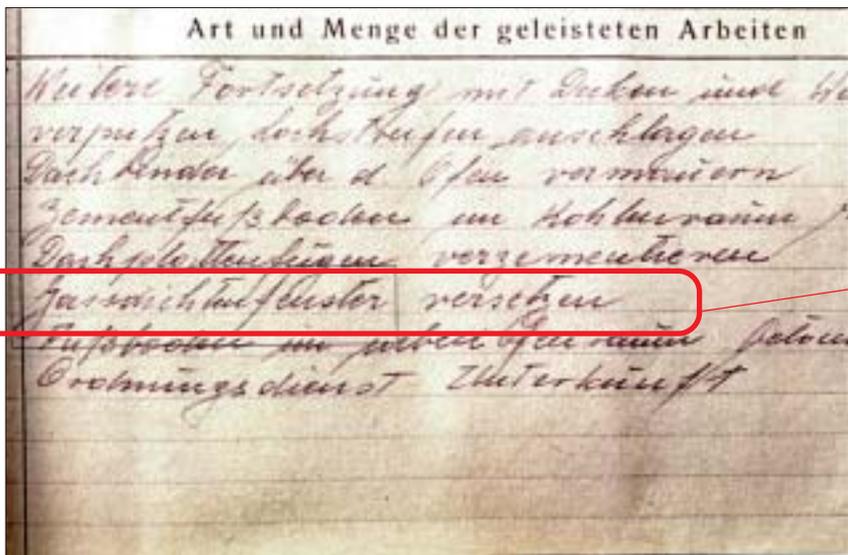
-einschiebe- push-in, shove-in

-vorrichtung (Cassel’s German Dictionary): preparation, arrangement; contrivance; mechanism. (Langenscheidt also offers): device, appliance, gadget, equipment; fixture; chuck.

We say that the reference is probably to the wire net device inserted inside the gas tight window shutter, as shown in standard German wartime civil defence literature.

“Gastight doors and windows”

Understandably, the Defence became excited about the presence of certain documents produced from Auschwitz files which referred explicitly to gas, gassing, gas-tight, gas-tight doors, and gas-tight windows and shutters. These items were readily accorded a uniquely homicidal purport by Van Pelt. (We allow without comment that the spellings of some of the documents is substandard, given the probable education of the documents’ authors). Gray J. shared the enthusiasm of Rampton and witness Van Pelt for these documents. We reproduce these documents on the following pages. From the fact that the Defence produced, in time, not just black and white copies but colour copies, and then enlargements of details from them, can be seen the evidentiary value which they attached to them.



Words ringed: “*Gasdichtenfenster versetzen*” (spelt thus, “shift gas-tight window”). A detail from a daily worksheet of the Riedel construction firm, working on the incineration plant at Auschwitz in February 1943/.

Source: Auschwitz archives; Defence s Auschwitz core file.

RIEDEL & Sohn **Tagesbericht** *Donnerstag, den 28.2.1943*

RIEDEL & Sohn
Eisenbeton- und Hochbau
BIELITZ

Bei Frost absteigende, bei Hitze steigende Temperatur angeben

Vorm.		Temperatur	Witterung
Nachm.			

Arbeiter- und Stundenzahl				Verarbeitete Baustoffe			
in vormal. Klassen		in abweichend. Klassen*)		in vormal. Klassen		in abweichend. Klassen*)	
Arbeiterzahl	Arb.-Stund.	Arbeiterzahl	Arb.-Stund.				
Stunde	Arbeiter	Stunde	Arbeiter	Stunde	Arbeiter	Stunde	Arbeiter
2	17 1/2						
15	90						
1	6						
20	182						
100	370						

Tagesleistungen

Art und Menge der geleisteten Arbeiten

1. Weitere Fortsetzung mit Balken und Stützen
verputzen der Balken auszubringen
2. Balken über d. Spine vorzubereiten
3. Zementfußbänke im Kellerbau zu bauen
4. Dachstuhldecken im Kellerbau zu bauen
5. Gussstahlstützen verstreuen
6. Fußboden im Kellerbau zu bauen
7. Bodenplatte im Kellerbau zu bauen
8. Bodenplatte im Kellerbau zu bauen

Bemerkungen:

Verfertigt von
W. RIEDEL & Sohn
Eisenbeton- und Hochbau
BIELITZ

W. Riedel

*) abweichende Arbeiter bezeichnen vorheriger schriftlicher Vereinbarung

73

*On March 31, 1943 Bischoff orders three gastight doors
with 8mm thick glass peephole*

Gray J. attached particular significance to this document, No. 26171/43/Ki./Schul. of March 31, 1943.

Three gas-tight doors are to be supplied for Sites 30b and 30c (the Crematorium II building site). For Crematorium III a gastight door identical to that supplied for II, directly opposite, is now to be urgently supplied, identically fitted with “a peephole of double-thickness laminated 8 mm glass” with rubber seal and grommet.

We comment: a 16mm thickness of glass – three-quarters of an inch! – does not seem geared to any damage that humans (*i.e.*, prisoners) might inflict. It is clearly designed to be blastproof.

11. März 1943.

49

RECHENUNGS-ABTEILUNG
ARCHIVSTUM

U/H 143/11./Schml.

Betrifft: Auftrag 2261/30/17 vom 18.1.43 Bw 30 b
Begru: Best. Schreiben vom 24.3.43, Nr. 5056 - 43 -
Zusammen: Zeise.

Vn.
Deutsche Ausrüstungswerke
G.m.b.H.

Werk-Anschritts/O.S.

Es wird auf o.a. Schreiben mitgeteilt, dass
drei ungeübte Fibre gemäss des Auftrages vom 18.1.43
für das Bw 30 b und 30 c auszuführen sind, genau nach
den Ausmassen und der Art der bisher angeforderten
Fibre.

Bei dieser Gelegenheit wird an einem weiteren
Auftrag vom 6.3.43 über Lieferung einer Gestr. 100/192
für Leichensteller I des Krematoriums III, Bw 30 a, er-
innert, die genau nach Art und Mass der Kellertür des ge-
genüberliegenden Krematoriums II mit Gestr. aus doppelt
8 - mm - Glas mit Gummidichtung und Beschlag auszufüh-
ren ist. Dieser Auftrag ist als besonders dringend
anzusehen.

Lie mit Auftrag vom 25.1.43 für Bw 30 bestellte
Bodenabschlusstür, sowie 1 Stück Bleidrahttür braucht
nicht ausgeführt werden, dieser Auftrag ist hinfällig.

Die vorbereiteten 10 ebn Bromholz werden bei
nächster Gelegenheit abgeholt.

Der Leiter der Zentralverwaltung
der Waffen -) und Polier-Anschritts

3 - Stabsamführer.

Verteiler:
Registretur, Akt Bw 30
E.A. Zeichmann
Baultg. K.L. - 1/4 - Utuf. Kirschneck

Gastight Doors and Shutters

There are many gastight doors and shutters found, mounted and unmounted, on the sites at Auschwitz I and II (Birkenau).

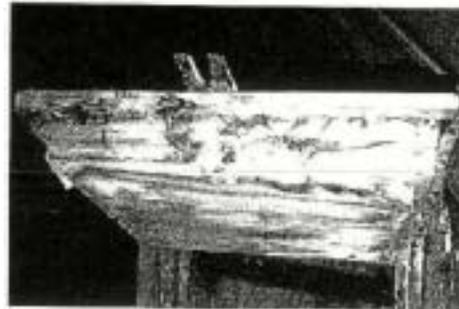
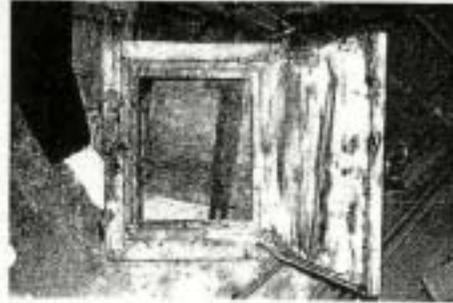
Auschwitz ordered gas tight doors; the mounting of the doors was accordingly shifted from inside Mortuary 1, opening inwards, to outside, opening outwards.

What did Van Pelt write in his report?

What did Judge Gray say in Judgment?



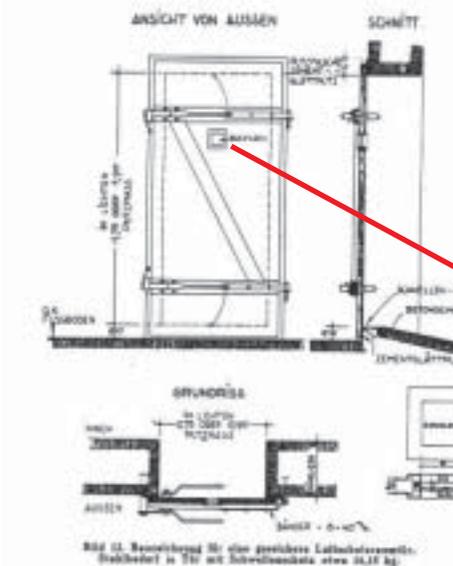
Window shutters found at Auschwitz. Pressac states that this shutter [these shutters?] was meant to cover a window-opening of Crematorium IV and V. They appear to be identical to standard air raid shelter shutters portrayed in World War II civil defence literature.





“Fig.17. The same shutter as in fig. 16, opened.”

From Behelfsmässigen Luftschutzräume, falsch und richtig [Makeshift air raid shelters, wrong and right] by Dr-Ing Ernst Baum, in *Gasschutz und Luftschutz*, X, (1940), page 25.



“Drawing for a gas-proof air raid shelter door”

“Peephole”

From an article by by Magistrats-Oberbaurat Erich Heinicke, Praktische Erfahrung beim Bau von öffentlichen Luftschutzräumen in bestehenden Gebäuden [Practical experience with the construction of public air raid shelters in existing buildings] in *Gasschutz und Luftschutz*, X, (1940), page 6.



Jean-Claude Pressac publishes on page 29 this photograph of a fumigation chamber door in Auschwitz. It is of the crudest construction, and has a square peephole. It is not claimed to have been used for homicidal purposes.

*Irving introduces the theory that Morgue 1 was to double
as Gassing room and air raid shelter*

D D Guttenplan, *The Holocaust on Trial* (London, 2001), page 155-6:

Get transcripts

Irving: "I will concede that they found in the ventilator grating taken from Morgue 1 of Crematorium 2 remains of cyanide."

"Yes," says Rampton. "How do you account for that, Mr. Irving?"

"Because that particular room was used as a Vergasungskeller as a gassing cellar."

"Yes. Gassing what?"

"I think the evidence is clear that it was used as a gassing cellar for fumigating objects or cadavers."

"Fumigating cadavers?" Rampton asks.

"Yes."

Rampton's disbelief is obvious. "What makes you say that?"

"That is what that room was for," Irving replies blandly. "That is what mortuaries are for. In mortuaries you put cadavers."

"That is news to me, Mr. Irving. What is the evidence for that?"

"I beg your pardon?"

"What is the evidence that they used that [room] for gassing corpses?"

"That is what it was built for."

"I am sorry," Mr. Justice Gray interrupts, "this seems a crude question, but what is the point of gassing a corpse?"

"Because they came in heavily infested with the typhus-bearing lice that had killed them."

"So why," asks Rampton, "would it need a gas-tight door with a peep hole with double eight-millimeter-thick glass and a metal grill on it?"

Irving's answer launches a whole new hypothesis. "At this time in the war," he says, "most of Germany was coming under the — it was feeling the weight of Royal Air Force Bomber Command forays. We were bombing all over Eastern Europe. Our bombing raids were extending further and further into Central Europe. You will see from the Auschwitz construction department files an increasing concern about the need to build bombtight shelters and gas-tight shelters because of the danger of gas attack."

"Now it is an air raid shelter, is it?" Rampton asks sarcastically "I beg your pardon?"

“In early 1943, Mr. Irving? The first bombing raid anywhere near Auschwitz was not until late ‘44?”

Once again Irving promises to provide documentation. “I will tomorrow produce to you an index of all the documents in the Auschwitz construction department files from late 1942 onwards dealing with the necessity to build air raid shelters, gas-tight air raid shelters and other similar constructions on the Auschwitz compound.” And once again, the promised evidence never appears.

In the meantime Rampton is still trying to make sense of Irving’s first suggestion: “If they were used for gassing corpses, I wonder if you can help me to understand the point, because shortly after they were in the mortuary they went to be incinerated?”

“Yes.”

“What would be the point of gassing a corpse that was shortly going to be incinerated?”

“The corpses arrived . . . fully clothed. Before they were Van Pelt, who teaches at the University of Waterloo, in Ontario, will not arrive until the next day. In the remaining minutes of the afternoon, Rampton goes back to the gas-tight doors. These doors pose two problems for Irving. First, Leuchter claimed they didn’t exist.”

“There is no provision,” says Rampton, reading from the Leuchter report, “‘for gasfitted doors windows or vents.’ That as a matter of history is just wrong, is it not, Mr. Irving?”

“I do not know. I have never been to Auschwitz.”

“No, the documents —” says Rampton.

“There are repeated references . . . to the need for a gas-tight door with a peep hole.”

“Yes. In the Auschwitz documents there are repeated references to this, yes. “So that is a piece of Leuchter which has no foundation in history?”

“I think what he is saying,” Irving replies, “is that nothing was to be seen when they inspected on-site.”

D D Guttenplan, *The Holocaust on Trial* (London, 2001), page 159:

Get transcripts

[. . .] Rampton points out the plans show the doors opening out-wards.

“All doors opened outwards,” he says, “which is why they are not air raid shelters.”

Irving: “Air raid shelters’ doors always open outwards.”

Rampton: “Why? What if the rest of the building tumbles down outside and you cannot get out?”

Irving: “The reason is because the blast from a bomb exploding outside will blow the door in if it opens inwards. Air raid [shelter] doors always open outwards.”

Comment Irving handed to the Court a sheaf of pages copied from the Index to Auschwitz documents housed at the Moscow archives, microfilmed by the Holocaust Museum. The index referred to many pages of documents on air raid security preparations from 1942 onwards. Clearly the Nazis did not wait for air raids to begin before preparing shelter construction. The first minor air raid on Auschwitz was on May 5, 1943 (as another document he gave to the court, quoting from the semi-official Auschwitz Kalendarium, reported).

But the doors had “peepholes”

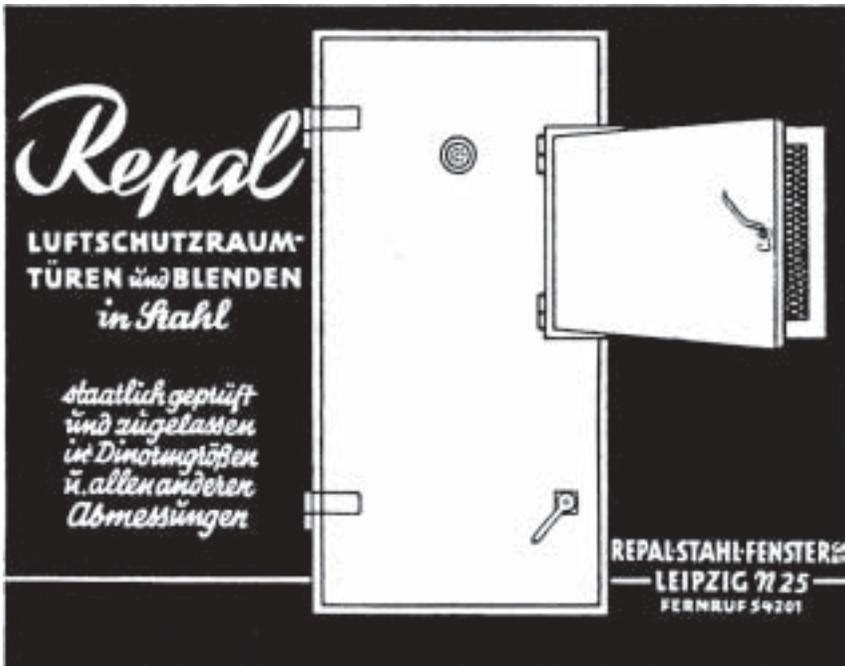
Day ¥: January 24, 2000, page 132, line ¥

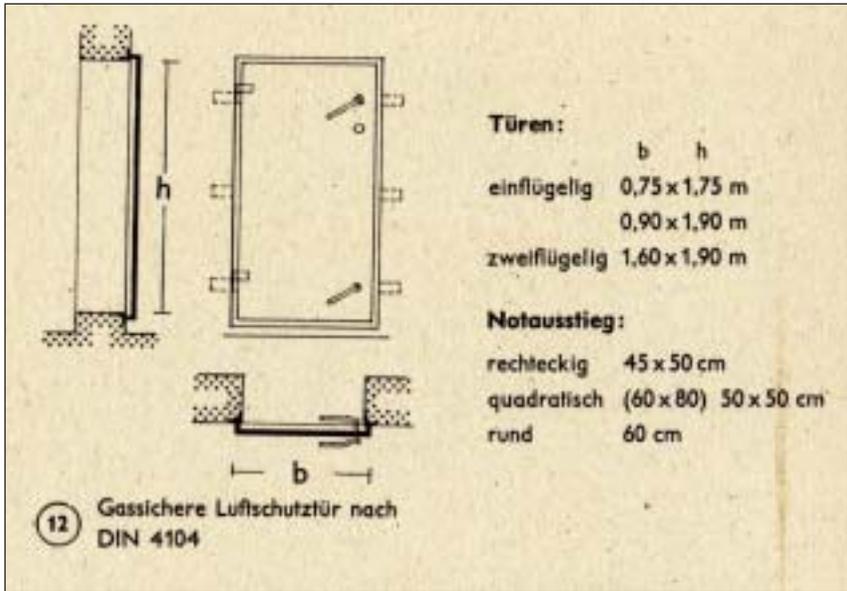
Mr Rampton: [introduces an Order for a gastight door with a peephole for the Mortuary 1 at Krema II; he implies that this peephole can only denote usage as a homicidal gas chamber.]

A picture of the order for gastight doors from Pelt report

Peepholes were common in air-raid shelter doors

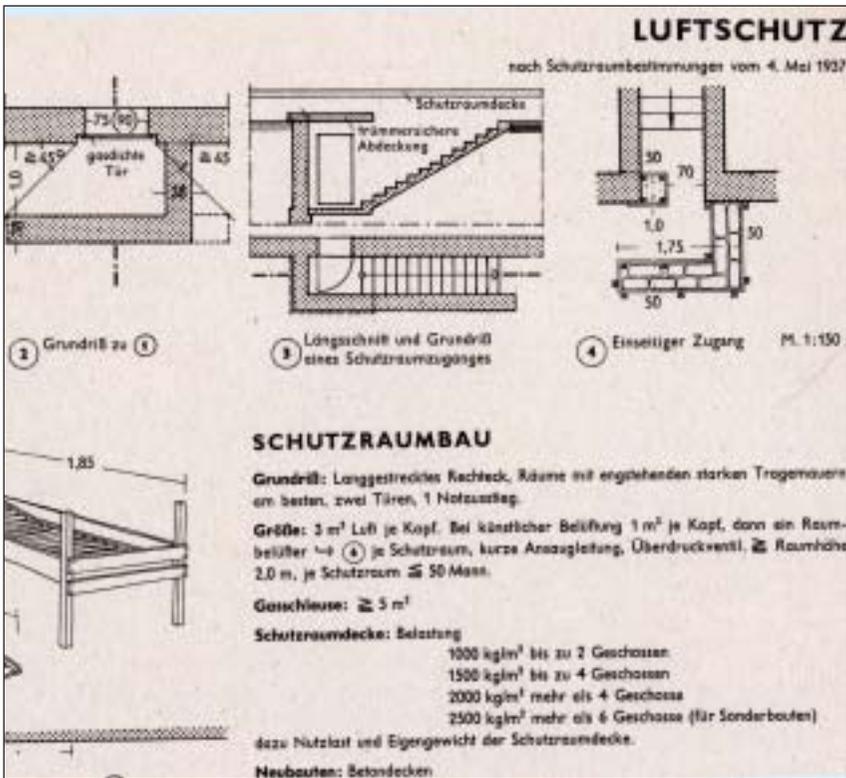
*Below: Advertisement for standard Repal-brand “air raid shelter doors and shutters (Blenden), published in the German World War II journal, *Baulicher Luftschutz* (Architectural civil defence) 1942, page v. Prior to March 1942 the journal was *Gasschutz und Luftschutz* (Gas- and air raid defence). Note plural of *Tür* is *Türen*; and note the wire mesh insert behind the shutter.*





The gasproof door “is to open outwards”

“Gasproof air raid shelter door to DIN 4104 standard” – Neufert, the wartime architect’s manual which Van Pelt confirms was used in Auschwitz, shows the shape and mounting of air raid shelter doors (Source: Prof. Ernst Neufert, *Bauentwurfslehre* Berlin, 1943, page 255; in evidence before the Court).



“Shelter construction” – Neufert, page 256, shows (top left image) the gastight door [gasdichte Tür] mounted in the passage outside the room, in a rabbeted concrete doorframe. There is reference to a “Gasschleuse which is to be five square metres or larger.

Türen: Außentür gasdicht und splittersicher, 20 mm Stahlblech. Innentür nur gasdicht. Schutzraumabschlüsse sind vom RLM genormt nach DIN 4104. Tür schlägt nach außen auf, nicht in den Falz.

Fenster: Außenblende, splittersicher, Innenblende gasdicht. Bei Notausstieg keine Sandsäcke.

Sonstige Öffnungen: Kaminputztür, gasdichte Klappe, Durchgangsstellen der Rohre abdichten.

The same page 256 specifies: “Doors: External door gas tight and splinter-proof, 20 mm steel plate. Internal door only gastight. . . . Door opens outwards, not into the rabbet.” “Windows: External shutter, splinter proof, internal shutter gastight.”



WWII German air raid shelter door: Hamburg

The recently opened Bunkermuseum in Hamburg is a well restored Air-raid Shelter (Bunker) from WWII. For the dm.5 entrance fee, reports Stroheim, one negotiates the steep stairs down. “Three long tunnels are on display, each capable of holding fifty to sixty people but, we were told, ‘As the war progressed often more than two hundred people were crammed into each tunnel.’”

At the bottom of the stairs, some ten meters underground, there was a sign in large letters in front of each tunnel reading ‘gasschleuse’ (lit.: Gas-sluice: Gas tract). The lady guide told me that every air-raid bunker had a gas tract and all the doors had peepholes in them so the people inside could look out to see if it was safe to leave the Bunker ” (Photo obtained March 29, 2000, courtesy of P von Stroheim, PVonstrohe@aol.com).

Note the peephole. The door is mounted outside the shelter room. Nobody claims that this was to be a homicidal gas chamber.



“Gas chamber” on display at Mauthausen

Tourists visiting the former Nazi concentration camp at Mauthausen, Austria, are shown a chamber with a gastight door with a peephole (*see enlargement on right*). The showers inside the room are working showers. The manufacturer’s name is embossed around the peephole: “Chema Olomuc Lutin”.



Olomuc is the Czech name of a town known as Olmütz during German sovereignty over the Sudeten territories. The door handles operate from inside and outside, and there is no lock; it is not a well-conceived design for a homicidal gas chamber.

Images: Holocaust website, *A Teacher’s Guide to the Holocaust* Produced by the Florida Center for Instructional Technology, College of Education, University of South Florida.
<http://fcit.coedu.usf.edu/holocaust/GALL32R/MAUT132B.HTM>
MAUT132C.HTM
MAUT132D.HTM

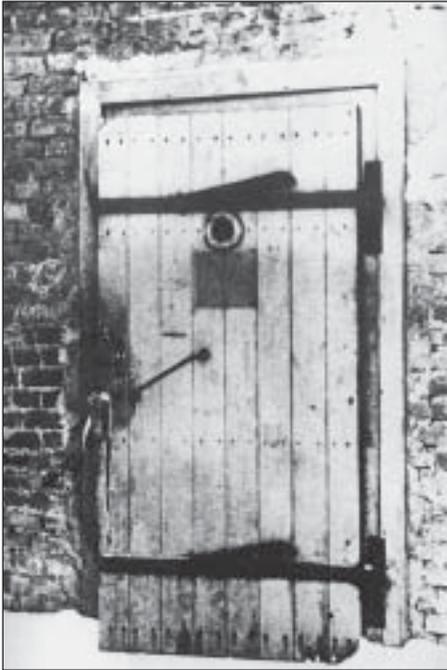
“Gas chamber” on display at Majdanek, Poland

Crowell says: We know that the gastight door with peephole at Majdanek is a bomb shelter door, and the legend on its peephole is “Auert Berlin”, from which we know that it was made by the Auert firm, in Berlin. It is identical to the bomb shelter door in the Repal advertisement. It was either a bomb shelter or decontamination center. It was next to the camp’s “Bad u. Desinfektion II” complex. At the British trial of Tesch and Weinbacher both defendants claimed that the chamber at Lublin (*i.e.*, Majdanek) was converted for the use of Areginal (a disinfectant agent similar to carbon tetrachloride) in 1944. The Majdanek doors can also be opened from inside: on one door the handles have been sawn short, in another case they are intact. The doors appear to be “locked” with a 1/4" x 1.5" iron bar across the middle, but this would not be very effective at preventing people from bursting out (the doors can be unlatched from within).

Dachau

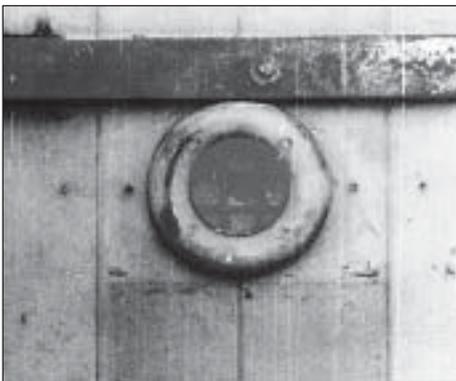
The door to Dachau should not be too hard to find. When you get the photo, you will note that unique among “gas chamber doors” it does not have a peephole. Instead, there is an aperture in the wall next to it. It is, of course, still maintained that no one was ever gassed in it, although Broszat’s 1960 declaration has been hedged around in many other ways.

Fumigation chamber at Auschwitz (“Canada I”)



Above: The door to the fumigation chamber, in 1945.

Below: Enlarged view of the peephole (note the grill).



Personal effects were taken from arriving prisoners and recycled after fumigation in the large “Canada” store. The fumigation chamber was often photographed. Note the square patch below the peephole where a warning notice was no doubt hung.

Nobody now claims that it was ever used as a homicidal gas chamber.

The defendants scoffed at Mr Irving’s suggestion (day ...) that Krematorium II was also partly intended as a fumigation chamber; as a facile argument in support, they pointed to the presence of a peephole in the door.

This argument reappeared in the Judgment of Gray J.

The photos are from page 46 of Jean-Claude Pressac: *Auschwitz: Technique and Operation of the Gas Chambers* (Beate Klarsfeld Foundation, New York, 1989), which was in evidence. Pressac leaves no doubt that this was a de-lousing chamber.

Richard Breitman, in Michael J. Neufeld, Michael Berenbau (eds.), *The Bombing Of Auschwitz: Should The Allies Have Attempted It?* (St. Martin s Press, New York, 2000), pages 29 and 284:

More suggestive was a later (November, 1942) message that Auschwitz urgently needed six hundred gas masks to equip its new guards, but that, too, was only one little piece of a picture.

Indeed. The document Breitman relies on is facsimiled on opposite page: German Police Section, Bletchley Park, German Police Decodes, November 20, 1942, items 38-39, PRO HW 16/22.

The decode tells us nothing about *homicidal* gassings at Auschwitz; not one of the tens of thousands of decodes in the PRO mentions them. It is in fact further evidence that Auschwitz (like other sites in Nazi-occupied Poland) was preparing for poison gas air attacks in November 1942 – at the very time that the gastight-doors-with-peepholes modifications to the underground Morgue 1 were being ordered.

Or did the fact that Mr Irving, for one, as a schoolchild carried a cardboard box with a gasmask over his shoulder to kindergarten each day make him a homicidal murderer *in spe* too?

This is a new document, first drawn to our attention on April 29,
2001

facsimile of PRO HW 16/22
November 20, 1942, items
38-39

Air raid labour was performed at Auschwitz in May 1943

Formular der Dienststelle:

Verw. des K. L.
Auschwitz 0/3

Zentralbauleitung der
Waffen- u. Polizei
Auschwitz 0/3

K.G.L.

Bestellnummer: 1943 Kap. 21/7b Ia (Bau) 65
 Herstellung: 1. 11. 1941.
 Genehmigungsverfügung vom: 13. 11. 1942.
 Kostenveranschlagung vom: April 43, 0,30
 Auftrag Nr. 1/d. 0,15
 Vertrag Nr. 43

Bestand (RM) 30 = Krematorium II 43
 Bauzustand: 43
 Preisänderung: G.-Befehl
 500

Rechnung Nr. den 2. Juni 1943.

Ursache (Beschreibung)	Ursache (Beschreibung)	Bestandsposten	Ursache (Beschreibung)	Ursache (Beschreibung)

Vorwissen:
siehe beigeschlossenen Forderungsnachweis u. Zusammenstellung bei BW1

No.	Strang	Einl. Nr.	Objekt	Menge	Preis je Einheit	Betrag	Bezug
			Auf BW: 30 entfallender Haftlingsersatz für Monat Mai 1943 lt. beigeschlossener Aufteilung	100	0,30	30,-	
				100	0,15	15,-	
						45,-	

Fachtechnisch richtig!
 Auftrags-Nr. 43
 11. 11. 1943

Festgestellt auf AM 43
 11. 11. 1943
 11. 11. 1943

nachgerechnet am 12. 6. 43
 11. 11. 1943

*Die fällige Summe wird auf Anweisung
 mitbringen beim Krematorium 2 beifolgend.*

Beleg: Bauhaushaltbuch

See facing page.

Civil Air Defence Inspection of Auschwitz on December 6, 1943

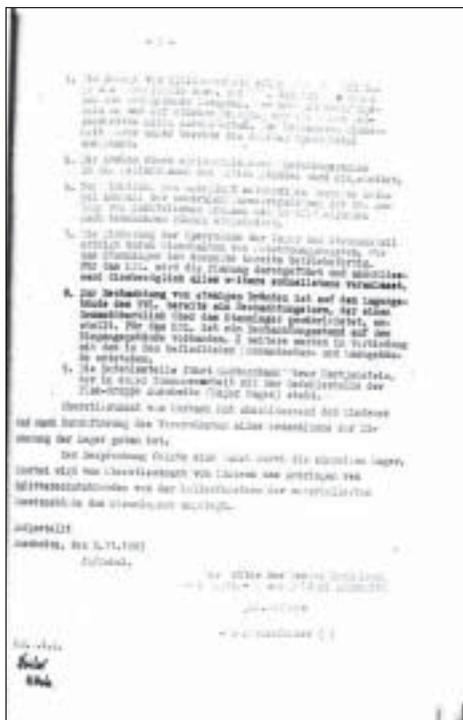


“... daß die Verdunklungsbestimmungen in den einzelnen SS-Unterkünften im Lagerbereich bereits seit längerer Zeit genauestens beachtet werden.“

“Für die Verdunkelung der Lagerunterkünfte und die einzelnen Verwaltungsdienststellen sind sämtliche Massnahmen getroffen.“

“Für die Sicherung bei etwaigen Angriffen nicht in Einsatz stehender SS-Männer des Wachverbandes der Verwaltungsstellen sowie der im Lagerbereich wohnenden Arbeiter ist die Anlage von Splitterschutzgräben gemäss den geltenden Bestimmungen bereits geplant and wurde mit dem Herstellen sowie Einbau der Betonformstücke die Zentralbauleitung bereits begonnen.“

“Der Besprechung folgte eine Fahrt durch die einzelnen Lager. Hierbei wird von Oberstleutnant von Mirbach das Anbringen von Splitterschutzblenden von der Kellerfenstern der unterkellerten Massivgebäude des Stammalgers angelegt.“



Lieut-Col. von Mirbach of *Luftgaukommando VIII* (Krakow), inspected Auschwitz air-raid defence measures on December 6, 1943, with the Auschwitz officials Bischoff, Jothann, Josten (in charge of civil air defense), and Liebehenschel, the new commandant. The following passages of the report are relevant:

“ . . . that blackout regulations in the various SS barracks in the camp area had already been meticulously observed for a long time.

“All steps had been taken to black out the camp’s barracks and the various administration buildings.

“In line with current regulations splinter-trench shelters have already been planned for all SS men of the administration guard unit and for workers living within the camp and their construction has already been put in hand with the manufacture and placement of concrete formworks.”

The report also contains the following passage:

“During a subsequent drive through the various camps, Mirbach recommended that the basement windows of the fixed structures in the base camp should be equipped with splinter shutters.”

—

Note that air-raid blackout regulations had been “meticulously observed for a long time.” The risk of air raids was therefore not new. Note also the recommended equipping of existing basement structures in the base camp [*Stammlager*] with splinter shutters.

(Source: Moscow archives, ZBL, 502-1-401)

*Was Gray J right to pooh-poooh Irving's statement that
Crematorium [Krema] II was used for fumigation?*

On about January **, 2000 the defence introduced a number of new Auschwitz documents as facsimiles. Mr Irving on January 27 drew the Court's attention to the following extracts from three of those documents:

April 13, 1943

[Topf to Auschwitz construction office]

Listing [of scarce metal requirements] [. . .]

Re: No. 24674/43/Ro-Pru/Pa.

Two Topf disinfection stoves for the Krema II in the prison camp, Auschwitz

25 kg of aluminium, 15 kg of zinc alloy, 8 kg of magnesium

Re: 2467943Ro-Pru/Pa.

Expansion of Ventilation and Extraction system (warm air duct) of Krema II at prison camp, Auschwitz.

5.5 kg copper, 0.1 kg zinc, 1.4 kg aluminium, 0.6 kg zinc alloy.

August 20, 1943 page 1 [. . .]

42/243 Ventilation and Air Extraction system for Krema II, invoice

Feb 22, 1943

7,795

[. . .]

41/219 Warm air conduit for Krema II, invoice dated June 11,

1943

1,070

August 20, 1943 page 2 [. . .]

Crematorium II and III [. . .]

43/204/1 Disinfection equipment advance payments due

[Facsimiles of those documents here]

But what about the air conditioning gear installed in Crematorium II?

Van Pelt made much of this in his Report, asserting that morgues did not need heating and cooling equipment, while homicidal gas chambers did. He produced a document specifying Vorwärmung equipment for the Morgue I. This wrongly impressed the Court. Mr Irving put to him in cross-examination the [page in the architect's code used at Auschwitz, Neufert, which stipulated, under "morgues", that mortuaries had to be maintained by heating and cooling equipment at a temperature range of 16 to 16 degrees C. Van Pelt had no answer to this.

To this source we now add also W Heepke, *Die Leichenverbrennungs-Anstalten (die Krematorien)*, Verlag von Carl Marhold (Halle a S, 1905), page 104, which stipulated that underground mortuaries must have 5–10 exchanges of air per hour. Morgue I of Crematoria II and III had provision for 4,800 cubic metres of air to be changed in a space of 483 cubic metres, i.e., 9.94 exchanges of air per hour (source: Auschwitz Museum archives, D-Z/Baum, Nr. Inw. 1967, pages 246-7). [We have facsimiles. Rudolf provides this source material]. The other underground chamber in II and III, the Ayuskleidekeller (undressing chamber) or Morgue 2, had a slightly larger ventilation performance, at 10,000 cubic metres per hour. This suggests that the Morgue I was not intended to serve any purpose more unusual than Morgue II.

In the Court of Appeal

January 29, 1943: Crematorium II's inadequate power supply for simultaneous "special treatment"

ftgb. 144/84/43/Swo/LM

Auschwitz, am 29.1.1943

A k t e n v e r m e r k

Betr.: Stromversorgung und Installation des KL und KGL.

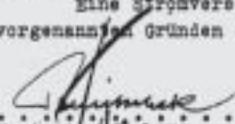
Besprechung am 29.1.43 zwischen Zentralbauleitung
Auschwitz und AEG-Kattowitz, Anwesende:

Ing. Tomitschek - AEG und
H-Uscha. Swoboda - Zentralbauleitung.

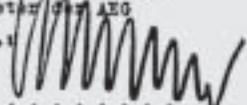
Die AEG teilt mit, dass ihr auf ihre Eisen- und Metallanforderung, welche teilweise schon im November 1942 ausgeschrieben wurden, bisher noch keine gültigen Eisen- und Metallscheine zur Verfügung gestellt wurden. Es war dieser Firma aus diesem Grunde bisher nicht möglich, die bestellten Anlagenteile in Arbeit zu nehmen. Es besteht die grosse Gefahr, dass durch weitere Verzögerung in der Kontingentierung dieser Aufträge die Liefertermine wesentlich verlängert werden.

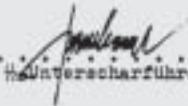
Aus diesem Grunde ist es auch nicht möglich, die Installation und Stromversorgung des Krematoriums II im KGL bis 31.1.43 fertigzustellen. Das Krematorium kann lediglich aus Lagernden, für andere Bauten bestimmten Materialien soweit fertiggestellt werden, dass eine Inbetriebsetzung frühestens am 15.2.43 erfolgen kann. Diese Inbetriebsetzung kann sich jedoch nur auf beschränkten Gebrauch der vorhandenen Maschinen erstrecken (wobei eine Verbrennung mit gleichzeitiger Sonderbehandlung möglich gemacht wird), da die zum Krematorium führende Leitung für dessen Leistungsverbrauch zu schwach ist. Für das hierfür erforderliche Freileitungsmaterial sind ebenfalls noch keine Eisen- und Metallscheine zugewiesen worden.

Eine Stromversorgung des Krematoriums III ist aus vorgenannten Gründen derzeit überhaupt nicht möglich.


Vertreter der AEG

S.K.G.


H-Hauptsturmführer


H-Unterscharführer

The “Reinhardt” camps

Defendants claimed that Reinhardt was a cover name for the mass extermination; Irving suggests it was a reference to State-secretary Fritz Reinhardt, whose section at the ministry of finance handled the looted properties of the victims and Himmler’s secret bank account. Defendants identified three camps as being Action Reinhardt camps, Belzec, Sobibor, Treblinka. We can point out that a September 1942 record of a visit by Pohl to Auschwitz refers in handwriting to the Aktion Reinhardt work there (see facsimile). In short there is much confusion and no documentation whatsoever linking the three camps to mass extermination. It is once again all eye witness based.

“Eye-witness” opinions differ even on such simple matters as how the killing was conducted, e.g. at Treblinka.

Nuremberg Dokument 3311-PS

Ende April 1942 waren die ersten drei Kammern fertig, in welchen die allgemeinen **Massaker durch Dampf** durchgeführt wurden. Etwas später, im Frühherbst 1942, wurde das richtige Todesgebäude für den Massenmord fertiggestellt, das zehn Todeskammern behaute. . . Nachdem die Kammern bis zur Aufnahmekapazität gefüllt waren, wurden sie hermetisch verriegelt und Dampf eingelassen. . . Aus Berichten darf geschlossen werden, daß mehrere Hunderttausend Juden in Treblinka (durch Verdampfung) getötet wurden.

Anti-Defamation-League of Bnai B'rith: *The Record, The Holocaust in History, 1933-1945* (New York, 1985) page 10.

2,000,000 Murders by Nazis charged

At Treblinka . . . alone, it is said, the Germans have killed 2,000,000 persons. . . “When the cells are filled they are closed and sealed. **Steam is forced through apertures** and suffocation of the victims begins.

Landgericht Düsseldorf, K I Ks 2/64

Den Mittelpunkt des Todenlagers bildeten die Gaskammern, in denen die Juden durch die **Auspuffgase eines Dieselmotors** getötet wurden. . . Schon bald nach Betriebsaufnahme stellte sich heraus, daß die Kapazität des alten Gashauses nicht ausreichte. . . Man begann daher Ende August/Anfang September 1942 mit dem Bau eines neuen großen Gashauses, das mehr und größere Gaskammern enthielt. . . Im Vernichtungslager Treblinka wurden mindestens 700.000 Personen, überwiegend Juden (durch Gas) getötet.

Hitler's pro-Jewish interventions

In his biography *Hitler's War* Mr Irving referred to the number of occasions on which Hitler intervened in a sense that was to some degree pro-Jewish. This was relied upon by the defendants as being an example of Mr Irving's distortions, and Gray J. agreed with them.

Arranged in roughly chronological order, these are such episodes, not all of them introduced by Mr Irving in his books or in Court, which clearly show that his was a reasonable conclusion to draw.

Document on right: August 20, 1935: "Prevention of Atrocities. The Führer and Reich Chancellor has ordered that members of the Nazi Party, its formations and associated units are definitely to refrain from individual actions against Jews. Anybody who after this still participates in individual actions against Jews or instigates them, is to be regarded in future as a provocateur, revell amnd eemy of the state. [. . .]"

Aug 20, 1935 Berlin Document Center / Ordre No I

(2) 728

Der Reichs- und Preuss. Min. d. J. Abdruck. Berlin, 20.8.35.
 Nr 40, Königspl. 6.

III P 3710/58. Geheim Eintragung Nr. 31185
 Eintrag

Betrifft Verhinderung von Ausschreitungen.

Der Führer und Reichkanzler hat angeordnet, daß Einzelaktionen gegen Juden von Mitgliedern der NSDAP, ihrer Gliederungen und der angeschlossenen Verbände unbedingt zu unterbleiben haben.

Wer hiernach noch an Einzelaktionen gegen Juden teilnimmt oder dazu anstiftet, wird in Zukunft als Provokateur, Rebell und Staatsfeind betrachtet werden. Ich ersuche daher, von nun an rücksichtslos gegen alle derartigen Aktionen vorzugehen und mit allen Mitteln für unbedingte Ruhe, Sicherheit und Ordnung zu sorgen. Ungesetzlichkeiten sind erforderlichenfalls mit den schärfsten Mitteln zu verhindern. Järes, dürfen strafbare Handlungen der Sachbeschädigung, der Körperverletzung, der Hütigung, des Haus- u. Landfriedensbruchs und der Zusammenrottung unter keinen Umständen geduldet werden, gleichviel gegen wen diese Straftaten sich richten.

Wenn trotzdem noch Ausschreitungen vorkommen, ersuche ich mich sofort telefonisch oder telegrafisch zu berichten. Ich werde jede Unsigkeit verantwortlicher Beamten bei der Durchführung dieses Erlasses auf schärfste dienststrafrechtlich ahnden.

ges. Frick.

o 10953
 Abdruck Geheim Laufes, am 29.8.35.
 Bezirksamt.
 J. A.
 Ges. Dr. Wagner.

an die Gond. Stationen
 zur Kenntnis und gewissen Beachtung.

Abdruck
 An die Kreisleitung der NSDAP. Laufes
 zur gefl. Kenntnis mit dem Ersuchen auf die unterstellten Gliederungen einzuwirken, Einzelaktionen unbedingt zu unterlassen.



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Berlin Document Center, file 240/I, in Mr Irving's Discovery

1935

Mr Irving put it to the witness (check: Evans?) that Hitler protected his own personal chauffeur Emil Maurice, although he was of Jewish blood. Hitler also had a Jewish dietary cook and was reluctant to dismiss her when Bormann insisted on it.

From Prof. Peter Hoffmann, McGill University of Montreal, *Die Sicherheit des Diktators* (Munich 1975), p.67 (engl. edition, *Hitler's Personal Security*, pages 50—51: [Maurice] enjoyed his Führers protection to the very end of the Nazi era.)

Munich, August 31, 1935 [*Part-translation of page opposite*]

1. SS-*Standartenführer* Emil Maurice is according to his genealogical tree without doubt not of Aryan descent.

2. On the occasion of SS *Standartenführer* Maurice's marriage, when he had to produce his genealogical tree, I represented to the Führer my own view, namely the position that Maurice would have to resign from the SS.

3. The Führer decided that in this single exception Maurice as well as his brother might remain in the SS, as he [Emil] had been his first companion and his brother and the whole Maurice family had served the movement with rare courage and loyalty in the first and hardest months and years .

[*The remaining paragraphs reveal Himmler's dismay at this.*]

Der Reichsführer-SS München, den 31. August 1935
Geheim!

Aktenniederschrift.

1.) SS-Standartenführer Emil Maurice ist gemäß seiner Ahnentafel ohne Zweifel nicht arischer Abstammung.

2.) Ich habe gelegentlich der Verheiratung des SS-Standartenführers Maurice, bei der er die Ahnentafel vorlegen mußte, dem Führer meinen Standpunkt vorgetragen, nämlich, daß ich der Ansicht wäre, Maurice müsse aus der SS ausscheiden.

3.) Der Führer entschied, daß in diesem einzigen Ausnahmefall Maurice, ebenso seine Brüder, da er sein allererster Begleiter war und er und seine Brüder und die ganze Familie Maurice in den ersten, allerschwersten Monaten und Jahren der Bewegung mit seltener Tapferkeit und Treue dienten, in der SS verbleiben könne.

4.) Ich bestimme, daß weder Maurice in das Sippenbuch der SS aufgenommen wird, noch daß irgendein Nachkomme der Familie Maurice in die SS aufgenommen werden kann.

5.) Von dieser Niederschrift erhält der Chef des Rasse- und Siedlungshauptamtes ein Exemplar zu seiner Kenntnis mit der Bitte der strengst vertraulichen Behandlung, es ist lediglich der Chef des Sippenamtes mir einzubeziehen.

6.) Ich stelle für mich und alle meine Nachfolger als Reichsführer-SS fest, daß lediglich Adolf Hitler selbst das Recht hatte und hat, auch für die SS eine Ausnahme in blutlicher Hinsicht zu bestimmen. Kein Reichsführer-SS jedoch hat heute und in aller Zukunft die Berechtigung, in den blutlichen Forderungen der SS Ausnahmen zu bewilligen.

7.) Ich verpflichte alle meine Nachfolger zur strengsten Einhaltung des in Punkt 6 festgesetzten Standpunktes.

Der Reichsführer-SS
(gez.) *H. Himmler.*

Hitler argues for greater assimilation

1935

From: Prof. Philippe Burrin, *Hitler and the Jews* (London 1994).

Professor Burrin quotes a newly-found document, ‘*Bericht des mit der Führung der Geschäfte beauftragten SS-Sturmmann Dr. Schlösser über die Besprechung im Rassenpolitischen Amt vom 25.9.1935*,’ – Report by the acting chief SS Sturmmann Dr Schlosser on the conference in the Racial Policy Office on September 25, 1935 (Bundesarchiv Koblenz NS2/143).

According to this, Hitler had mentioned three possible solutions concerning the half-Jews, (1) emigration, (2), sterilisation, (3) assimilation.

Against the party wishes, Hitler opted for assimilation. He stressed that realities must be taken into account, everything should be subordinated to the goal of rearmament and military build-up.

Anyway, he wished that there be a more vigorous emigration of the pure Jews.

Says Burrin: Hitler made it clear that he alone decided the pace and scope of the anti-Jewish policy. At least before 1937, anti-Jewish policy had a limited place in Hitler’s preoccupations.

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Nationalsozialistische Deutsche Arbeiterpartei

Der Stellvertreter des Führers

München, den 5. Februar 1936
Kunze

A n o r d n u n g
Nr. 17/36

Streng vertraulich

Aus Anlass der Ermordung des Landesgruppenleiters Schweis der NEDAP, Pg. G u t l o f f, hat der Herr Reichs- und Preussische Minister des Innern, Pg. Reichsleiter Dr. Frick, im Einvernehmen mit mir zur Verhütung von Ausschreitungen gegen Juden einen Hund-erlass herausgegeben, den ich nachstehend den Geleitungen ver-träulich zur Kenntnis bringe :

Der Reichs- und Preuß.
Minister des Innern.

Berlin, den 5. Februar 1936

III GR p 3710/459
Ref.l.drt.ERMENT.

Verschlüsselt durch Funkspruch.

An

- a) die Herren Reichsstatthalter
- b) den Herrn Reichskommissar für die Rückgliederung des Saarlandes
- c) die Landesregierungen (für Preussen:
den Herrn Preuß. Ministerpräsidenten, Geheime Staatspolizei,
die Herren Oberpräsidenten und sämtliche Polizeibehörden).

- 2 -

DRUCKSTÄMMEL (siehe bei allen postamtlichen Schreiben usw.)

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yy

Betrifft: Verhütung von Ausschreitungen aus Anlass der Ermordung des Landesgruppenleiters der Schweiz der NSDAP, Fg. G u s t l o f f.

Unter Bezugnahme auf meinen Erlaß zur Verhinderung von Ausschreitungen vom 20.8.1935 - III GR p 3710/59 - ordne ich im Einvernehmen mit dem Stellvertreter des Führers, Reichsminister Rudolf Hess, an, dass Einzelaktionen gegen Juden aus Anlass der Ermordung des Leiters der Landesgruppe Schweiz der NSDAP, Wilhelm Gustloff in Devos, unbedingt zu unterbleiben haben.

Ich ersuche gegen etwaige Aktionen nötigenfalls vorzugehen und die öffentliche Sicherheit und Ordnung aufrecht zu erhalten. Sofern es zu Ausschreitungen kommen sollte, ist mir unverzüglich fernmündlich oder telegraphisch zu berichten."

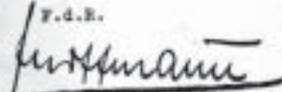
Ich bitte, sämtlichen untergeordneten Parteidienststellen sofort telefonisch oder telegraphisch den Inhalt dieses Sonderlasses zur Kenntnis zu geben.

Meinen Sonderlaß Nr. 160/35 vom 2. August v. J. bringe ich hiermit in Erinnerung und weise nochmals darauf hin, dass jegliche Ausschreitungen gegen Juden oder jüdische Provokateure strengstens untersagt sind.

Es bleibt nach wie vor dem Führer allein überlassen, welche Politik von Fall zu Fall einzuschlagen ist. Kein Parteigenosse darf Politik auf eigene Faust treiben.

F.d.R.

ges. R. H e s s


(A. Hoffmann)

Verteiler: II 4

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The January 30, 1939 Hitler “prophesy”

1939

Speaking in the Reichstag on January 30, 1939 Hitler prophesied that if they launched a new world war, European Jewry would themselves be destroyed. In speeches in later years, as Mr Irving correctly catalogued them in his biography *Hitler’s War*, Hitler repeatedly reverted to and recalled those words.

From: Philippe Burrin, *Hitler and the Jews* (London 1994), page 90:

Eichmann in his trial said he had taken the prophesy as propaganda.

[Note: The defendants rely on Eichmann’s trial as a source.]

Hitler agrees with guideline: “No physical extermination:

1940

From: Philippe Burrin, *Hitler and the Jews* (London, 1994), page 76:

In the spring of 1940 Himmler wrote in a memorandum: “... we reject as *ungermanisch* and as impossible the Bolshevik method of the physical extermination of people...” On May 28, 1940 he submitted this to Hitler, who found it “very good and right” and agreed that it be used as a guideline.

From: Philippe Burrin, *Hitler and the Jews* (London, 1994), page 81:

On August 17, 1940 Hitler talked about shipping the Jews to Madagascar.

D J C Irving vs. Penguin Books Ltd & Lipstadt

The “Generalplan Ost”

1941

From: Philippe Burrin, *Hitler and the Jews* (London 1994), page 99:

Generalplan Ost of July 15, 1941: Within 30 years 31 million persons including Jews were to be resettled in Siberia.

Hitler orders an end to the Euthanasia programme

1941

The “mercy-killing” of the mentally sick and disabled which he had ordered in 1939 and 1940 caused such public unrest that Hitler ordered it stopped.

From: Philippe Burrin, *Hitler and the Jews* (London 1994), page 127:

On August 24, 1941 Hitler ordered a halt to the “euthanasia” operation. Did he have another job in mind for the crew? It does not seem so. According to testimony at Nuremberg a large number of men were dismissed. A few weeks later a part of the remaining personnel [obviously rather few] were sent to Globocnik in Lublin.

Hitler sanctions release of Jews from Auschwitz

1943

Source: *Die Welt*, Berlin, February 2, 2000, Literarische Welt, page 9:

Widerstand des Herzens

Die Berliner Demonstration von 1943

Von Eckart Klessmann

Am 6. März 1943 befahl Goebbels, alle jüdischen Männer, die in „Mischehe“ lebten, freizulassen, nachdem er sich der Zustimmung Hitlers versichert hatte

. . . Die Demonstration in der Rosenstraße richtete sich ja auch nicht gegen das Regime selbst, sondern bezog sich einzig auf die ihren Frauen entrissenen Männer. . . Nicht nur die 1700 in „Mischehe“ lebenden Juden wurden wieder freigelassen, man holte sogar 36 nach Auschwitz Deportierte von dort zurück. Fast alle Entlassenen haben das Hitler-Reich überlebt.

[Translation:]

Resistance of the Heart

The Berlin Demonstration of 1943

by Eckart Klessmann

On March 6, 1943, after first gaining Hitler's agreement, Goebbels ordered the release of all Jews living in "mixed marriages." . . . The demonstration in Rosenstrasse was not directed against the regime as such, but was concerned only with the men torn away from their womenfolk. . . Not only were the 1,700 Jews living in mixed marriages released again, they even fetched back thirty-six who had been deported to Auschwitz. Almost all of those released survived the Hitler Reich.

The Nineteen “Distortions”

Hitler’s Trial in 1924

Reichskristallnacht

Daluege

The gas chamber story invented by PWE

Police chief Daluege and the Fraudster Statistics

In his 1996 biography Goebbels. Mastermind of the Third Reich, Mr Irving wrote at pages 46–47 this passage (about the Weimar Republic and Berlin’s then police chief Weiss):

“Dr Goebbels would shun no libel to blacken his name. Instinctively carrying on an ancient tradition of name-calling, he seized on his nickname of ‘Isidor’ and commissioned a scurrilous Nazi marching song about him.²⁹ He would highlight every malfeasance of the criminal demimonde and identify it as Jewish. In the Weimar republic, he was unfortunately not always wrong. In 1930 Jews would be convicted in forty-two of 210 known narcotics smuggling cases; in 1932 sixty-nine of the 272 known international narcotics dealers were Jewish. Jews were arrested in over sixty percent of the cases of running illegal gambling dens; 193 of the 411 pickpockets arrested in 1932 were Jews. In 1932 no fewer than thirty-one thousand cases of fraud, mainly insurance swindles, would be committed by Jews.³⁰

“Statistical comparisons are of course usually odious, but it was against this background that Goebbels now started his campaign.”

The Goebbels endnotes (on pages 547-548) read as follows:

²⁹ ‘Der mächtigste Mann in Gross-Berlin /Das ist der Isidor Weiss. / Doch Joseph Goebbels, der “Oberbandit”, / der macht ihm die Hölle schon heiss,’ etc. Bering, 20; Bering shows that the Berlin communist Otto Steinicke (later a Nazi and editor on Goebbels’ *Angriff*) had first dubbed Weiss ‘Isidor’ in *Rote Fahne* No.152, as early as Jul 5, 1923; and see May 16, 1924.

³⁰ Interpol figures, in Deutsche Nachrichten-Büro (DNB), Jul 20, 1935; and see K Daluege, ‘Judenfrage als Grundsatz,’ in *Angriff*, Aug 3, 1935 (Hauptamt Ordnungspolizei files, BA: R.19/406); on the criminal demimonde of 1920s Berlin see Paul Weiglin, *Unverwüstliches Berlin. Bilderbuch der Reichshauptstadt sekt 1919* (Zürich, 1955) and Walther Kiaulehn, *Berlin: Schicksal einer Weltstadt* (Munich, 1958).

Prof Evans seized on this passage as further evidence of Mr Irving's distortions and manipulations (see his Expert Report, page 694, para. 5.4 (b) *Jewish Criminality in Berlin*).

Although Mr Irving is explicitly giving statistics for the entire Weimar republic, Evans (page 695, para.14) stated untruthfully that Mr Irving was attributing the criminality figures to Berlin alone.

In his prejudicial and irrelevant para. 7 – about Daluege's unbecoming later career, all of which is properly reported by Mr Irving in the biography – Evans describes Daluege, whose paper on the Jewish crime statistics, from the German federal archives collection of Daluege papers, was used by Mr Irving as his primary source, as making the statement in his capacity “a *Generalleutnant der Landespolizei*.” The opening two lines (see facsimile on next page) make plain however that Daluege was speaking as “*Befehlshaber der deutschen Polizei*” (commander in chief of all German police forces), and thus clearly in a position to know what he was talking about. Evans also finds it repugnant and blameworthy that the National Socialists appointed a fellow-Nazi to that post.

It is however the deliberate omissions and distortions in Prof. Evans's report which show what this neutral expert witness is up to. Thus, in para. 9 Evans merely states,

“Daluege went on to present figures detailing the alleged participation of Jews in criminal activities in Germany which proved the danger of Jewry for the German people .

But this obliquely worded sentence masks precisely the statistics which Mr. Irving quotes in *Goebbels*, which was why Evans was careful not to provide it to the Court, to enable it compare the original source with the precise figures cited by Mr Irving. Daluege stated (quoted in full to enable the Court now to assess the full flavour):

“Now that professional criminals can be considered as having been smashed by the National Socialist methods, we have begun directing our attention to the public danger of the professional fraudster, a circle of anti-social elements which functions more beneath the surface but causes at least the same harm to the economy as the former. I'm not thinking here of the big rackets,

which are no longer possible in today's Germany. I'm thinking of the countless 'minor cases' in which a refined fraudster exploits the gullibility of his more simple-minded countrymen to rob them of their last farthing and drive them to despair. I'm thinking above all also of the unclean business practices in business life, with which the professional fraudsters inflict multi-million-mark damages on the economy and, sad to say, very often slither through the loopholes of the criminal law in doing so. Among them I count the so-called hit-and-run deals, junkbonds, loansharking, insurance rackets, and the like.

"Even if we have succeeded in forcing down the number of fraud [*Betrug*] cases, from 31,000 in 1933 to 18,000 in 1934, the damage done still comes to over 112.5 million Reichsmarks. Here we were able upon closer investigation to establish that a considerable portion, if not the largest part, of these fraudulent manipulations was still being effected by Jews. [...]"

General Daluege mentioned on this occasion that the international war on narcotics smuggling was a matter of concern to the League of Nations, and called for the closest cooperation of all nations. "We have established," he continued, "that in 1931 of 272 international drug dealers, 69, *i.e.* 25 percent, were Jews; in 1932 the ratio was 294 to 73, also twenty-five percent; in 1933 the ratio of Jews involved in international narcotics cases rose to 30 percent, and in the years 1934 and 1935 it declined again a bit. In 1934, 24 percent of all international drug dealers were Jews, in 1935 they were 13 percent.

"What is of particular interest in this connection are the figures on domestic narcotics crimes, and it is to be observed that in relation to the overall German population figures Jews form a startlingly high proportion of narcotics dealers. In 1930, 42 Jews were involved in 210 domestic narcotics cases, *i.e.* 24 percent; in 1931 9 percent; in 1932, 12 percent; in 1933, 14 percent; in 1934, 17 percent, and in 1935, 11 percent. If one contrasts the Jewish proportion of the German population, 0.76 percent, as the latest

data collected by of the Reich Statistical Office establish, then the damage inflicted on the health of the German nation by the Jews in this respect is substantial. [. . .]

In 1933 57 Jews were arrested in 94 card-sharpping and gambling cases, that is 60.6 percent. In consequence of the intervention of the National Socialist government the figures have gone down a bit, but they still provide clear enough evidence. In 1934, 42.6 of those arrested in card-sharpping and gambling cases were still Jews, in 1935 they are 59 percent.

“Even more telling are the figures for pickpocket gangs. Before the tough National Socialist measures



Official German press agency release on General Daluge s July 20, 1935 speech (Mr Irving s Discovery: German Federal Archives, General Kurt Daluge papers, file R.19/406).

against professional criminals came into effect the art of dipping lay, if I may put it like this, almost exclusively in Jewish hands. In 1932, 193 Jews were arrested in 411 pickpocketing cases, *i.e.* 74 [sic. *the typescript draft correctly has '47'*] percent.”

First, it is to be noted that the various figures cited by Daluege fluctuate just as “real” statistics do, and Daluege cites them all, even those that appear inconvenient to his argument.

Second, Prof. Evans in his Expert Report went to great and devious lengths to suggest that Mr Irving had invented the figures and quotations.

The discrepancy between 47 percent and 75 percent referred to by Evans in para.(b)3 of his report is simply explained: the correct percentage (47%) is given in the typescript draft speech in Daluege’s files (German federal archives, R.19./406), the evident typo (74%) is given in the 1935 printed version (*see the facsimile on previous page*); Evans has not spotted this. Mr Irving used the correct figure in his book.

The reference to Interpol as the source is in other papers in the file, to which Mr Irving no longer has access; there would have been no reason for him to invent the phrase. In Court, Evans untruthfully tried to suggest that Interpol did not exist in 1935.

Mr Irving made no attempt in Goebbels to conceal the source of his figures, which was the official German (Evans: “Nazi”) news agency report on Daluege’s speech, and the general’s own draft for that speech. While Evans is perhaps right to point out that Mr Irving clumsily condensed the Daluege sentence in writing “In 1932, no fewer than thirty-one thousand cases of fraud, mainly insurance swindles, would be committed by Jews,” Daluege still clearly stated that of the 31,000 (1933) and 18,000 (1934) fraud cases recorded in the Weimar Republic “we were able upon closer investigation to establish that a considerable portion, if not the largest part, of these fraudulent manipulations was still being effected by Jews,” *i.e.* in 1934 as in 1933.

It is hard therefore to see what point Evans thinks he has scored other than a mistaken year (1932 instead of 1933). Evans is accus-

ing Mr Irving however of using false statistics, not mistaking the year. He concludes by triumphing,

“It would have been easy for Irving to have verified his account against other sources. Thus the official German Criminal Statistics for the year 1932 recorded a total of 74 persons convicted of insurance fraud (paragraph 265 of the German Criminal Code) *in the whole of Germany* — a far cry from Irving’s figure of over 15,500 cases of insurance fraud committed in 1932 by *Berlin Jews alone*.”

This argument (based on a statistical table, buried in one of twelve ring binders supplied to Mr Irving on December 22, 1999) and put to him at the last minute under cross-examination by Mr Rampton, is demonstrably deceitful.

The table of the Reich Statistical Office (*Criminal Statistics for 1932*) which Evans relied on (see facsimile below: the first column lists actual “convictions”) in fact confirms that in 1932 there were 50,126 convictions for *Betrug* (fraud); 7,376 convictions for repeat fraud; 74 (as Evans stated) for insurance swindles; and 10,600 convictions for serious document-forgery; so Daluege’s figures for 1933 and 1934 do not seem



77a	Personenhehlerei: § 258	391	22
77b	Sachhehlerei: § 259	110484	428
78	Gewerbe- od. gewohnheitsmäßige Hehlerei: § 260	142	—
79	Hehlerei im wiederholten Rückfall: § 261	139	—
80a	Betrug: § 263	50126	581
80b	Betrug im wiederholten Rückfall: § 264	7376	1
80c	Betrügerisches Beschaffen geringwertiger Gegenstände aus Not: § 264a	312	3
81	Versicherungsbetrug: § 265	74	—
82	Untreue: § 266	4243	13
83a	Einfache Urkundenfälschung: § 267	1431	48
83b	Schwere Urkundenfälschung: § 268	10600	257
83c	Hochverrat, sines falsche Staatspapiere: § 269	518	33

to have been inflated at all, and the trend of Mr Irving’s figures appears to have been an under-estimate, if anything.

The gratuitous interpolation, with emphasis, by Prof. Evans of the phrase “committed . . . by *Berlin Jews alone*” is disgraceful.

Further comment on this instance of his manipulation of documents and selective quoting of statistics seems superfluous.

Hitler and the Kristallnacht

Mr Justice Gray agreed with the Defendants that Mr Irving had dishonestly made out that Hitler disapproved of Goebbels's initiative in launching the Kristallnacht pogrom (November 10, 1938), and that Hitler had tried during the same night to halt the madness. Professor Evans stated under cross-examination that Mr Irving's eye-witnesses, including members of Hitler's staff, were Nazis and hence could not be trusted as sources. Mr Irving stated that where Goebbels implied in his diary – written up after the event – that Hitler had endorsed his actions, Goebbels, an inveterate liar, was demonstrably trying to cover his own tracks for posterity.

Mr Irving's sources included the 1947 typescript memoirs of airforce adjutant Colonel Nicolaus von Below; the diary of Ulrich von Hassell (sacked by Hitler as ambassador to Rome in 1937, and executed by him in 1944 as a traitor); the February 1939 handwritten aide memoire of Fritz Wiedemann, Hitler's personal adjutant, sacked by him late in 1937 and travelling in February 1939 to San Francisco as German consul-general; Rudolf Likus... etc. The relevant extracts are given below; most were before the Court as Exhibit ARJ2.

Hitler's meeting with Admiral Horthy

Hitler and Ribbentrop met with Admiral Horthy in Salzburg on April 16 and 17, 1943. Interpreter Paul Otto Schmidt wrote non-verbatim minutes. Drafting *Hitler's War* – a 6,000 page typescript – over a period of years, Mr Irving inadvertently switched two filing cards on which he had extracted passages of note, and consequently got the two dates mixed up. The defendants leapt on this, and claimed that the transposition of the two sentences was deliberate, but could produce no proof for that claim. Hitler is quoted in the official minute as stating, “There is no need for that” (namely, murdering the Jews). Whether said on April 16, or 17, 1943 is surely immaterial. Nor could the Defendants convincingly suggest how this accidental transposition had contributed to Mr Irving's alleged agenda to whitewash Hitler, when omitting the passages entirely would have served that purpose better.

At their meeting on April 16, Schmidt records Horthy saying:

He had done, he said, everything one decently could against the Jews, but one couldn't very well murder them or bump them off somehow. The Führer replied that there was no need for that either. Hungary could accommodate the Jews in concentration camps just like Slovakia.

As the defendants correctly point out, Mr Irving erroneously dated the above extract, which he quoted in *Hitler's War*, as April 17. In our view this accidental transposition was wholly immaterial.

On the following day, April 17, Ribbentrop (again in Hitler's presence) is then described by Interpreter Schmidt's notes as follows:

On Horthy's retort, what he was supposed to do with the Jews

then, after he had pretty well taken all means of living away from them – he [Horthy] surely couldn't beat them to death – The Reich Foreign Minister [Ribbentrop] replied that the Jews would have to be either annihilated or taken to concentration camps; and that there was no other possibility.

Aside from minor translation differences, there is no dispute over this. On the same page, Hitler enlarged on Ribbentrop's statement:

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

In our view it is plain from the context that both Hitler and Ribbentrop were urging internment on the Hungarians, as the lesser of two evils.

Mr Irving's case is that it was reasonable to assume from the Schmidt records quoted that Hitler and Ribbentrop had *not* been urging the extermination of the Hungarian Jews so much as their rooting out, or putting out of harm's way, as the lesser of two evils; he had quoted the "meat" of these passages in his Hitler biography anyway, while necessarily abridging them in the shorter US (and Focal Point) edition in 1991.

The following passages from Schmidt's notes were not cited by the defendants, but were put to the court in evidence by Mr Irving to support his argument. We have added **emphasis** for this appeal:

Source: Andreas Hillgruber: *Staatsm nner und Diplomaten bei Hitler* , vol. 2 (Frankfurt, 1970), page 239ff:

With great pain he (the Führer) saw that the policies conducted by Hungary internally were bound gradually to result in a complete disintegration of the morale of Hungarian soldiers. The pro-Jewish attitude in Hungary was completely incomprehensible to him. How, after the experiences they had had, could they have such a policy? He didn't want somehow to interfere with Hungary's internal affairs but just state bare facts. Germany was standing today with her morale firm because she had removed the Jews, of which even those remaining **would also soon have vanished to the East**. Difficulties like those Germany had experienced through the Jewish influence in 1918 could now no longer arise. If one did not **drive out the Jews** now, then they would again just as then destroy the economy, the currency, and morale. The Duce and Antonescu had completely accepted this. If Germany was today the only country among her allies which was domestically completely intact, this was only because Jewish subversion had been rendered impossible. In the steps against the Jews one should not be too timid. Hungary had not had an antisemitic policy, but they had ended up with a Bela Kun. Nor had the Baltic states and Poland had antisemitic policies, but they had been overrun by the Jewish Bolsheviks. The conclusion from all this was that if one was going to have the unpleasant side of a fight, one had no need to be frightened of fighting the fight against the Jews energetically. And there could be no hesitating about it, and if anybody believed in compromising over this question, they were badly mistaken. Anyway, why should the Jews be handled with kid gloves? After all, it was they who had triggered off the Great War and they were responsible for the millions of victims it had cost. After that they had called forth the Revolution, and here too they had caused immense suffering. **And for the present war, and the shape which it had taken, they were responsible particularly**

for the bombing of the civilian population and the countless victims among women and children. "All Europe must be razed to the ground," Ilya Ehrenburg, Roosevelt's [sic. Stalin's?] adviser, had written, and nor had he left Budapest out of that.

Ibid., Page 245:

To a comment of the Reich foreign minister, that two full-blooded Jews had again been elected to the Hungarian upper house, Horthy replied, that for constitutional reasons there was nothing that could be done against that, and that anyway in Hungary there was a large number of baptised Jews, among whom were many valuable human beings. **He had done, he said, everything one decently could against the Jews, but one couldn't very well murder them or bump them off somehow.**

"The Führer replied that there was no need for that either. Hungary could accommodate the Jews in concentration camps just like Slovakia. By the release of the positions occupied by the Jews, she would thereby open up for her own subjects many possibilities and in this manner create for the talented children of her people careers which had hitherto been barred for them by the Jews. If there was talk of murdering the Jews, then he (the Führer) must point out that only *one* person murdered, namely the Jew who started wars and who by his influence gave the wars their anti-civilian, anti-women and anti-children character. With regard for the Jews, there was always the possibility of having them work down the mines. But at all costs they must be cut off from any kind of influence on their host country." [...]

"The Reich foreign minister pointed out in this connection that every Hungarian Jew was so to speak an agent of the British secret service who possessed Hungarian nationality, and was furnished with considerable monetary resources. From that one could recognise how dangerous it was to allow the Jews to run around scot-free."

In our arguments we pointed out that there is no indication in the Hungarian files, which Mr Irving also consulted, that any of the remarks by Hitler or Ribbentrop had been taken as an exhortation to start exterminating, as opposed to “rooting-out,” Hungarian Jews. There would of course have been no need to use euphemisms in their own domestic Hungarian files. The defendants had made no attempt to consult the Hungarian records on these meetings.

The Antonescu conference of April 13, 1943

The Defendants made much of the fact that Mr Irving did not refer to the Jewish passage of Hitler's conference with Marshal Antonescu on April 13, 1942. But Mr Irving was writing a book about Hitler's War, not the Holocaust (the word did not even exist when he was doing most of the drafting). A reading of the Antonescu conference confirms that it does not add an iota to our knowledge of the position. It is cumulative and repetitive. Mr Irving did not have to mention every diplomatic conference that Hitler engaged in during his career. No doubt, if he *had* reported this conference in Hitler's War, the Defendants would have singled out another that he had omitted and still declared him delinquent. The book was already overlong and being shortened.

The fate of the Jews of Rome

Again, this was a history of Hitler's War, not of the Holocaust. The Defendants may not like it, but that was what people were buying. The 1991 edition was shortened by one-third to make room for the entire pre-war volume *The War Path* and much new material which had become available to Mr Irving since the 1977 edition – e.g., the diaries of Morell, Goebbels, Göring, etc. The cutting was done by a historian, Frau Dr Rosemarie von dem Kneesebeck (whom he himself hired as an outside editor for the job), Don Fehr (the editor at the American publisher Avon Books) and Mr Irving himself. Typically, one third of the lines, or one third of the paragraphs, on every page had to be cut. It is otiose now for the defendants to point to specific excisions and say that they were part of Mr Irving's alleged agenda. They have to prove it to a very high degree of certainty.

They draw attention to the excision from the new (1991) edition of the sentence "The SS liquidated them [the Jews deported from Rome to northern Italy] anyway, regardless of Hitler's order." If it was Mr Irving who made the cut then he did so because he considered that on balance the source evidence for the killing was anecdotal, and of lower quality than the telegrams from the German foreign ministry archives which he cited in both volumes and left in.

The defendants produced other documents (Evans Report pages 461–4), not known to Mr Irving at the time, which bore on Field Marshal Albert Kesselring's intentions with the Roman Jews (employing them in construction projects); these however had no bearing on Hitler or his *well-documented* veto on liquidating the Roman Jews.

The Ribbentrop Manuscript

See Evans Report page 478, about the Ribbentrop Aufzeichnung – a handwritten memoir by him written in 1945 captivity.

Mr Irving found it in the Bavarian State Archives. The Defendants accused him of deliberately omitting one sentence as part of his alleged agenda.

Once again he drew attention to the need to write books of a manageable length, and made a passing unflattering reference to the acres of sludge contained in the Evans Report.

In *Hitler's War*, he pointed out, he quoted in full the definite statement of disbelief by Ribbentrop; he omitted the sentence concerned because it was unsubstantiated speculation of the vaguest sort about Hitler's knowledge or otherwise of the fate of the Jews (ribbentrop: "I suppose that he at least knew about it...")

A more vacuous statement can scarcely be conceived. By August 1945, the time that Ribbentrop wrote this, there was no doubt that Hitler knew about the fate of the Jews (Mr Irving had repeatedly stated in his book that after October 1943 Hitler had no excuse for not knowing). So he suppressed nothing of value. Note that Mr Irving also omitted the (conceivably pro-Hitler) statement by Ribbentrop that as a vegetarian Hitler could not have killed.

The Aumeier Dossier

On June 3, 1992 Mr Irving stumbled across a dossier in the files of Lieut.-Colonel A. Scotland, commanding officer of the “London Cage” at Kensington, containing papers on SS Captain Aumeier, who had for a while been deputy commandant of Auschwitz. The Holocaust was never Mr Irving’s research subject (he was in 1992 working on *Goebbels. Mastermind of the Third Reich* and on *Churchill’s War*, vol. ii). Scotland was a notoriously rigorous interrogator, and Mr Irving entered in his diary that day (which was in evidence before the Court): “Once again, like Gerstein[’s], his reports grow more lurid as the months progress. I wonder why? Beaten, like Höss, or was he finally telling the truth? A disturbing two hours anyway.”

On June 4, 1992 Mr Irving faxed these reasonable misgivings about the value of the Aumeier dossier to Mark Weber at the Institute of Historical Review in Los Angeles, and to Karl Philipp, and asked their opinions (*see facing page*).

Gray J criticised that Mr Irving made little reference to Aumeier in the book *Nuremberg, the Last Battle* (published in 1997); but Aumeier was not called to Nuremberg, or even mentioned there. Mr Irving identified the dossier in a very full endnote.* Astonished that no scholars were interested in it, he drew expert witness Van Pelt’s attention to it in a lengthy private letter from Chicago on May 29, 1997 (which he also published in his newsletter and on his Internet website, with a link to Pelt suggesting that people e-mail him). The letter was correctly addressed to Pelt, but he denied receiving it and although it went to the credibility of this expert witness Mr Irving was not permitted by Gray J to press him further on that answer.

*The endnote 34 on page 353 read: “Nor did they introduce other compelling evidence about Auschwitz, for example, the testimony of S.S. *Sturmbannführer* Kurt Aumeier, who had for several weeks acted as deputy commandant of Auschwitz. Aumeier was initially as incoherent as Höss under interrogation by the British in Norway and England. The memoirs and manuscripts which he pencilled in the Kensington interrogation centre commanded by Lieut.-Col. Scotland also displayed an increasing precision with each week that passed. The final manuscript (or fair copy) signed by Aumeier was pencilled in British Army style with all proper names in block letters (PRO file WO.208/4661.) Aumeier was extradited by the British to Poland and hanged.”

Mr Irving's reasonable doubts about Aumeier as a source

London, June 4, 1992

To: [. . .] Mark Weber

Dear Mark, working in the Public Record Office yesterday I came across the 200pp handwritten memoirs, very similar in sequence to the Gerstein Report versions, of an SS officer Aumeier who was virtually Höß's deputy. They've just been opened for research. He was held in a most brutal British prison camp, the London Cage (the notorious Lt Col A Scotland). These MSS are going to be a problem for revisionists, and need analysing now, in advance of our enemies, and answering. I attach my transcript of a few pp., and you'll see why. He becomes more lurid with each subsequent version: first no gassings, then 50, then 15,000 (total). Brute force by interrogators, perhaps.

Yours sincerely, David Irving.

London, June 4 1992

Lieber Karl, im Public Record Office gestern stieß ich auf anl. Aufzeichnungen des stellv. Kdt von Auschwitz Aumeier (von den Polen nachher gehenkt). Was meinen Sie dazu? Angefangen im Juli 1945 die Aufzeichnungen werden (wie bei Gerstein) immer aufschlußreicher – zunächst keine Vergasungen, dann 50, dann 15,000. Ich habe diese Papiere, die erst jetzt freigegeben wurden, wohl als erster eingesehen. Man muß aber eine Antwort darauf haben. Etwa 200 Seiten handschriftliches, wie bei Höß. Oberst Scotland war einer der brutalsten britischen Vernehmungsoffiziere. Mit freundlichen Grüßen, Ihr, David Irving.*

*"Dear Karl, yesterday at the Public Record Office I came across the attached notes of the deputy cdt of Auschwitz, Aumeier (later hanged by the Poles). What d'you make of them? Starting in July 1945 the MSS get more and more rich (just as with Gerstein) – first no gassings, then fifty, then 15,000. I'm probably the first to have seen the papers which were just released. But an answer to them must be found. About 200 handwritten pp, like Höß's. Col. Scotland was one of the most brutal British interrogating officers."

In the lengthy, and detailed, letter to Van Pelt on May 29, 1997, challenging his scholarship and expertise long before it was announced that he was to be an expert witness for Lipstadt, Mr Irving had written as follows:

I am quite prepared to accept that there may have been experimental “gassings” on a limited scale both at Auschwitz and elsewhere [*comment, April 2001: which may seem a remarkable statement for a “Holocaust denier” to make*]; Adolf Eichmann’s papers which I was given in Argentina show that he himself witnessed one trial truck-gassing elsewhere, on which he was required to report to SS-Gruppenführer Heinrich Müller, but even he was never shown a gas chamber at Auschwitz.

[. . .] Had you after visiting Washington flown on to London, England, you could have used the many versions of the handwritten memoirs of Höss’s erstwhile stand-in and deputy Kurt Aumeier (written under similar conditions of duress; he too was, no doubt deservedly, hanged by the Poles). These pencilled papers are held at the Public Records Office. But Aumeier does not even figure in your history. Is not such an original document, written at or near the time, worth ten times what a Kitty Hart or Primo Levi writes for payment for profit-driven publishers? How can your colleague Deborah Dwórk be “Rose Professor of Holocaust History at Clark University” if she is unaware of Aumeier’s testimony or the Washington interrogation transcripts?

Mr Irving provided the Aumeier dossier to other writers, for instance Martin Gilbert and Gifford Gifford (covering letter from David Irving of October 7, 1992, in evidence before the Court). Mark Weber had meanwhile pointed out in a letter on June 20, 1992 (in evidence before the Court) that the Aumeier version was not consistent with the standard Auschwitz extermination story. Aumeier stated that a decision to kill Jews who could not work was not taken until late 1942, and only then “in order to hinder further epidemics.” He also confirmed that Crematoria II–III and IV–V, which were built in late 1942 and early 1943, were *not* constructed as extermination facilities. Aumeier clearly presented problems for both revisionists and Holocaust scholars, as Pelt shows in his report on page 390 where he also draws attention to errors. “Aumeier is confused on this point [the date of first gassings]. All the evidence points to the commencement of gassings in crematorium 1 a year earlier.”

Kristallnacht November 9, 1938

Gray J. omitted due reference to the 3: 45 a.m. telegram from Gestapo-chief Müller which flatly prohibits all acts of arson i.e., against all buildings, not just shops, which is clearly the result of the Hitler intervention which Mr Irving had described to him by all of his staff.

page 141 The fury of Hitler, Göring, Himmler and even Heydrich at Goebbels's arbitrary act is borne out in varying degree by numerous contemporary sources including – by implication – his private diary, first transcribed by me; Groscurth's and Hassell's diaries, Wiedemann's 1939 manuscript on the pogrom, the unpublished memoirs of the Luftwaffe's chief judge-advocate Christian von Hammerstein, Engel's notes, and Likus' report of Nov 30 (AA serial 43, 29067).

*The private diary of anti-Nazi Abwehr colonel Helmut
Groscurth confirms Hitler's rage*

Prof. Helmut Krausnick et al (ed.): *Tagebuch eines Abwehroffiziers 1938—1940* (Stuttgart, 1970), page 157. These documents are on National Archives microfilm T84, roll 229; and on Mr Irving's private microfilm DJ-22, filmed from the originals in the Bundesarchiv, files H08—104/1 and 104/3); cited by him in *Goebbels. Mastermind of the Third Reich*; the published volume was disclosed in his Discovery, and put before the Court in evidence, and the all-important 3:45 a.m. telegram was specifically quoted again in his final written submission to Gray J.

Privattagebuch 1938

Nov. Im November die Großaktionen gegen die Juden. Die erteilten Befehle für die »spontanen« Aktionen werden gesondert aufgehoben. Man muß sich schämen, noch ein Deutscher zu sein!

Dez. Anfang Dezember Reise nach Hamburg und Bremen.

Die beabsichtigte Reise nach Budapest mußte wegen Krankheit unterbleiben.

Es wird bekannt, daß der Führer und Göring sich scharf gegen die Judenaktion ausgesprochen haben.* Göring hat die Gauleiter stärkstens beschimpft, die scharfen Judengesetze sollen praktisch nicht durchgeführt werden. [. . .]

* "It becomes known that the Führer and Göring have expressed themselves sharply against the Jew-Aktion."

*Respected Scholars conclude that Hitler was shocked by
Goebbels' handiwork that night*

From Professor Philippe Burrin [Professor of International History, The Graduate Institute of International Studies, Geneva], *Hitler and the Jews: The Genesis of the Holocaust* (English edition 1994), page 57. Put to the expert witness Evans and to the Court in Bundle G.

Uncertainty persists about the exact orders Hitler gave to Goebbels. According to the results of an inquiry conducted by the Nazi party tribunal, it seems that he authorised the holding of spontaneous demonstrations; the party was neither to initiate or lead them. In his speech, however, Goebbels made it clear that the party's role was to organize them behind the scenes.

While Hitler could only have endorsed the concept of exacting reprisals, he seems to have been surprised by the extent of the destruction; soon he would be able to gauge its impact.

The German people had disapproved of the pogrom; foreign opinion strongly condemned it; and even some Nazi leaders, Goering and Himmler at their head, were critical. In each case Hitler covered for Goebbels, who did not derive the hoped-for benefits from the affair.

His relationship with the Fuehrer, which was becoming strained, deteriorated even more in the next two or three years. Hitler, however, had learned his lesson. There would be no further public violence against the Jews in Germany.

At the outbreak of war, as well as in September 1941, when the wearing of the yellow star was imposed, he issued very strict orders to forestall any incident.

The Sequence of telegrams shows that after Gestapo officials initially followed Goebbels' orders, fresh orders were issued during the night, "from the highest level," to halt the arson outrages



Nürnberger Dokument 574-PS (IMT, Bd. XXV, S. 377 f.): geheimes Fernschreiben vom 9. 11. 38, 23.55 Uhr (gez.: »Gestapa [Berlin] II Mueller«) »an alle Stapo-Stellen und Stapo-Leitstellen«

Nürnberg. Dok. 3051-PS (ebd., Bd. XXXI, S. 516ff.) enthaltenen geh. Blitzferschreiben aus München vom 10. 11. 38, 1.20 Uhr („gez. Heydrich, SS-Gruppenführer«) »an alle Staatspolizeileit- und Staatspolizeistellen« sowie »an alle SD-Oberabschnitte und SD-Unterabschnitte«.

48

10.11.1938
Schrift.

Nachstehend gebe ich folgendes FS. abschriftlich zur Kenntnis.
München 47768 10.11.38 0210

An die Staatspolizeistellen Augsburg, Eilmberg, Würzburg, Neustadt
a.d. Leinr.

Mit dem Brouchen um sofortige Weiterleitung an die Herren Regio-
ranggräsidenten und die Cheileiter der NSDAP.-

D r i n g e n d

Betreff: Massnahmen gegen Juden.
Das Gestapo Berlin hat soeben folgendes verfügt: [*]

1. Es werden in kürzester Frist in ganz Deutschland Aktionen gegen
Juden, insbesondere gegen deren Kulturgemeinden und Synagogen statt-
finden. Sie sind nicht zu stören. Jedoch ist im Benehmen mit der
Ordnungspolizei sicherzustellen, dass Plünderungen und sonstige be-
sondere Ausschreitungen unterbunden werden.

2. Sofern sich in Synagogen u. Kulturgemeinden wichtiges Archiva-
material befindet, ist dieses durch eine sofortige Massnahme sicher-
zustellen.

3. Es ist vorzubereiten, die Festnahme von etwa 20 - 30 000 Juden
im Reich. Es sind masszuwählen vor allem vorwähende Juden.

4. Sollen bei den kommenden Aktionen Juden im Besitze von Waffen an-
getroffen werden, so sind die schrifteten Massnahmen durchzuführen.
Zu den Gestaktionen können herangezogen werden:
Verfügungstruppen der SS, sowie allgemeine SS. Durch entsprechende
Massnahmen ist die Führung der Aktion durch die Stapo auf jeden Fall
sicherzustellen. Plünderungen, Diebstähle usw. sind auf jeden Fall
zu verhindern. Für die Sicherstellung von Materialien ist sofort mit
der zuständigen SS-Ober- und Unterebeneaufführung Verbindung auf-
zunehmen.

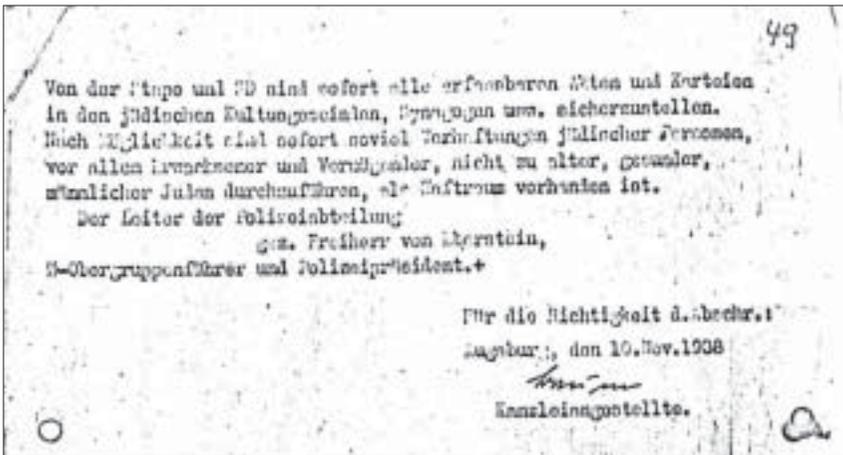
Dara wird noch folgende Weisung erteilt.

Die uniformierte Polizei soll bei diesen Aktionen zunächst nicht
einschreiten. Brandstiftungen, Plünderungen von Läden und Wohnungen,
sowie Vergewaltigungen gegen das Leben sind zu verhindern.

Der Einsatz der Kripo und Stapo hat in Zivil zu erfolgen. Mit
allen Gliederungen der NSDAP ist zur Vermeidung von Zusammenstößen
sofortige Verbindung aufzunehmen. Auf den Befehl des Chefs der Or-
dnungspolizei und des Chefs der Sicherheitspolizei wird verwiesen.

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[* mit Fernschreiben v. 28.05.38, 9.8.38; (N): 174-PS; Unt 227 22376/1]



The defendants offer the above telegram as proof that the pogrom orders were being issued far into the small hours. Examination shows that it is a telegram from Baron von Eberstein, police chief of Munich, repeating to subordinate Bavarian state police offices orders issued at 11:55 p.m. by Gestapo HQ *in Berlin*. At 2:56 a.m. (the time is given on the item below) the Office of the Deputy Führer *in Munich* – where Hitler was – countermanded the orders “on orders from the highest level” (i.e. the Führer himself).

From Defendant s bundle: Reichskristallnacht: BA Berlin BDC Ordner

Fernschreiben über Propaganda-Schreiber
Abschrift
Braunes Haus, München, 10.11.1938, 2.56 Uhr
An alle Gauleitungen
zur sofortigen Veranlassung
Auf ausdrücklichen Befehl allerhöchster Stelle dürfen
Brandlegungen an jüdischen Geschäften oder dergleichen auf
gar keinen Fall und unter gar keinen Umständen erfolgen.
Erbitte sofortige Quittung aller Gauleitungen.
gez. Opdenhoff.
Durchgegeben: Fugger.

See also the facsimile on following page



Rudolf Hess's Munich headquarters issues urgent orders to all gauleiters "from the very highest level" to halt arson attacks on Jewish businesses and suchlike.

[The original is a negative and poorly reproducible.]

Nationalsozialistische Deutsche Arbeiterpartei
Der Stellvertreter des Führers

München 33, den
10. November 1938

An alle Gauleitungen zur sofortigen Veranlassung!

A n o r d n u n g Nr. 174/38

(Wiederholung des Fernschreibens vom 10. Nov.1938)

Auf ausdrücklichen Befehl allerhöchster Stelle dürfen Brandlegungen an jüdischen Geschäften oder dergleichen auf gar keinen Fall und unter gar keinen Umständen erfolgen.

i.A.

(Opdenhoff)

Verteiler:
Gauleiter

[TRANSLATION:]

Nationalsozialistische Deutsche Arbeiterpartei
Office of the Deputy Führer

Munich 33,
November 10, 1938

To all Gau headquarters for immediate action!

Directive No. 174/38.

(Repeating Telex of November 10, 1938).

On express order of very highest level, arson attacks on Jewish businesses or suchlike are not to occur at any event and under no circumstances whatsoever.

P.P.
(*Opdenhoff*)

Distribution:
Gauleiters

'Fritz Wiedemann, handwritten MS, Feb 1939 (Libr. of Congress, Wiedemann papers, box 604).'

“There is absolutely no doubt that this action slipped out of the hands of those who instigated it. It is reliably reported that Göbbels (sic) as well repeatedly telephoned from Munich during the night to stop the worst outrages.”

Abchrift von Abchrift.

Fernschreiben.

10.11.38 0345

Betrifft: Massnahmen gegen Juden in der heutigen Nacht.

Folgende Befehle des Chefs der Sicherheitspolizei sind sofort dringend auszuführen:

- 1.) Nach letzten Befehlen sind im Zusammen mit den politischen Leitern jegliche Brandlegungen zu verhindern,
- 2.) alle in dieser Angelegenheit ergangenen und noch ergehenden Befehle sind mit *g e h e i m* zu kennzeichnen,
- 3.) Über die Durchführung der Aktionen und ihrer Auswirkung insbesondere auch über hervorsteckende Ereignisse sind dem Gestapo Abtlg. II ausnahmslos von jeder Stapel- und Stapelstelle zwei eingehende Berichte zu übersenden. Der erste Bericht muss bis spätestens heute den 10.11. morgens 05.00 Uhr, der zweite Bericht bis spätestens heute bis 07.00 Uhr morgens dem Geheimen Staatspolizeiant überreicht sein,
- 4.) der Eingang der Empfangsbestätigungen über das Blitzfern schreiben München Nr. 47.767 wird dringend erwartet.

Gestapo Abtlg. II

J.A. gez. *B a r t s .*

- - - -

F45/8

Source: Groscurth papers, Institut für Zeitgeschichte, file F45/8

An urgent 3:45 a.m. Telegram repeats orders from Heydrich (who was with Hitler in Munich) for an immediate halt to “any kind of” arsons

A transcript of this telegram issued by Gestapo Müller's staff (in Berlin) reporting the latest orders transmitted by Heydrich from Munich was found in the Groscurth papers (see the facsimile facing page): Prof. Helmut Krausnick *et al* (ed.): *Tagebuch eines Abwehroffiziers 1938—1940* (Stuttgart, 1970), page 157. These documents are on National Archives microfilm T84, roll 229; and on Mr Irving's private microfilm DJ-22, filmed from the originals in the Bundesarchiv, files H08—104/1 and 104/3); cited by him in *Goebbels. Mastermind of the Third Reich*; the Groscurth diary volume was disclosed in his *Discovery*, and put before the Court in evidence, and the all-important 3:45 a.m. telegram was emphasised again in his final written submission to Gray J. No reference was made to it by the defendants or their witnesses.

Fernschreiben vom 10. 11. 38, 3.45 Uhr:

»Folgende Befehle des Chefs der Sicherheitspolizei sind sofort dringend auszuführen:

1.) **Nach letzten Befehlen sind im Benehmen mit den Politischen Leitern jegliche Brandlegungen zu verhindern,**

2.) alle in dieser Angelegenheit ergangenen und noch ergehenden Befehle sind mit geheim zu kennzeichnen,

3.) über die Durchführung der Aktionen und ihrer [sic] Auswirkung, insbesondere auch über hervorstechende Ereignisse, sind dem Gestapa, Abtlg. II, ausnahmslos von jeder Stapoleit- und Stapostelle zwei eingehende Berichte zu übersenden. Der erste Bericht muß bis spätestens heute, den 10. 11., morgens 05.00 Uhr, der zweite Bericht bis spätestens heute bis 07.00 Uhr morgens dem Geheimen Staatspolizeiamt übermittelt sein,

4.) der Eingang der Empfangsbestätigungen über das Blitzfernschreiben München Nr. 47.767[*] wird dringend erwartet.

Gestapa Abtlg. II, I.A. gez. Bartz«

* The ref. number of the Heydrich telex of 1:20 a.m. cited above.

Vertraulicher Bericht!

Nach seiner Rückkehr aus München empfing Reichsminister G o e b b e l s am Nachmittage des 11. November um 2,30 Uhr die Berliner Vertreter ausländischer Zeitungen, die mit über 100 Personen vollständig erschienen waren. Die Atmosphäre dieser Presseempfangen kann nur als einigheit gekennzeichnet werden. Nach dem Urteil zahlreicher Teilnehmer habe G o e b b e l s sowohl auch Form wie nach dem Inhalt seines Vortrages nie so unsicher und wenig wirkungsvoll für Deutschland plaidiert. Es gehe, so wird weiter berichtet, wenig intelligent dazu, den Reichsminister Goebbels mehr als ein Redund Wiederholer in seiner Rede nachzuweisen, die einen sehr erfahrenen Minister auf die Teilnehmer hinsteuere. G o e b b e l s habe den Kontakt mit seinen Zuhörern nicht gefunden und sei, obwohl er zu Beginn gesagt habe, er wolle den Anwesenden Rede und Antwort stehen, unmittelbar nach Schluss seines Vortrages mit seiner Begleitung aus dem Saale so gut wie geflohen. Nebenstand also keine technische Möglichkeit, ihn überhaupt nach etwas zu befragen. In ausländischen Kreisen sagt man, der Vorfall wäre wirkungsvoller gewesen, wenn ihn ein Staatssekretär anstelle des Ministers durchgeführt hätte. Der allgemeine Eindruck aller Teilnehmer geht dahin, dass Reichsminister Goebbels in Gegenwart von seiner sonstigen Art ein gutes Stück innere Sicherheit bei der Vertretung deutscher Belange verloren habe.

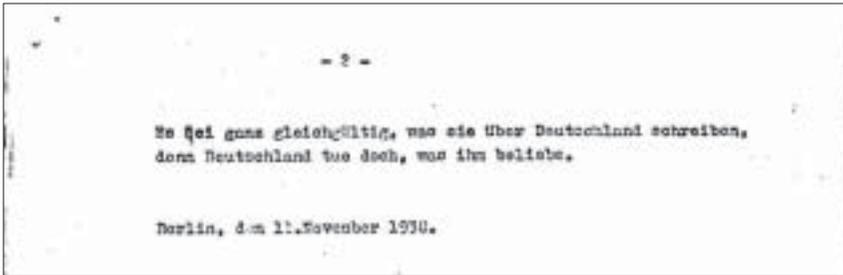
In gleichen Zusammenhang wird auf die erst 4 Tage zurückliegende Rede des Reichsaussenministers bei dem Banquet der Auslandspressen im Hotel Majestic hingewiesen, deren entsprechende Wirkung noch immer von den ausländischen Pressevertretern erfüllt wird. Sie zeigen das Auftreten der beiden Minister in Vergleich miteinander und stellten dabei fest, dass die Form ~~des~~ ^{des} Reichsaussenministers von den antijüdischen Kundgebungen nur zu seinen Gunsten spreche. Nach der Vertlaut seiner in der Rede von Rath verlesenen Telegramme wurde allgemein als neuwoll angesehen.

Insgesamt ist festzustellen, dass sich der in Berlin lebenden ausländischen Journalisten eine starke Konjunktur dahingehend bemächtigt hat, dass ihre Kritik und ihre Proteste gegenüber den antijüdischen Kundgebungen angesichts der starken Stellung des Reiches und seiner Machtmittel ohne Bedeutung sind.

43/29049

-2-

Indexed



Rudolf Likus, liaison officer, reports to Ribbentrop the icy reception that Goebbels gets in Berlin the next day

Rudolf Likus reports prevailing anger at Goebbels. On November 11, 1938, at 2:30 p.m., Goebbels received the Berlin foreign press corps upon his return from Munich. He was given an icy reception, and left in a hurry without answering questions.

Likus vertraulicher Bericht, November 11, 1938, German foreign office archives, serial 43, pages 29067 f. Irving Discovery item 12:

Nach Äusserung eines engen Mitarbeiters Goerings hat sich bezüglich der Massnahmen gegen die Juden eine volle Übereinstimmung zwischen Goering und Reichsführer SS Himmler ergeben. Himmler mache Herrn Goebbels zum Vorwurf, dass er als Reichsleiter über die örtlichen Gliederungen der SS verfügt habe, ohne dass Himmler im einzelnen davon unterrichtet war.

[Translation] According to a close colleague of Göring there has resulted complete agreement between Göring and Reichsführer SS Himmler with regard to the measures against the Jews. Himmler accuses Mr Goebbels of having issued dispositions as Reichsleiter to local SS units without Himmler having been informed in detail about this.

Nicolaus von Below, Hitler's airforce adjutant

Mr Irving took the following extracts from the Below typescript memoirs (written ca 1947) while researching Hitler's War in the 1960s, as well as interviewing the colonel.

Murder of von dem Rath. Hitler sent Professor Brandt to Paris, in vain. Rath's funeral in his home town Düsseldorf. Hitler himself participated in the ceremonial in the planetarium.

About Reich Kristall Nacht. Hitler was in his private residence in Munich. There came a phone call from the Hotel Four Seasons in Hitler's residence, that the synagogue was in flames; a further phone call from a private person reported that the display windows of a Jewish store had been smashed in. These reports were passed on to Hitler. "He at once had the Police President von Eberstein telephoned and ordered that this madness was to cease, as he put it." . . . When reports meanwhile came in from Berlin to the same effect, Hitler also issued the order to Himmler and Goebbels to put a halt to the destruction of Jewish shops and synagogues immediately" (Page 83).

[Aus den nicht veröffentlichten Memoiren des Luftw.Adjutanten von Below:]

Mord von dem Rath Hitler schickte Prof. Brandt nach Paris, vergeblich. Die Beisetzung von Rath's in seiner Vaterstadt Düsseldorf. Hitler nahm selbst an den Feierlichkeiten im Planetarium teil.

Betrifft Reichskristallnacht Hitler war in seiner Privatwohnung in München. Es kam ein Anruf vom Hotel Vier Jahreszeiten in Hitler's Wohnung, daß die Synagoge brannte; ein weiterer Anruf von privater Seite berichtete von eingeschlagenen Schaufenstern in einem jüdischen Warenhaus. Diese Nachrichten wurden Hitler gemeldet. „Er liess sofort den Polizeipräsident von Eberstein anrufen und befehlen, dass dieser Wahnsinn unterbliebe, wie er sich ausdrückte.“ ... Als inzwischen aus Berlin gleiche Berichte kamen, gab Hitler auch noch an Himmler und Goebbels Befehl, die Zerstörung jüdischer Geschäfte und Synagogen sofort zu unterbinden.“ (Seite 83)

Translation of Tape Recorded interview of Colonel Nicholas von Below (Hitler's Luftwaffe adjutant, 1937-1945), May 18, 1968 (before the court in Bundle M)

David Irving: One more question. You were with Hitler in his home when the news of the *Reichskristallnacht* arrived there in Munich, and he was rather surprised by that. Can you depict that? Who else was there?

Colonel von Below: I remember only [Julius] Schaub, and a servant and a doctor certainly, and a personal adjutant, a military adjutant, an SS orderly, a doctor, a secretary. [. . .] The first thing that came to us was a phone call from the Four Seasons Hotel, — those of us who were on duty with Hitler always lived at that time in the Hotel Four Seasons and on this day we were billeted in rooms that were quite high up. The staff phoned us, to say we ought to come right over and pack our bags, as in a neighbouring building the synagogue was on fire and the sparks were flying right over the building. It was just a matter of security. [Dr] Brandt always lived in that hotel too. He said, “Ought we to drive over or not?” Somebody said then, “Well one of us ought at least to go and take a look.” Whether anybody did drive over, I don’t know now. Then further reports came, I don’t know on the basis of what facts, whether it was [Julius] Schaub asking or the fire-brigade or the Gau headquarters. Shortly after that it became known that the synagogue had not caught fire by itself, but had been set on fire and that there was a demonstration going on. Thereupon that was immediately passed on by Schaub to Hitler. Thereupon the Police President of Munich, [Baron Friedrich] von Eberstein, was immediately sent for. Herr von Eberstein then appeared soon after at the Führer’s residence, he was an SS *Obergruppenführer*. He was now interrogated by Hitler. Then there was a conversation between Hitler and Goebbels by phone about the situation. [. . .]

Irving: What was Hitler’s reaction to the first news reports?

Below: Well: “What’s going on, please find out, I have to know what the game is.” It was my impression that we all, and even Hitler himself, were totally in the dark [*Muspott*], nobody knew anything about anything. I can only say, from my many years with Hitler and on his staff, if that had been organised by Hitler and with Hitler’s knowledge — a charade on that scale would have been impossible! I wouldn’t put it past Goebbels, absolutely not. Then Hitler became angry and raised his voice quite loudly to Eberstein and said, “I demand that order is

restored at once!” That was however limited just to Munich. I overheard that, because the conversation took place as I was on the way out. What happened with regard to the directive to Goebbels or to Himmler for the rest of the Reich territory, that I do not know. I spoke once more with Eberstein about this business in Nuremberg prison in 1948, and I asked him, “Did you know anything about it before you came to Hitler’s?” He described it to me just as I had it in my own recollection. He was every bit as surprised by the whole events when he came to Hitler, and he was horrified at the development in his own patch, Munich.

The topic occupied us actively ever after. Who was the real originator of this affair? We did not learn that at the time either. We suspected that the SA was behind it, but who in the SA had given the order, I never learned that either.

Irving: When Hitler then learned that it had been done in conjunction with Goebbels, did he condone the thing?

Below: I don’t know, I don’t think so. I just learned the sequel with the famous fine of one million, or whatever the Jews had to pay up. It was ordered at the time that the Jews had to pay a huge sum. That was all connected with Vom Rath and the like, the *Reichskristallnacht*. I only know that on the various points Göring once came to Hitler — that was later, in Berlin, I think — and that he was frightfully agitated about the fact that so many plate glass windows had been smashed, which we would have to replace with costly foreign currency purchases. That was completely new to me, and it’s still a bit of puzzle to me today. Any way I know that Göring was in a rage because this *Reichskristallnacht* had cost him so much hard currency. Quite apart from the fact that Göring had a totally different attitude toward the Jews that the Party gentry like Goebbels, Himmler, etc. He considered this topic was particularly effective, which was right. This problem is naturally a very important and decisive one in the whole field of the Third Reich. But naturally through the depiction after the war the depiction of it has been completely distorted, which is understandable enough but which has not exactly helped to clarify what happened. The most radical of all the Nazi leaders was, from the very outset, Goebbels, as I saw for myself at that time, and that is why it was rather remarkable, in the last days in Berlin, that it was he of all people who had a substantial role in the way things had gone, that it was Goebbels who was now the Last Paladin at

Hitler's side, — that was just a little bit macabre. Because he had not really done Hitler any favours. For a long time Hitler did not really place much trust in him, but then after a while he began to in matters of importance, because Goebbels had the knack or putting forward his things in a very logical and penetrating manner. Hitler was in some way a sucker for this whole kind of act [*Masche*], there's no doubt about that. ...

Julius Schaub, Hitler's chief personal adjutant

**From the Julius Schaub papers, Institut für Zeitgeschichte, Irving collection
ED 100/203 (put before the Court, as bundle M)**

Without doubt Goebbels had the biggest influence on AH, far more so than Bormann. He invented the concept of Führer for AH, and hammered the Führer principle into the people. Goebbels always discussed his propaganda with Hitler, even during the war. Whether his influence on Hitler can be regarded as favorable or unfavorable, cannot be decided here. It was to Goebbels' credit that the people toed the line to the very last moment. It is a certainty that Goebbels ordained the Reichskristall Sunday (sic) with the SA commanders. The SS was innocent of this, apart from a few lesser officers. **When AH learned on that Sunday of the antisemitic outrages he was furious with Goebbels. He made a frightful scene with Goebbels and told him that this kind of propaganda was just damaging, in fact downright dangerous particularly with regard to overseas.** That Sunday in Munich 1934 [DI's note: Sunday was either Nov 6 or 13, 1938(?)] Hitler had returned to his home from a ceremony. In his residence on Prince Regent Platz he learned of the events. AH tried to save what could still be salvaged and ordered that some of his staff, Schaub among them, had to halt the plundering at once. AH particularly tried to stop the worst befalling the internationally famous art dealers Bernheimer.

What did Hitler say at his Table Talk, October 25, 1941?

The surviving fragments of the 1941–1944 Table Talks of Hitler were obtained from Martin Bormann’s family by François Genoud and published by Weidenfeld & Nicolson in •• with an introduction by Prof. Hugh Trevor-Roper (now Lord Dacre) as *Hitler’s Table Talk*; the book has recently been reissued by Weidenfeld’s unaltered.

Mr Irving has owned a copy since the 1950s. He considers it an important source on Hitler: a civil servant (Heinrich Heim) took notes at table, and typed a first-person transcript immediately afterwards, which Bormann signed or initialled. Mr Irving quoted verbatim, without alteration, from the Weidenfeld translation of this important paragraph in *Hitler’s War* (1977).

No German-language edition of the Hitler’s Table Talk texts appeared until •• Preparing a later edition of the book, which was to appear also in German, Mr Irving persuaded Genoud to release yo him copies of the original pages to him. The relevant page is reproduced on the facing page.

“we are preceded by the fear that we are exterminating (or going to exterminate) the Jews”.

It is evident that the translation is literate rather than literal; drawing on his knowledge of the whole sheaf of transcripts, and his knowledge of history, the English translator has on occasion had to give the *sense* of a passage rather than an impossibly wooden literal translation. This is nothing new. Because Mr Irving relied on the Weidenfeld translation and did not change it to an impossibly wooden literal translation, the Judge perversely held that he was guilty of distortion. But the version he gave is closest to the truth.

Now see how Prof. Philippe Burrin, Professor of International History at the University of Geneva, cites the same lines in his book “*Hitler and the Jews*”, page 145, relying not on the English (Weidenfeld) version but the German original – because he cites Jochmann (ed.), *Monologe im Führerhauptquartier 1941-1944*, (Munich 1980), page 107 as his source:

“On 25 October, in the presence of Himmler and Heydrich, he recalled his prophecy, adding that the Jews already had the two million Jews killed in the First World War on their conscience and now some hundred thousand more. ‘No-one had better say: “but we still can’t drive them into the swamp!” Does no-one care about our men? It is a good thing we are preceded by the **ominous reputation** of exterminating the Jews.’”

Note that Professor Burrin, who is in no way a revisionist, renders *Schrecken* as “ominous reputation” which conveys exactly the same meaning as the “public rumour” version rendered in Weidenfeld’s *Hitler’s Table Talk*. From this we see how perverse was Gray J.’s finding that Mr Irving was guilty of deliberate distortion. Other famous historians have interpreted the text in exactly the same way as he.

Argument

Apart from Weidenfeld's translator and Trevor Roper, other learned authors have adopted the same interpretation as Mr Irving without being accused of distortion.

The defence took the position that the translation used in *Hitler's Table Talk* edited by Trevor-Roper was false and deceptive, and that Hitler's words are tantamount to an admission that Jews were being systematically slaughtered.

Clearly the Weidenfeld translator attempted to capture the essential meaning of what Hitler was saying. His translation does reflect that intended meaning i.e., that it was a good thing, that as the German forces advanced, stories were transmitted from village to village (i.e., like rumours, the term used in "*Table Talk*"), to the effect that when "we" arrive we kill (*vernichten*) the Jews — this fright (*Schrecken*) is a good thing. And why so? This is a question the Defence did not address. The obvious answer is that if the Jews flee in panic, it will achieve "our" objective without bloodshed.

Logically, if Hitler's aim had been to exterminate all the Jews he could get his hands on – the Defence position throughout the trial – the "*Schrecken*" would have been the very opposite of a good thing, as it would cause the Jews to escape. Hitler's words are proof that his aim was to scare the Jews into fleeing for their lives.

Historians are entitled to adopt this interpretation. In the *Ereignismeldung* (Event Report) No. 81 of September 12, 1941, where EG C reported:

[From the translation of Arad, Krakowski and Spektor, *The Einsatzgruppen Reports*, page 131]:

"The gratuitous evacuation of hundreds of thousands of Jews may be considered to be an indirect success of the work of the

Security Police. As we hear mostly from the other side of the Urals, this is a considerable contribution to the solution of the Jewish question in Europe”.

See too the *Operational Situation Report USSR No. 80* of the Chief of Security Police and SD (Heydrich) dated Berlin, September 11, 1941, which makes precisely the same point, using the word “rumour”. This document was exhibited by Prof. to his Expert Report as H1(vii) 33a, and is reproduced on the following page with the sentence concerned in **bold face** for convenience. (Mr Irving has of course documented in all his books that the Germans carried out such shooting operations on this horrific scale, and this is not contested by the defendants).

The Chief of the Security Police
and the SD

Berlin,
September 11, 1941
48 copies
(36th copy)

Operational Situation Report USSR No. 80

[...]

Einsatzgruppe C

Location: Novo-Ukrainka

Observations made and measures taken by the Security Police.

Besides the thorough liquidation of the Party organization and the operations to clear the country of Jews who constitute the most negative civilian element, the executive operations of Einsatzgruppe C at present also include: above all, the fight against all partisan activities, beginning with the well-organized bands and the individual snipers down to the systematic rumor mongers.

[Our added
emphasis]

The rumor that the Germans shoot to kill all the Jews has advantages. This is probably the reason why all the time the EKs encounter fewer Jews. Thus, it should be noted that everywhere more than 70-90% of the original local Jews have fled, in contrast to the past, this concerns not only those Jews who once held influential positions. Primarily in the large towns, the ever increasing security tasks cannot be solved by the Einsatzkommandos alone, since they are too small for this purpose. Mounting importance is being attached to the creation and organization of a regular police service. Well screened particularly reliable Ukrainians are employed for this purpose. Moreover, a network of confidential agents composed predominantly of ethnic Germans, has been created with great success. In the kolkhozes these tasks have mostly been conferred upon the kolkhoz managers (the starostas). [The Elders].

At Kirovo, the development has reached a stage where the men enlisted for this purpose are already being paid by the municipality from funds seized from Jews. They obtain their rations from a small farm that has been especially allocated to them.

In Narodichi, 208 terrorists, and, in a nearby barn, nearly 60 terrorists were arrested and shot in the course of a large-scale action.

In Andrushovka 6 more Bolsheviks were rendered harmless.

In Korosten, according to reports received, numerous Jews who had previously fled had gathered together again, constituting a source of continuous unrest.

238 Jews who were rounded up and driven to a special building by the Ukrainian militia were shot.

In Fastov, where the Secret Military Police of the local command post and a Defense Battalion had already liquidated about 30 snipers and 50 Jews, order was fully restored only after Sonderkommando 4a shot a former terrorist and all the Jewish inhabitants between the ages of 12 and 60, making a total of 262 heads.

August 24, 1941, the total of executions carried out by Sonderkommando 4a has thus reached the figure of 7 152 persons.

In Lisovishi three saboteurs, one of whom had destroyed several harvesters, were arrested and liquidated.

In Tarashcha, 17 executions were carried out.

In Kamenets-Podolsk 23,600 Jews were shot in three days by a Kommando of the Higher SS and Police Leaders.

What Hitler had unquestionably ordered of Himmler

Letter from Himmler to Gauleiter Greiser, September 18, 1941 (National Archives microfilm of Himmler files, T175, roll••, frame ••).

[...]

The Führer wishes that, from the West to the East, the Altreich and the Protectorate be emptied and freed of Jews as soon as possible. Initially therefore, and during the course of this year if possible, I am striving as a first stage to transport the Jews out of the Altreich and the Protectorate into the eastern territories newly accessioned by the Reich two years ago and then to deport them even further to the east early next year. I intend to convey about 60,000 Jews of the Altreich and Protectorate into the Litzmannstadt ghetto for the winter, which has, so I hear, the space to accommodate them.

[...]

British decodes show German police in November 1941 provisioning each Jewish deportation train with food for several weeks and deportees' equipment.

[From PRO file HW16/32; put by Mr Irving in evidence before the Court]

ZIP/GPD 467/30.11.41: German Police Decodes, No.1, Traffic 20.11.41

No.2:

SPK1 from SPÖ bremen No 1 0800 3 parts 149 117 91 SPK1 410

Commander of Order Police and SS, riga

Concerning evacuation of Jews. Transport train DO 56 has left bremen destination minsk with 971 Jews on 18.11.41. Escort command regular police bremen. Transport commander Police *Meister bockhorn* is in possession of two lists of names and 48,700 Reichsmarks in cashiers' credits. Jews are well provisioned with food and appliances. State Police, bremen.

[...]

No.15:

DQH from SPK SPK1 No 7 1130 3 parts 175 149 45 DQH 152
Command Office of Waffen SS, Dept. V, SS mot., berlin.

SS Obergruppenführer *jeckeln* transferred from kiev to riga.

[Vehicle No.] SS 200116 not taken over here but probably in kiev. If car remains with Senior SS and Police Commander South, request urgent allocation of a Type 61 motor vehicle to Baltic Provinces, as nothing taken over here. Request listing of all materials delivered for *prützmann's* command-staff and sending of all motor vehicle papers. Senior SS and Police Commander, Baltic Provinces, *auer*, [Motor] Inspector N..

ZIP/GPD 515/25.12.41: German Police Decodes, No. 1, Traffic

17.11.41

No 35:

SPK from DQB SSD Berlin No.44 2300 3 parts 173 169 177
SPK1

Commander of Security Police Dr Lange in Riga.

Re *Evakuierung* of the Jews. November 17, 1941 at 18: 25 hrs transport train No.DO 26 has left Berlin for Kovno [Kaunas] with 944 Jews. Transport escorted by two Gestapo and fifteen police officers. Transport commander is *Kriminaloberassessor* Exner, who has two copies of the transport list with him. Transport provided with following provisions: 3000 Kg. bread, 2700 Kg. flour, 200 Kg. peas, 200 Kg. nutrients, 300 Kg. corn-flakes, 18 bottles of soup spices. . . . [continued in Berlin Nr 45.”

No 36:

SPK1 from SPÖ SSD Berlin No. 45 2300 2 parts 107 103
SPK1

410 52, 5 Kg. soup-powders, 100 packets of corrupt groups 50 Kg. salt, 1 corrupt groups 1 corrupt groups and 47, 200 Rm. in Reich cashiers' credits. Gestapo HQ Berlin, IV

D 1.

“Deliberately mistranscribed” Himmler’s telephone logs

Himmler’s Telephone Pad, November 30, 1941

source: National Archives Washington, microfilm T175, roll 𐀀𐀀

D D Guttenplan at page 𐀀𐀀: says Irving admitted “mistranscribing
𐀀𐀀𐀀𐀀𐀀 Himmler’s handwritten word *Judentransport* as
Judentransporte.”

Mr Irving obtained a poor Xerox print from his National Archives microfilm of Himmler’s handwritten notes in the early 1970s, and he was the first to transcribe the clearly difficult handwriting. No other historian had mentioned their existence. He admits that in *Hitler’s War* he inadvertently mistranslated the word *Judentransport* as transports (plural) of Jews.

He argued that even such a translation (*i.e.* the plural usage) is legitimate *in vacuo*; *e.g.* “*Kokstransport*” could be coke transports (transportation) or just one trainload. But not once the context becomes plain from other documents as it did in later years, when Prof. Gerald Fleming supplied him with collateral documents. He corrected the error in later works and in *Goebbels. Mastermind of the Third Reich*.

Never once did Irving mistranscribe the word as *Judentansporte*, let alone deliberately; to have mistranscribed or mistranslated the word deliberately would have been hazardous, as he reproduced the whole page (at right) as one of the few facsimiles in his book, and donated a copy of the document to the Munich archives.

Rampton and Gray J. repeatedly said he did mistranscribe the document, and this was plainly their error (**check the transcripts**).

<u>Verkehrsgeschichte: 30. IV. 1944.</u>	
<u>Halbeseege.</u>	
<p><u>mit dem Satz</u> 11. 11. 44 Gr. S. Jahnke - Berlin (Bund)</p>	<p>Verfassung für LAH u. Halbeseege Jungfer - Eisenbahn.</p>
<p>11. 11. Berlin, Verfassung <u>mit dem Kinder.</u></p>	
<p>13. 11. 44 Gr. S. Jahnke Prag</p>	<p>Verfassung der Polizei Anzahl. Fünf Taktoren. (Bund) aus Berlin. beim Verfassung.</p>
<p>18. 11. Debarant. V. Jahnke</p>	<p>Telegramme an Fritz Jahnke</p>
<p>18. 11. 44 Gr. S. Jahnke - Berlin (Bund)</p>	<p>Verfassung der Polizei. Zahl der Fünf Taktoren. (Bund) aus Berlin. beim Verfassung. Telegramme an Fritz Jahnke.</p>

Himmler's Telephone Pad, December 1, 1941

source: National Archives Washington, microfilm T175, roll ㄹㄹ

At 13:15 Himmler speaks with SS *Obergruppenführer* Heydrich in Prague again. Topics:

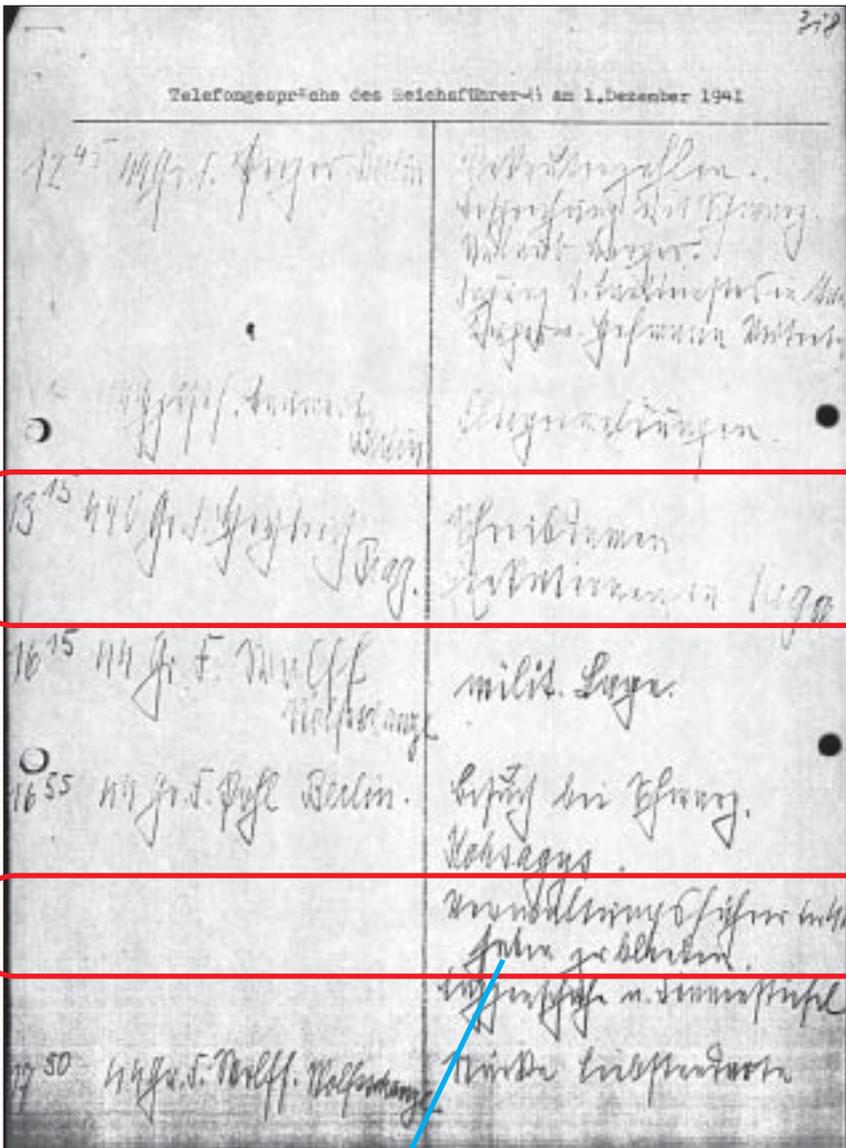
“Female clerks | Executions Riga”
Schreibdamen | Exekutionen Riga

The second box marks a conversation with SS *Gruppenführer* Oswald Pohl in Berlin:

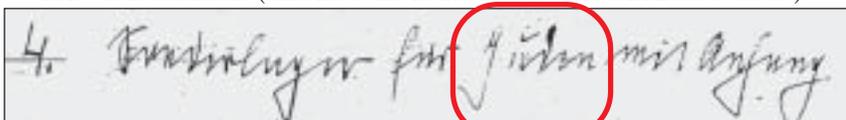
Verwaltungsführer ®.
haben zu bleiben

Each line of this right-hand column deals with a *different* topic except for these two lines, which now turn out to be one sentence.

Mr Irving, who was the first ever to transcribe these notes in the 1970s, drew the Court's attention to the appalling quality of the originals, and admitted having in consequence mistranscribed several of Himmler's rapidly scrawled words, including *haben* as *Juden*. The Defence submitted that the *haben* error was deliberate, and part of Irving's alleged agenda to whitewash Hitler, and Gray J agreed. (The correct transcription is: “SS administrative officers | have to stay.”)



Compare the word *haben* (above) with *Juden* (below, in the evidence document on page **, December 18, 1942). Irving said his error was reasonable (and note the lack of *h* over the *u* in *Exekutionen*).



On December 1, 1941 Himmler reprimands Riga mass-killer Jeckeln, orders him to report to Headquarters

[Both from PRO file HW16/32; in evidence before the Court]

ZIP/GPD 511/24.12.41: German Police Decodes, No. 1, Traffic 1.12.41

No.2

DQH from SPK SSD SPL1 No 1 0915 2 parts 107 83 DQH 152
SS Main Leadership office, Berlin. I need by next available air courier ten Finnish military pistols with two drum magazines each. Execution of *Sonderaktionen* [special actions]. Request radio-telegram reply. Senior SS and Police Commander North Russia

ZIP/GPD 471/4.12.41: German Police Decodes, No. 2, Traffic 1.12.41

No.24: OEJ from DSQ SSD DSQ No 3 1930 2 parts 175 71
SPK1 3742

SS Obergruppenführer Jeckeln, Senior SS and Police Commander, Ostland [Baltic Provinces], Riga. The Reichsführer SS [Himmler] summons you to him for a conference on 4.12.41. Please state when you will arrive here and by what means you will be travelling (on account of being fetched). (Sgd.) [Werner] Grothmann, SS Hauptsturmführer and Adjutant [of Himmler]
No. 25: OEJ from DSQ SSD DSQ No 4 1930 2 parts 177 75 SPK1 3742

SS Obergruppenführer Jeckeln, Senior SS and Police Commander, Ostland [Baltic Provinces], Riga. The Jews being outplac'd to the Ostland are to be dealt with only in accordance with the guidelines laid down by myself and/or by the Reichssicherheitshauptamt on my orders. I would punish arbitrary and disobedient acts. (Sgd. h Himmler)

The killing of German Jews sent to the East stopped for many months after these remarkable signals from Headquarters. Mr Irving suggested to the Court that this was clear proof that Headquarters had frowned on them. He also put to the Court the footnote of the published official German edition of the 1941 Himmler Diaries (ed. Peter Witte *et al.*), page 278:

“The reference is to 1,305 Jews whose deportation train had left Berlin on November 27, 1941. On the order of the Senior SS and Police Commander Ostland, Jeckeln, these had already been driven out of the train on the morning of November 30, taken to the Rumbuli forest near Riga and shot between 8:15 and 9 a.m. [. . .] Simultaneously he [Himmler] ordered Jeckeln to report to him in person and this took place on December 4. [. . .] For many months thereafter no more mass shootings of German Jews were carried out.”

Ezergailis, the acknowledged authority on the Holocaust in the Baltic states, reports that 15,760 Reich Jews (comprising seventy-five percent of the total who arrived in Latvia) were *not* liquidated. This supports the reasonable view that the massacres (like this Riga episode, of a total of 6,240 Jews, by German troops and their Latvian collaborators) were the exception, not the rule. On August 6, September 25 and 29, 1944, the Germans brought back to Germany the remaining 12,000 German and Latvian Jews.

In the Court of Appeal

Judenfrage: "als Partisanen auszurotten"

Argument:

In his Judgment Gray J adopts the interpretation suggested by exterminationists, that the extermination of partisans was a model for the extermination of Jews. It rests on a mistranslation of the word “als” (as). They translate it as if it were “wie” meaning “like”. Wie compares two different things, whereas “als” equates them. This matter should not have exercised the Court anyway: the document was discovered in Moscow archives in summer 1999, long after Mr Irving’s books were published. He can not be accused of distorting or ignoring it. Even if it were in his hands in the 1970s., it would not have been an unreasonable interpretation of the Himmler note that he had received from Hitler authorisation to root out Jews as a counter-partisan measure in certain areas where the partisan activity was strongest. Nothing in Himmler’s note can reasonably be read as an instruction to exterminate all Jews everywhere.

Terminen der Briefe 19 aus 4. 8. 41 350

13 ^{er} Fapt zum Faptungs- gläubiger Inpmit Zahlung	✓
14 ^{er} Inpmit 14-er grif. Zinsen	Linfay 1. 4. 41 S. KAL
19 ^{er} 14-er grif. Zinsen 14-er grif. Zinsen	Übertragung Abnabf. Stein - Respekt Übertragung Alj. Land Zinsen
20 ^{er} Anstatten im mit reguliert	Zinsen, Anstatten Zinsen
21 ^{er} 19 ^{er} 14 ^{er} 13 ^{er} Zinsen 14 ^{er} 13 ^{er} 12 ^{er}	Zinsenfrage 1. 4. 41 Zinsenfrage

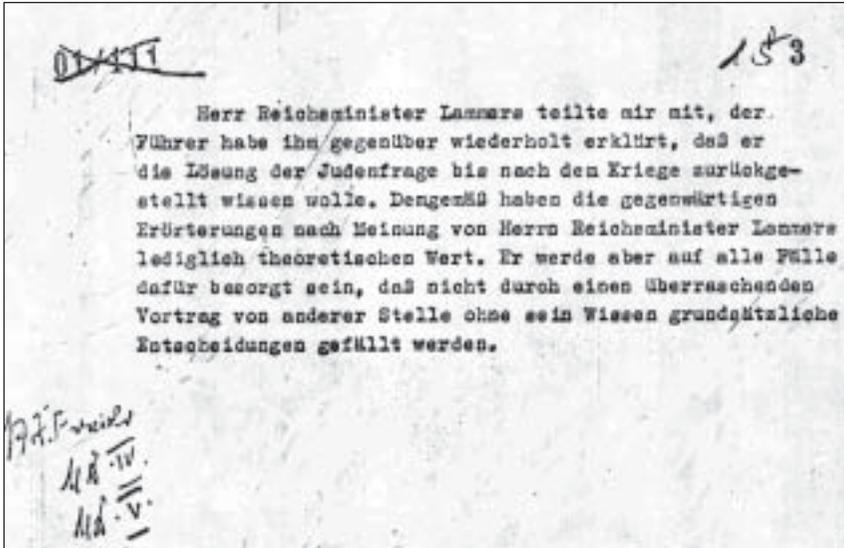
[From Moscow archives; Irving's Discovery, No. 350]

Appointments of the Reichsführer SS on 4. XII.41

13:00	<i>Drive to Führer's Headquarters</i> <i>Barber</i> <i>Dentist</i>	✓
17:00	<i>Führer</i> <i>SS-Obergruppenführer Jeckeln</i> <i>SS-Gruppenführer Berkelmann</i>	<i>Operation 1st Brigade with L[eibstandarte A[dolf] H[itler]</i> <i>Taking over Upper Sector</i>
19:00	<i>SS-Gruppenführer Rösener</i>	<i>Rhine–Westmark</i> <i>Berkelmann</i> <i>Taking over Alpine region</i> <i>Rösener</i>
20:00	<i>Dinner in Hegewald Home with</i>	<i>Jeckeln, Berkelmann, Rösener</i>
21:30	<i>SS-Obergruppenführer Jeckeln</i>	<i>Jewish Question SS Brigade.</i> <i>Economic businesses</i>
	<i>[signed] Grothmann</i> <i>Hauptsturmführer and Adjutant</i>	

On the evening of December 4, 1941, Jeckeln duly shows up on Himmler's appointments calendar; topic, the *Judenfrage*, Jewish Question.

The Schlegelberger Document



not a very good facsimile; we have better?

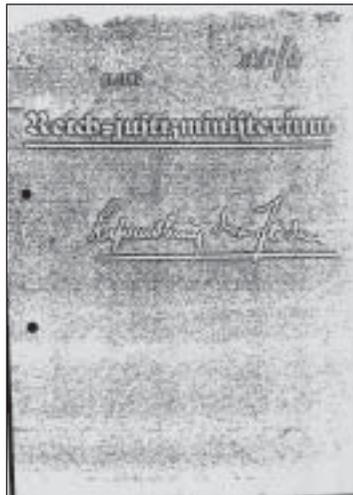
Translation:

“Mr Reich Minister Lammers informed me that the Führer had repeatedly declared to him that he wants to hear that the Solution of the Jewish Problem has been postponed until after the war is over. That being so, the current discussions are of purely theoretical value, in Mr Reich Minister Lammers’ opinion. He will moreover take pains to ensure that, whatever else happens, no fundamental decisions are taken without his knowledge in consequence of a surprise briefing by any third party.”

In 1942 a justice ministry document notes that Hitler has “repeatedly” ordered the postponement of the Solution of the Jewish Problem until after the war

On the left is a facsimile of the Schlegelberger document (translated in chronological sequence below on page 22). As Gray J. observed Mr Irving attached much importance to this item. He discovered its existence in about 1970, but could give only a paraphrase of its content in his 1977 book *Hitler’s War* (it was then still missing from the archives). A facsimile of the original reached his hands in January 1978. The actual wording of the document makes plain that it is reasonable for a historian to read that the question whose solution Hitler is proposing to postpone, the “Jewish Question,” is the global issue, and different from the “present discussions” whatever they were about – *Mischlinge* or anything else. It suffices to read the document with this point in mind to be forced to accept that this is so.

The documents are from a Reich Justice Ministry file in the Bundesarchiv, cover title: *Behandlung der Juden*; treatment of the Jews. Mr Irving put the whole file in evidence to the Court in facsimile, transcript, and translation, as Bundle D, “Schlegelberger” together with all relevant documents on how and when he discovered it.



In his Judgment, Gray J. wrongly referred to its main document as a transcript, although it is clearly an original, and he implied that there was dispute as to its authenticity.

From the internal evidence of the file it is reasonable to accept that the (undated) document was created at the end of March 1942.

*Letter Dr Schlegelberger of Reichsjustizministerium to
Chef der Reichskanzlei Dr Lammers, March 12, 1942*

01/109

ND: 4055-PS

Durchschlag

Der Reichsminister der Justiz Berlin, den 12.3.42
M.d.F.d.G.b.

Sehr verehrter Herr Reichsminister Dr. Lammers!

Soeben wird mir von meinem Referenten über das Ergebnis der Sitzung vom 6.3. betreffend Behandlung der Juden und Mischlinge vorgetragen. Ich erwarte jetzt noch die amtliche Niederschrift. Nach dem Vortrage meines Referenten scheinen sich Entschlüsse vorzubereiten, die ich zum großen Teil für völlig unmöglich halten muß. Da das Ergebnis der Besprechungen, an denen ja auch ein Referenten Ihres Hauses teilgenommen hat, die Unterlage für die Entscheidung des Führers bilden soll, wäre es mir dringend erwünscht, mich noch rechtzeitig mit Ihnen persönlich über die Angelegenheit zu unterhalten. Sobald die Niederschrift der Sitzung vorliegt, werde ich mit erlauben, Sie anzurufen und Sie zu befragen, ob und wann eine Rücksprache stattfinden könnte.

Mit verbindlichem Gruß und Heil Hitler!

Ihr sehr ergebener

gez. Dr. Schlegelberger

Herrn Reichsminister und Chef der Reichskanzlei Dr.
Lammers
Berlin

[Translation]

01/109

ND: 4055-PS

Carbon copy

The Reich Minister of Justice

Berlin, March 12, 1942

Acting Minister

Dear Mr Reich Minister Dr Lammers!

My personal assistant has just briefed me on the result of the session of March 6 on the treatment of Jews and Mixed-Races. I am now still awaiting the official minutes. From the briefing by my personal assistant there seem to be decisions in preparation which I have to consider for the most part to be completely impossible. As the outcome of the talks, in which a personal assistant of your department took part, is to form the basis for the decision of the Führer, it would be urgently desirable to me to have a personal talk with you in good time about the affair. As soon as the minutes of the session are before me I shall permit myself to phone you and to ask you whether and when a discussion between us might take place.

Yours faithfully

Your (*sgd.*) Dr Schlegelberger

To Mr Reich Minister and Chief of the Reich Chancellery Dr Lammers
Berlin

Lammers agrees to see Dr Schlegelberger to talk these things over at the end of March 1942

01/108

Carbon copy

The Reichminister and
Chief of the Reich Chancellery
Berlin, March 18, 1942
at present at Führer's Headquarters

To Mr State Secretary Prof. Dr Schlegelberger
acting Reich Minister of Justice

Re: "Overall Solution of the Jewish Problem"
Your letter of March 12, 1942

Dear Dr Schlegelberger!

I am very ready to conform with your wish and talk with you about this question. I shall provisionally come to Berlin again at the end of the month and I shall then have you given you information on an appointment.

Heil Hitler!

Yours obedient

Dr Lammers

Lammers testified at Nuremberg that Hitler had told him he wanted to hear no more briefings on Jewish Problem until war was over

Mr Irving put these unpublished endnotes to his biography relating to the Schlegelberger Document in evidence to the Court:

Translation of my draft notes for HITLER'S WAR [not printed, 1977 edition]

[. . .]

Note 63: "Staff Evidence Analysis" sheet, on 4025-PS (renumbered 4055-PS). The copies (IMT document US-923) were notarised by Dr Robert M W Kempner. – Before the International Military Tribunal [at Nuremberg] Lammers testified that Himmler had told him that he had received from the Führer the task of bringing about a final solution of the Jewish Problem "i.e. that the Jews were to be evacuated out of Germany". Lammers wanted to find out for himself, he said, and fixed an appointment with the Führer, "whereupon the Führer told me that yes, it was quite right that he had given the evacuation order to Himmler, but he did not want to hear any more briefings about the Jewish Problem during the war" (*IMT*, vol. xi, page 61).

Translation of Schlegelberger Document [of late March 1942?]:

“Mr Reich Minister Lammers informed me that the Führer had repeatedly declared to him that he wants to hear that the Solution of the Jewish Problem has been postponed until after the war is over. That being so, the current discussions are of purely theoretical value, in Mr Reich Minister Lammers’ opinion. He will moreover take pains to ensure that, whatever else happens, no fundamental decisions are taken without his knowledge in consequence of a surprise briefing by any third party.”

The Müller Document

A key defence document was a telegram (*below*) allegedly sent by Gestapo chief Müller to the Einsatzgruppen on August 1, 1941; but when challenged, they were not able to identify its real provenance, to enable Mr Irving to see the surrounding documents.

12.) RSHA-Befehl vom 1.8.1941 zur Besorgung von „Anschauungsmaterial«

Quelle: BA R 70 Sowjetunion/32

Abschrift!

Reichssicherheitshauptamt Berlin, den 1.8.1941

IV A I -13.Nr.576 B/41 g

Geheim!

FT.(verschlüsselt!) — Bef. am 1.8.41 Nr.5778

An die

Einsatzgruppen A, B, C und D.

Betrifft; Beschaffung von Anschauungsmaterial.

Dem Führer soll von hier aus lfd. Berichte über die Arbeit der Einsatzgruppen im Osten vorgelegt werden. Zu diesem Zweck wird besonderes interessantes Anschauungsmaterial, wie Lichtbilder, Plakate, Flugblätter und andere Dokumente, benötigt. Soweit solches Material dort anfällt oder beschafft werden kann, erbitte ich schnellstmögliche Übersendung.

RSHA VI A 1 b

B.Nr.576 B/41 g

i.V. gez. Müller, // -Brif.

Problem: Defence can't or won't identify its True Origin

On February 7, 2000, after the document was discussed in Court, Mr Irving applied by fax to the Bundesarchiv for the original document (translations from the German):

February 7, 2000

Dear Dr Lenz, –

1. For the big trial in London I need an original copy of the following document (File identity: BA R70 Sowjetunion/32): Müller (RSHA Dept. IV) to the *Einsatzgruppen A B C D*, dated Berlin, August 1, 1941, one page. I need it immediately (Christopher Browning is going to be for the next 3 days only in the Witness Box). Could you please fax the document through to me in facsimile to London at this number: 004420-7409-7048

2. Recently I have been corresponding with an Englishman, who has purchased original documents from Hitler's Presidial Chancellery, Year: 1938, hand-corrected speech scripts of Hitler, table layouts (Horthy, etc), invitations.

Still interested?

Yours sincerely,

David Irving

—
Berlin, February 9, 2000

Dear Mr Irving,

In reply to your letter of February 6, 2000, I inform you that no letter of August 1, 1941 is found in the file *R70 Sowjetunion/32*. This file consists only of copies. On the basis of the received stamp the provenance of the items can be determined as “the Commander of the Security Police and of the Security Service, Lithuania”.

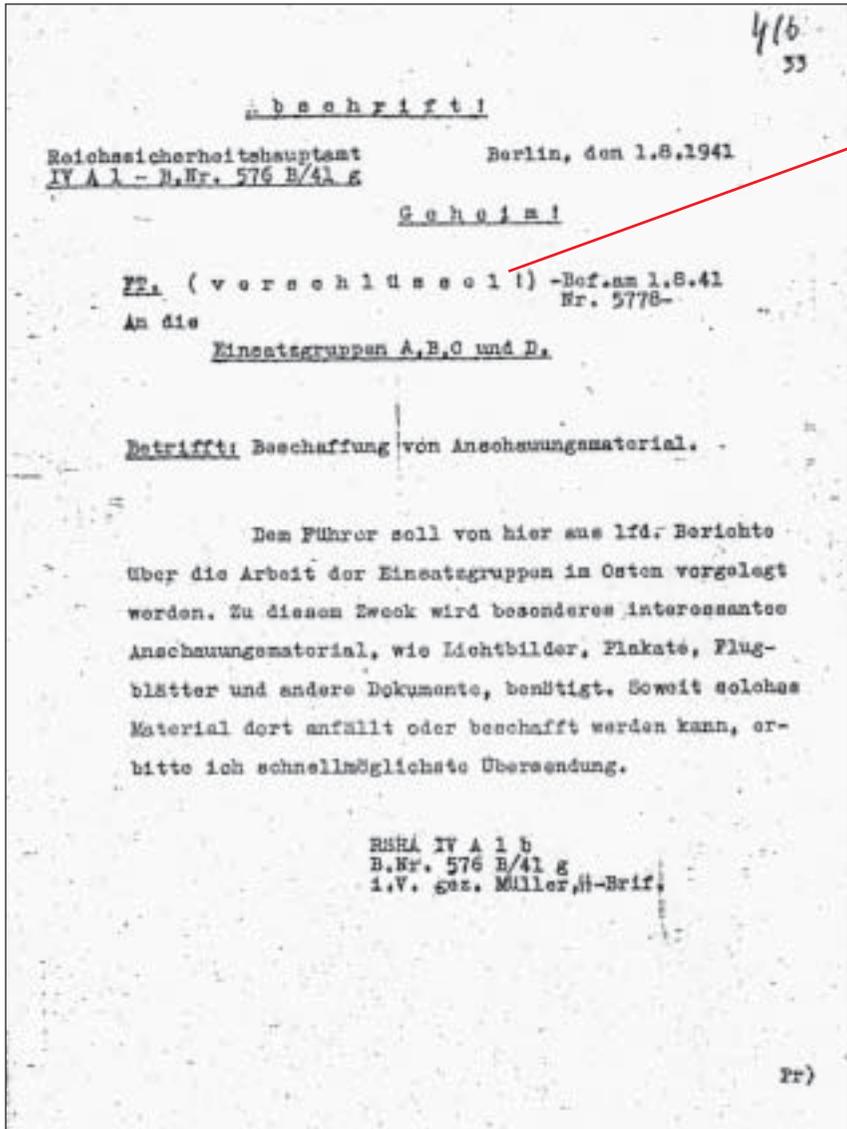
I am very interested in the original files of the Presidial Chancellery. Can you please put me in contact with your informant?

Yours sincerely,

Dr Lenz

In the Court of Appeal

Ordered to identify the file holding the original document, the defence produced a typed copy of unknown provenance which has a spelling error but does use the SS-runes (//).



Letter "t"
missing

We submit that Gray J should therefore have disregarded the document or attached substantially less weight to it than he did.



*Governor-General Hans Frank (right, with Himmler)
testified that Hitler told him he knew nothing*

Source: Official English translation, Trial of the Major War Criminals before the International Military Tribunal, vol. xii, pages 12-15: session of April 18, 1946

hans frank: Now, I have to say I was in a position to get information, whereas the witnesses who have testified so far have said under oath that in the circles around the Führer nothing was known about all these things. We out there were more independent, and I heard quite a lot through enemy broadcasts and enemy and neutral papers. In answer to my repeated questions as to what happened to the Jews who were deported, I was always told they were to be sent to the East, to be assembled, and put to work there. But, the stench seemed to penetrate the walls, and therefore I persisted in my investigations as to what was going on. Once a report came to me that there was something going on near Belcec. I went to Belcec the next day. Globocznik showed me an enormous ditch which he was having made as a protective wall and on which many thousands of workers, apparently Jews, were engaged. I spoke to some of them, asked them where they came from, how long

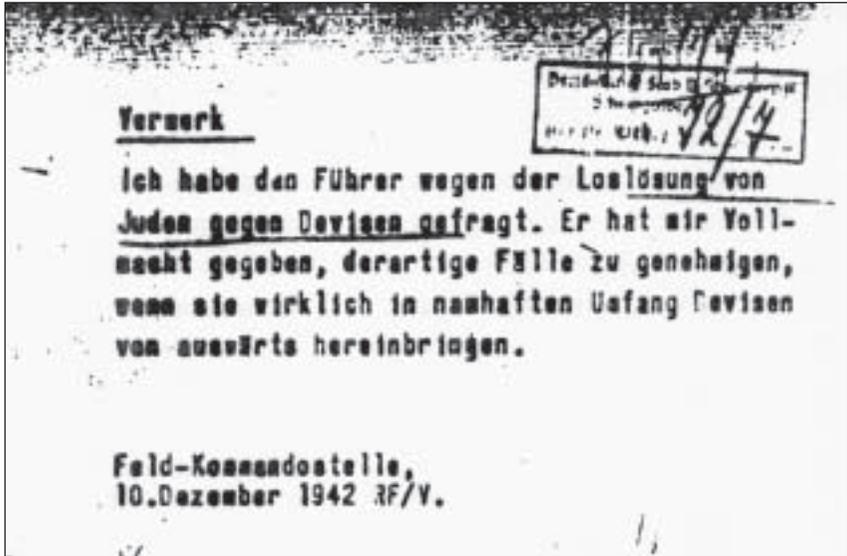
they had been there, and he told me, that is, Globocznik, "They are working here now, and when they are through they come from the Reich, or somewhere from France they will be sent further east." I did not make any further inquiries in that same area.

The rumor, however, that the Jews were being killed in the manner which is now known to the entire world would not be silenced. When I expressed the wish to visit the SS workshop near Lublin, in order to get some idea of the value of the work that was being done, I was told that special permission from Heinrich Himmler was required.

I asked Heinrich Himmler for this special permission. He said that he would urge me not to go to the camp. Again some time passed. On February 7, 1944 I succeeded in being received by Adolf Hitler personally – I might add that throughout the war he received me three times only. In the presence of Bormann I put the question to him: "My Führer, rumors about the extermination of the Jews will not be silenced. They are heard everywhere. No one is allowed in anywhere. Once I paid a surprise visit to Auschwitz in order to see the camp, but I was told that there was an epidemic in the camp and my car was diverted before I got there. Tell me, My Führer, is there anything in it?" The Führer said, "You can very well imagine that there are executions going on of insurgents. Apart from that I do not know anything. Why don't you speak to Heinrich Himmler about it?" And I said, "Well, Himmler made a speech to us in Krakow and declared in front of all the people whom I had officially I called to the meeting that these rumors about the systematic extermination of the Jews were false; the Jews were merely being brought to the East." Thereupon the Führer said, "Then you must believe it."

When in 1944 I got the first details from the foreign press about the things which were going on, my first question was to the SS *Obergruppenführer* Koppe, who had replaced Krüger. "Now we know," I said, "you cannot deny that." And he said that nothing was known to him about these things, and that apparently it was a matter directly between Heinrich Himmler and the camp authorities. "But," I said, "already in 1941 I heard of such plans, and I spoke about them." Then he said that was my business and he could not worry about it.

Hitler is quite willing to see Jews set free (for cash)



From the files of Himmler's personal staff, US National Archives; a document in evidence before the Court, and in Mr Irving's Discovery:

[TRANSLATION]

“Aide memoire

I asked the Führer about setting Jews free in return for foreign currency. He gave me authority to sanction such cases, if they really do bring in foreign currency from abroad in significant quantity.

Field headquarters,
December 10, 1942, RF/V.”

[Karl Wolff's name is on it, in Himmler's handwriting, top right]

The “abschaffen” document

On January 20, 2000 the Defence put to Mr Irving the December 10, 1942 Himmler handwritten note on his conversation with Hitler about the 600,000–700,000 Jews in France. (Mr Irving was the first to have found and transcribed this, and used it in *Hitler’s War*). Himmler noted “abschaffen” (dispose of) in handwriting, and dictated more prosaically “abzutransportieren” (transport away) in the typed version of the same aide memoire. (The official French Committee for the History of the Second World War gives a final figure of 28,162 French Jews deported, of a total of in fact 240,000–300,000, not 700,000).

Himmler September 17, 1942 minute

Mr Irving quoted the lines of Himmler's minute of September 17, 1942 in full in *Hitler's War* (1977 edition) at page 392, lines 6 et seq. He did not include the reference to "Globus" as it referred to the resettlement paragraph below, not to the *Auswanderung*. In the 1991 edition he did include the Globus reference as Gitta Sereny had meanwhile drawn his attention to it.

There is not one example adduced by the Defendants where *Auswanderung*, as opposed to *Evakuierung* or *Umsiedlung* is used explicitly by Hitler or others as a euphemism for killing.

Meldung 51: The "363211 Jews executed" document

"submitted, 31/12.41 Pf"

ausg. d. 31/12.41 Pf.
Feld-Kommandostelle
den 29. Dezember 1942

Der Reichsführer-
Heer

Betr.: Meldungen an den Führer über
Sandentrückung.
Meldung Nr. 51
Ausland-Süd, Ukraine, Dajlystok.
Sandentrückungserfolge vom 1.9. bis 1.12.1942

4/r

1.) Sanditen:

a) festgestellte Tote nach Gefechten (x)					
	<u>August:</u>	<u>September:</u>	<u>Oktober:</u>	<u>November:</u>	<u>Insgesamt:</u>
	227	381	427	302	1337
b) Gefangene sofort exekutiert					
	125	282	87	243	737
c) Gefangene nach längerer einjähriger Verschanzung exekutiert					
	2100	1400	1590	2731	7821

2.) Sandenhelfer und Sandenverpflichtete:

a) festgenommen					
	1343	3078	8337	3795	16553
b) exekutiert					
	1198	3020	6333	3706	14257
c) Juden exekutiert					
	31246	165282	95735	70948	363211

3.) Überläufer z.B. deutscher Propaganda:

	21	14	42	63	140
--	----	----	----	----	-----

(x) Da der Russe seine Gefallenen verschleppt bzw. sofort verscharrt, sind die Verlustzahlen auch nach Gefangenenaussagen erheblich höher zu bewerten.

-2-

Mr Irving said there was no evidence that Hitler read it

Hitler had other things on his plate: Supporting his argument that Himmler had chosen a period precisely when Hitler was preoccupied with Stalingrad and other grim disasters, Mr Irving produced to the Court an entry from the private diary of the wife (widow) of Genral Rudolf Schmudt; Hitler's chief Wehrmacht adjutant, dated December 30, 1942: "Rudi came back in forenoon from Führer's headquarters. Grim thoughts." He also produced samples of other Himmler–Hitler documents of precisely the same period, one of which had had to be *vorgelegt* (submitted) to Hitler twice (indicating that one *vorgelegt* endorsement was not proof he had read it).

The document in question is also dated December 29, 1942, a Telegram signed by Heinrich Müller, the Gestapo chief, to Himmler, about Combating the Draza Mihailovic movement ("On the night of 27/28 December 1942 Major Dodic and his chief of staff were apprehended. . .") This is endorsed in handwriting "submitted [*vorgelegt*], December 30, 1942 Pf[eiffer]." and – this is Mr Irving's point – *again* endorsed the next day, "submitted [*vorgelegt*], December 31, 1942 Pf[eiffer]."

NARS film T175, roll 124; [Irving collection] Himmler photostats file page 296

The missing paper-trial: As a second argument contradicting the Defence submission that Hitler had necessarily read the incriminating item, Mr Irving put in evidence a contemporary sample of the kind of paper-trail which is significantly missing in the case of *Meldung* 51 – a message dated December 28, 1942 from Hitler's adjutant Pfeiffer to Himmler's adjutant Grothmann not only confirming that *Meldung* 49 had been *vorgelegt* (submitted) to the Führer but also conveying what were clearly the latter's resulting comments: "Report No. 49 laid before the Fuhrer. I request you in future to state our own casualties on the report. Heil Hitler! pfeiffer, SS *Hauptsturmführer* Pfeiffer, Personal Adjutant of the Führer. [Initialed:] "Gr[othmann] 29. xii."

NARS film T174, roll 124; [Irving collection] Himmler photostats file page 290

So what did Hitler know?

Mr Irving's Notes on research in Institut für Zeitgeschichte, 1960s. Source: Claimant's Discovery 122

Extracts from IfZ Zeugenschrifttum file ZS 243 (which cannot however be identified by number) on Dr Heinrich Heim.

1. Heim wurde 1900 geboren. Trained as Rechtsanwalt. Sommer 1933 im Stab Hess. Ende 1939 als Adjutant Bormanns im FHQu, bis Ende 1942 when he returned to Braunes Haus, München. The file contains much material on Genoud's claim to Urheberrechte of Tischgespräche.

[...]

3. „Heim glaubt“ – according to Gespräch vom 17. Juli 1952 – „dass Hitler die Vorgänge in Auschwitz usw. nicht gewusst habe und auch nicht gut geheissen hätte.“... „Die ganze Massnahme gegen die Juden ist viel zu doktrinär, als dass sie aus Hitlers Gehirn stammen könnte. Hitler kannte überdies auch den ungeheuren Mangel an Arbeitskräften [...]“ ... „Viel besser passt die ganze Aktion zu Himmler. Kaltenbrunner hat einmal, wohl 1944, Hitler über die Judenaktion Vortrag gehalten. Daraufhin hat Hitler Himmler sofort angewiesen, die Massnahmen abzustoppen.”[*]

[..]

5. An attempt should be made to procure a photocopy of pages 0027-29, which concern the events of the Reichskristallnacht.

[* Translation: “Heim believes,” according to an interview of July 17, 1952, “that Hitler did not know what was going on in Auschwitz etc., and would not have approved either.”... “The whole operation against the Jews is much too doctrinaire to have emanated from Hitlers brain. Hitler was aware quit apart from this of the huge shortage of manpower.[...]”... “The whole Aktion fits in much better with Himmler. Kaltenbrunner once, probably in 1944, gave Hitler a briefing on the Judenaktion. Thereupon Hitler at once ordered Himmler to stop the measures. . .”]

The Dresden 1945 death roll

In researching this, his first book, in 1960–1961, Mr Irving received information by mail from one Hanns Voigt, a school teacher living in Hannover, who had by his own account been in charge of the Missing Persons Bureau, Dead Persons department, in charge of identifying and drawing up a missing persons index after the raids. It was singular stroke of good fortune that he was living in West Germany, as citizens in the Soviet Zone were almost unapproachable as sources. He had kept a diary, he stated in one letter. Voigt gave as his own best estimate the figure of 135,000 dead and missing in their raids. The popular estimate in Germany at that time, to which even Chancellor Konrad Adenauer had subscribed, was “250,000.” This figure was also stated in a US Strategic Bombing Survey report on Desaga and Hurd dated July 19, 1945, which Mr Irving had obtained in 1960 based on the interrogation of two local Luftwaffe doctors. The German Federal Office of Statistics chief, Sperling, cited to Mr Irving immediate figures of 180,000–200,000 dead in Dresden; this letter was also before the court, and Mr Irving explained to the Court the political pressures which obtained in West Germany relating to the propagation of British air war deathroll figures. While stating upper and lower limits for the estimates, Mr Irving gave however Voigt’s figure of 135,000 as the most probable in his 1963 book *The Destruction of Dresden*, which was serialised in *The Sunday Telegraph* and highly favourably reviewed, and the figure was widely accepted as reasonable.

In May 1966 as a result of his inquiries, the West German federal archives and the East German city archives of Dresden simultaneously surfaced two different documents which gave a lower, albeit necessarily still an interim, figure (dated March 1945, with salvage work still far from complete). The documents were delivered to Mr Irving on June 16, 1996. The Court attached little

or no weight to the fact that Mr Irving, having obtained these new and hitherto unknown documents through his own efforts, and against the advice of William Kimber his publisher, voluntarily wrote a letter to *The Times* drawing attention to these lower figures. He also had this letter, which *The Times* published on July 7(?), 1996, printed by Times Newspapers Ltd. as a reprint at his own expense and he mailed copies to many leading newspapers and historians. Further comment seems superfluous.

It cannot be stressed strongly enough that between the time the book was published in 1963 and 1994 over thirty years passed – during which Mr Irving had no opportunity to revise any edition of the book. All rights were with William Kimber Ltd., who traded sub-licences to foreign and British publishers without reference to him. In those days authors were not encouraged to make the slightest changes to their works, anyway, because of the cost involved in resetting pages. In rewriting the book as *Apocalypse 1945: the Destruction of Dresden* for publication in 1995, he substantially lowered the death roll estimates, while stressing that all figures were still conjectural.

Voigt's estimate was impressively borne out by what the city commandant General Mehnert and the leftwing civil-defence chief Fetscher estimated the death roll would be (*see the highly circumspectly worded Funfack letters from the Soviet Zone, in this document book*).

If the figures given by Höss, Bimko, Vaillant-Couturier and others about Auschwitz were accepted without question by the defendants, why was it unreasonable for Mr Irving to accept the estimates arrived at without reward or duress by these expert and unbiassed sources in Dresden: Voigt ("135,000"), Mehnert ("140,000"), and Fetscher ("180,000"), who was shot by the SS when he went to meet the Russian troops carrying a white flag.

Prof. Evans' allegation that Voigt was a Nazi official was just a wild smear, for which he produced not a shred of evidence other

than the label pinned to Voigt (“virulent fascist”) by Evans’s fellow-marxist Walter Weidauer. Weidauer was the notorious long-time communist post-war mayor of Dresden who destroyed the surviving architecture of this beautiful Residence City of Saxony as a working-class statement against the bourgeoisie. Voigt was nothing but a quiet and humble city official who became a secondary school teacher in post-war West Germany, and was greatly embarrassed by the notoriety that surrounded him after Mr Irving’s book was published.

Number of air raid victims in Dresden: Twenty tons of clothing were taken from the bodies at one graveyard before burial

Friedrich Reichert, Verbrannt bis zur Unkenntlichkeit (Dresden, 1994).

[Translated and put in evidence before the Court in Bundle G ca Feb 10, 2000]

[. . .] Records were kept not only of the number of dead who were buried. On March 26, 1945 the Director of the Burial Operations wrote to the Municipal Camp Administration (i. e., the Prisoner of War and Forced Labour Camps) and informed them that on the Heide Cemetery there was stored a large quantity of footwear from the air-raid victims (approximately one five-tonne truckload). In agreement with the Gau Officer for Recycling Old Clothing, footwear was to be sold to the work camps. The camps were to take care of the cleaning and disinfection of them themselves.

From a letter dated April 4, 1945, it is evident that the corpses were also stripped of their clothing. This was estimated at about 300 hundredweight [about 15 tonnes]. This clothing had been turned over to the Paper & Textile Utilisation Company at No. 30, Hamburg Street. As all the disinfection facilities in Dresden had been destroyed by the air-raids, this clothing was now to be shipped to a corrugated cardboard factory in the Sudeten territory.[. . .]

[*Details of individual bulk footwear sales then follow.*]



In the 1964 interview with Mr Irving, Dr Max Funfack identified himself as the officer in a peaked cap visible in several photos of the mass cremations on Dresden's Altmarkt (these photos were taken twelve days after the raids, on February 25, 1945). This establishes his immediate involvement with the deathroll.

Letters from Dr Max Funfack to David Irving

Dr Max Funfack, Urologist, Dresden, January 19, 1965 to David Irving.

Dear Mr Irving,

You were so exceedingly kind as to send to my wife a copy of your book about *The Destruction of Dresden*, as printed matter. The book has arrived safely and we thank you very much for that.

You can understand that as an old Dresdener who has been

resident here for many generations, I have a particular interest in the event 20 years ago which I had to be more or less directly a participant in. I was bombed-out 100% at that time, in Surgery, Clinic and private residence and hall.

I had to begin again after 1945 as a beggar. Thank God, nobody in my family was killed in it, because every member of it was outside Dresden when this air raid broke across Dresden.

I was at that time the Chief Doctor of the Urological Department of the Military Reserve Hospital in Dresden, Neustadt, and I was taken by surprise by the attack, in my home in Parkstrasse. It was pure chance that I survived, as I took refuge in the Red Cross Building in Tiergarten Strasse.

All my neighbours in Parkstrasse were killed, without exception.

It is unclear to me why I am now, after 20 years, being cast into the limelight by being named in the newspapers of the [West German] Federal Republic and why I am cited as a witness for the deathroll. Just like any other person affected I **learned the figures only at third hand – from the City Commandant who was my friend, from the Civil Air Defence, etc.** But the figures were always substantially different.

I myself was only once on the Altmarkt during the cremations, otherwise I was completely uninvolved. Nor was I ever the Medical Officer of Dresden or Deputy Medical Officer, but just active as a Urological Specialist in the Military Hospital. How you reached such a conclusion is completely incomprehensible to me. I have not had the least to do with such official bodies.

The photographs of the cremations on the Altmarkt, and the “Tagesbefehl No 47” were also given to me by acquaintances.

While I cannot make any binding statements on the deathroll I can only repeat what was reported to me. The City Commandant, General Mehnert, spoke on about 22 February 1945 of 140,000 dead, Professor Fetscher of the Civil Air Defence of 180,000. But I have never seen written evidence.

I attach great importance to these facts, in order to serve the interests of the truth. The best informed ought really to be the delegates of the International Red Cross, who under the leadership of a Swiss, were provided with all the figures when they came on about 22–26 February to enquire about the prisoners of war, as was their duty. Unfortunately, I do not know their names, but I was together with them shortly at one meeting.

Allow me once more in the name of and on the instructions of my wife, and in my own name, to state my thanks for having sent this interesting book. I would just be curious to know how you came into possession of my name and address.

Yours faithfully,

M. Funfack

PS: I learned of the naming of my name in the Press from a Mr Nicolaus of the Ideological Commission of the SED [Socialist Unity Party, the governing Communist party] and the City Management in Dresden.

—

Dr Max Funfack, Urologist, Dresden, March 16, 1965 to David Irving.

Dear Mr Irving,

Very many thanks for your thank you letter from Madrid dated February 20, 1965 which came into my hands after being rubber-stamped by the Dresden Postal Customs Office on the envelope.

It has put me in a most unpleasant situation that my name has appeared in the Press of the Federal Republic, and that naturally also the appropriate Authorities in our German Democratic Republic have learned of that. On account of this fact I was subjected to several interrogations and had above all, in accordance with the truth, to state correctly that I was never here the Medical Officer or the Deputy Medical Doctor. It is completely incomprehensible how anybody came to this

conclusion. It is also a puzzle to me how even my name became known. I was just more or less an observer of the air raid and gravely affected by it, and had no kind of official function e.g., in the counting of the dead. It would interest me to know how my name was dug up.

You will certainly understand that I attach great importance to this so that I am spared further such interrogations that just cost me my free time and cause me a lot of aggravation. For that reason I will have a copy made of the mentioned order of the day *Tagesbefehl* No. 47 and send it to you [this sentence was poorly legible]. I want nothing to do with this.

I can answer a few questions. **Lieutenant General Karl Mehnert was City Commandant of Dresden and was a very close friend of mine. I was very often together with him. He was truly no Hitler fan and for this reason I liked him particularly.** In May 1945, he ended up in Russian captivity and he lived for many years after his return from Russia in Dresden. In this time too we were often together.

In about 1955 he went to Wiesbaden, and died there years later aged about 73. **With him I naturally often talked about the air-raid and we spoke about the death roll. We were both astonished about the tiny figure of 35,000 which was given out in the Press here. Professor Dr. Fetscher (ret.) had his medical practice quite close to mine. He was a convinced Anti-Fascist, and knew of death toll figures in the magnitude of which I made mention and wrote to you.** In May 1945 he was shot by the SS in Dresden's Prager Strasse, as he was about to drive out to meet the Soviet army with a white flag.

I received the *Tagesbefehl* which I mentioned, to the best of my memory, in the military reserve hospital No.1 merely through official channels. I was at that time the Chief of the Urological Department and *Oberstabsarzt* [major in Army medical corps].

If you ever come here, then I will show you my copy willingly, on condition that the proper Authorities here are informed of

this, and are in agreement with it. It would be impossible for me to send it by post.

I never kept a diary. A short time ago a book by [Walter] Weidauer was published here “*Inferno Dresden*”, where once more only the 35,000 figure is given. You will have to read that one day.

Many thanks also for having sent me the very pretty photos of your family which pleased us very much.

I was present for only a relatively short time during the cremations on the Altmarkt, on the occasion of visiting my completely bombed-out clinic and surgery in the town centre in the Garnisonen Strasse. Everything had been cordoned off. **I was only able to get in wearing the uniform of an *Oberstabsarzt*.** I do not want to write to you any more about it than that. If you come to Dresden, I would look forward to your visit.

Yours faithfully,
M. Funfack

Mr Irving submitted to the Court that Funfack was citing highly reliable figures from Mehnert and Fetscher, both anti-Nazis; Mr Irving also submitted that as Funfack was now living in a marxist police state (the Communist Zone of Germany), he was clearly being circumspect about putting to Mr Irving high figures that he believed to be accurate, since the figures adopted by the communist leadership were for political reasons substantially lower, and he was phrasing his letters carefully as he knew they were being opened – which fact he also deliberately drew to Mr Irving’s attention; and that he was anxious to avoid harassment as a former Nazi official (as the uniform on the photo shows). These translations were in Mr Irving’s Bundle G, put in evidence.

Table published by Press and Information Office of the Federal German Government in *Deutschland heute*, with an Introduction by the Federal Chancellor Dr Konrad Adenauer, page 154; in evidence before the Court, in a Bundle:

Casualties in two world wars

[.°.°.]

German civilian population casualties (inhabitants of the four later occupation zones) through enemy action (primarily air warfare)¹ 500,000 dead

Casualties in the German civilian population of the eastern Provinces of the Reich territory through expulsion (including air raid dead) 1944—1946
1,550,000 dead

[.°.°.]

1: Not including the 750,000 German civilians kidnapped in the east.

2: The February 13, 1945 attack on the city of Dresden which was overflowing with refugees alone caused about 250,000 dead.

Casualties in other air raids

As a Marxist professor and Labour Party supporter (as he testified) Prof Evans invariably preferred the lowest air raid casualty figures resulting from RAF attacks on Nazi Germany that he could find. (e.g. Evans Report, page 495).

Cross-examining him on February 21, 2000, Mr Irving pointed out that the official history *Strategic Air Offensive* (HMSO), vol. ii, page 261, gives a deathroll of “fifty thousand” in the July 1943 raids on Hamburg. In Pforzheim (one raid, February 1945) there were 17,500 identified dead, a figure which the numbers incinerated (literally: heaps of ashes) and missing would well bring up to the 25,000 figure which Mr Irving used in his public lectures. Under cross-examination Prof. Evans admitted that he was not an expert on the strategic air war, and he left no doubt on that score.

Dresden strafing allegation not amended:

On page 504 of his Report Evans alleged that Mr Irving let the story stand in later editions of *The Destruction of Dresden*. In cross-examination Mr Irving put it to him that (a) he had no editorial control over sub-editions, which were licensed directly by the British publisher to other British and foreign publishers; and (b) the first rewrite which he undertook was in 1994, when he rewrote it as *Apocalypse 1945: The Destruction of Dresden*. In this edition he voluntarily revised the death statistics downwards on the basis of the latest information.

The March 1945 report by the Dresden police chief, on which Prof. Evans relied heavily for the (lower) casualty figures, stated clearly that machine gun fire had been heard from the attacking planes (*festzustellen*) during all three air raids. Mr Irving had many other sources, but given the reliance that the Defendants placed on this report for the lower casualty figures in Dresden it seems capricious to reject it on the strafing.

The verdict of other historians on David Irving

Professor David Aaron Meier, expert on anti-Semitism

E-mail, date: Mon, August 23, 1999 11: 03: 32 MDT [in bundle of evidence put before the Court on about February 17, 2000].

Subject: Re: Hilberg

David – Given the extent of your research and publications over the years, I would be surprised if we differed in our opinions on much – and then it would be the traditional question of what hard evidence one could present. I have been familiar with your works for a very long time and find them exceptionally well written and researched. – David [Meier]

Dr. David Aaron Meier, Associate Professor of History

H-Antisemitism Moderator

Department of Social Sciences

Dickinson State University

<http://www.dsu.nodak.edu/users/dmeier/Homepage.html>

“Exonerating Hitler”

From A J P Taylor, *The Origins of the Second World War*, published by Penguin, the First Defendants, page 829.

. . . I have however no sympathy with those in this country who complained that my book had been welcomed, mistakenly or not, by former supporters of Hitler. This seems to me a disgraceful argument to be used against a work of history. A historian must not hesitate even if his books lend aid and comfort to the Queen's enemies (though mine did not), or even to the common enemies of mankind. For my part, I would even record facts which told in favour of the British government if I found any to record (goak again). It is not my fault that, according to the record, the Austrian crisis was launched by Schuschnigg, not by Hitler; not my fault that the British government, according to the record, not Hitler, took the lead in dismembering Czechoslovakia ; not my fault that the British government in 1939 gave Hitler the impression that they were more concerned to impose concessions on the Poles than to resist Germany. If these things tell in favour of Hitler, it is the fault of previous legends which have been repeated by historians without examination.

. . . These legends have a long life. I suspect I have repeated some. For instance I went on believing until the last moment that Hitler summoned Hacha to Berlin; only when the book was in proof did I look at the records again and discover that Hacha asked to come to Berlin, not the other way round. No doubt other legends have slipped through.

Destroying these legends is not a vindication of Hitler. It is a service to historical truth, and my book should be challenged only on this basis, not for the political morals which people choose to draw from it. This book is not a contribution to 'revisionism' except in the lesser sense of suggesting that Hitler used different

methods from those usually attributed to him. I have never seen any sense in the question of war guilt or war innocence. In a world of sovereign states, each does the best it can for its own interests; and can be criticized at most for mistakes, not for crimes.

I have no desire to win, only to get things right.

Defendants must prove deceit (not just negligence)

On January 20, 2000 Irving made the following submission to the Court:

Memorandum

Thursday, January 20, 2000

I respectfully submit that His Lordship must apply the following tests to all evidence led by the Defendants:

(a) Does it go to the proof of wilful Deceit?

1. What materials were before the Claimant at the time he wrote the book or books referred to by the Defendants? (I respectfully submit that ephemeral spoken utterances, particularly *ex tempore* unscripted talks, are less material to this action than books).

2. Have they established beyond the balance of probabilities that the Claimant, faced with various alternative interpretations, and following as they wrongly represent an agenda to exonerate Adolf Hitler, put fraudulent meanings put on these materials before him, *i.e.*, meanings that were so perverse that no reasonable and unbiased man informed by the same materials and expertise could have arrived at those meanings?

3. Have they established beyond the balance of probabilities that he wilfully and following that political agenda mistranslated or distorted such materials?

(b) Proving **Negligence** is irrelevant to the Issues as pleaded by the Defence The line of inquiry being followed by the defendants, namely *Did an event or thing happen or exist at the time — i.e.*

during the war — as described by the Defendants is of relevance only if they plead negligence: i.e., that the Claimant did not know of that event or thing but “ought to have” known of them. For the avoidance of doubt I would equally have sued on allegation (b), negligence, but that is not what was pleaded. Were the latter to be pleaded, the Claimant would have argued that it is not reasonable to assume that

1. An author writing in 1970 would have knowledge of documents in Soviet or Eastern European or other archives that only later became available;
2. An author writing biographies of Nazi leaders would be expected to develop historiographical expertise on one narrow field such as the Holocaust;
3. An author writing on the normal commercial basis would have the funds and manpower available for research that have been available to the defence team in this action. To prove deceit the Defence must explore the state of mind of the claimant at the material time.

Edgington and Fitzmaurice 1885 29 Chancery Division 459 at 482, Lord Justice Bowen “the state of a man’s mind is a much a fact as the state of his digestion.” Whether I wrote something dishonestly is a fact of this case.

Their decision to plead justification, and not fair comment, is analogous to the case of a Claimant who, finding that he cannot make out the case in deceit which he has pleaded against a Defendant, seeks to fall back on allegations of negligence which he has failed to plead in the alternative.

In summary: If they will not depart from their pleaded case they should not be heard to lead evidence in support of a wholly unpleaded defence that my work is historically worthless i.e. because my research has been negligent to a material degree.

BBC Propaganda on “gas chambers”

Broadcasts by German playwright Thomas Mann

Mann worked for Anglo-American intelligence and made propaganda broadcasts to his fatherland in 1941 and 1942?

[Sourcebook] page 44

In November 1941 he broadcast these words:

“Das christliche Gegenstück zu den Massenvergassungen sind die Begattungstage, wo beurlaubte Soldaten mit BdM Mädchen zu tierische Stundenehe zusammenkommandiert wurden, um Staatsbastarde für den nächsten Krieg zu zeugen” [The Christian counterpart to the mass gassings are the “copulation-days” on which soldiers on leave are ordered together with League of German Maiden girls for an animal hour of marriage to procreate state-bastards for the next war....]

Mann was thus broadcasting talk of “mass gassings” already in November 1941, at a time when they existed only in the fantasy of British propaganda experts.

In January 1942 Mann broadcast these words:

“400 junge holländische Juden sind nach Deutschland gebracht worden, um als Versuchsobjekte für Giftgas zu dienen.” [400 young Dutch Jews were taken to Germany, to act as guinea pigs for poison gas.]

[Sourcebook] page 62

In June 1942 he broadcast:

“400 junge Holländer jüdischen Geblüts wurden nach Deutschland geschafft, um dort mit Giftgas getötet zu werden... Es waren 800 Menschen, die damals verhaftet und nach Mauthausen gebracht und dort vergast wurden” [400 young Dutchmen of Jewish blood were taken off to Germany, to be killed there with poison gas. . . There were 800 people arrested at that time and taken to Mauthausen and gassed there.]

There were no homicidal gas chambers at Mauthausen in June 1942.

The Bischoff Document

One version of the document is illustrated overleaf (several versions are floating around, some typed transcripts, but this seems to purport to be a photocopy, bearing original-looking signatures). It has been cleaned up (blotches, etc., removed) for reproduction.

Because it could be used to establish death rates in Auschwitz that otherwise seemed extravagantly high – namely those first propagated by the Soviet occupation authorities of Poland – first Jean-Claude Pressac in 1989, in his book *Auschwitz: Technique* (at page 247), then the Defendants, and following them the Court, attached serious importance to this document ostensibly originated during World War II by SS *Sturmbannführer* Bischoff, the chief architect of the Auschwitz camp.

The text of the document was published in 1957 in East Berlin, by the Committee of Anti-Fascist Resistance Fighters of the Democratic Republic of Germany, entitled *SS im Einsatz* (Kongress-Verlag, East Berlin, 1957), page 269. According to Pressac a likeness of the document itself first appeared on May 15, 1981 when the same Committee sent a photocopy to the curator of the Auschwitz Museum.

Pressac casts doubt on its figures, stating (at page 91 of his book), without further explanation: “Except for Crematorium I, the figures given are entirely theoretical, obtained by calculation, then increased by about one-third.” Pressac gives the file reference as both 502–1–324 and 502–1–314 in different language editions of his book. Moscow supplied a copy from a file identified as 502–1–314a, but a list of their holdings shows no such file. (File 502–1–314 is 36 pages of correspondence and invoices, Topf and other firms, regarding the construction and outfitting of a crematorium, and similar work.)

Mr Irving offered a number of reasons why he, as a cautious and serious historian, would have reasonable doubts about this otherwise unsupported document: the document’s provenance was highly dubious, and it contained not one flaw, but very many, any one of which would call the document’s integrity into question. This was the only document whose integrity Mr Irving challenged in his closing submissions.

Provenance

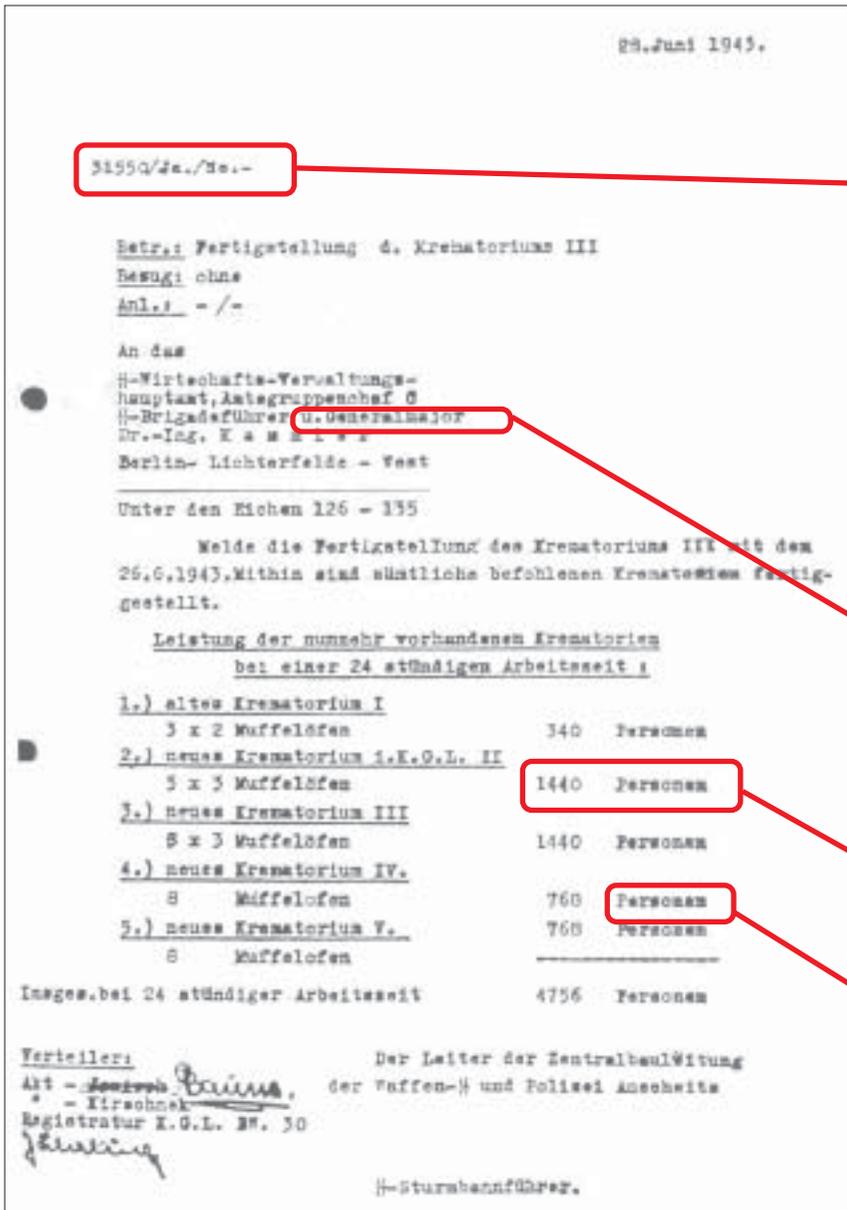
Several versions seem to exist, some differing from others.

1. One version, an *Abschrift* (typed transcript), was produced in Court by Van Pelt and stated by him to come from the Domburg Archiv, East Germany, file ND4586; but it has Jährling (the *Sachbearbeiter*, or consultant) signing the document as “SS *Sturmbannführer*” (although Jährling was a civilian employee of the *Bauleitung* with no rank, an expert consultant or *Sachbearbeiter* on heating matters); this version went to Vienna for a legal action, testified Van Pelt, and ended up in the Auschwitz archives, file PMO BW 30/42, page 2, which is why it has their rubber stamp on it. *I.e.* it does not *originate* from the Auschwitz archives, but from a communist East German archive.

2. A second version, that produced by Van Pelt in his Expert Report, the fourth line (“*Bezug: ohne*”, already an oddity) is reproduced as “*Bezug: keine*”).

Kasimierz Smolen's only evidence that it was genuine was that it agreed with the figures that Filip Müller gave. Müller got his figures however by plagiarism from Miklos Nyiszli, whose book turns out to have been written and first published as a novel.

It must be borne in mind that all paperwork of the Auschwitz *Bauleitung*, a *Waffen SS* office, was bound by the pernicky rules laid down in *Heeresdienstvorschrift* 30(19) and 99(20): each document had to have a *Brieftagebuch* (letter-register) serial-number, including the calendar year, the initials of the person dictating the item, and of the secretary taking dictation; on carbon copies the *Brieftagebuch* serial number was usually added by hand.



Crematorium capacities. The report referred to in the trial as the “Bischoff document”

Defects in the Bischoff document

Mr. Irving challenges this document's integrity for these reasons:

1. The *Bauleitung* Letter Registry Number No.31550/Je./Ne.-
 - (a) The serial number 31550 appears to be typed in later (perhaps after a suitable in-sequence serial number was ascertained for this document?) **At least one other genuine Auschwitz document has a much higher number, though dated several days earlier.**
 - (b) The Registry Number lacks a year: /43/.It was required by civil service regulations. See other examples in this document book. **No other Auschwitz Bauleitung document suffers this defect.**
 - (c) Ja[nisch] dictated the letter; but in all Auschwitz files dictated by him and sighted to date (fifty items) all have the abbreviation *Ja*, none has the abbreviation *Ja.* (i.e. with a fullstop).
 - (d) The Letter-No. indicates a typist working for Janisch whose initials are (/Ne.) **These typist initials are not found on any of the 58,000 genuine documents surviving in the Auschwitz Bauleitung (Construction Office) archives.**
- (2) The SS General Kammler's rank is given wrongly: *SS-Brigadeführer und Generalmajor* instead of *SS-Brigadeführer und Generalmajor der Waffen SS*. **It would have been unthinkable for a wartime typist to commit this error. No other genuine Auschwitz document suffers this defect.**
- (3) The figures for Crematorium II do not tally with the manufacturers' specifications. A letter cited by Pressac in Topf & Co archives gives a top rate of 800 per day for Crematorium II and III.
- (4) Crematoria do not cremate living people (*Personen*) but dead corpses (*Leichen*). **A *lapsus linguae* which no other genuine Auschwitz document makes.**

(5) The document includes crematoria already out of, or due to be taken out of, commission. On the apparent date of the document Crematorium II was out of service, and remained so until July 18; it was in service from March 15 to 24 and Jul. 18 to Dec. 31, in 1943; III from Jun. 25 to Dec. 31; IV from Mar. 22 to May 10. II and IV were down on Jun. 28, 1943; and Crematorium I was already taken out of service on July 19, 1943 for conversion to an air raid shelter.

(6) The *Bauleitung* files show that Bischoff meticulously initialled every page of documents originated by his office, including invariably every page of carbon copies like this alleged document. None of the versions of this document produced by the Defendants is initialled by Bischoff.

The conclusion is inescapable that this document was inexpertly forged by the East German committee of anti-fascists for their 1957 book *SS im Einsatz*, and palmed off onto the Auschwitz archives over twenty years later by them. It would be an incautious historian who accepted it at face value.

Madame Vaillant-Couturier

Rather oddly, Van Pelt makes the point that she was a gentile, but she was not; her maiden name was Vogel, she married Lucien Vogel, publisher of leftist periodicals, and friend of Willi Münzenberg, the (Jewish) Comintern super-agent. She was an accomplished propagandist, and this came across in her Nuremberg testimony where she laid it on thick and rotten. Defence Counsel at Nuremberg reminded her of her journalistic background, clearly putting it to her that she was inventing her testimony. Upon reading Judge Biddle's notes, Mr Irving concluded that this experienced American judge had seen through the witness as a whole, when he jotted the words "this is disbelieve" [check wording] in his notes; it can not have been about the specific testimony about camp Buchenwald, which were well known features of the Nazi camps. It was not unreasonable for Mr Irving, speaking *ex tempore* to an audience, to give a more general summary of Biddle's position; verbally such lapses are more reasonable than in a written prose, of course.

Goebbels diary, March 27, 1942

As the Defendants state, this diary entry was quoted at length in *Goebbels. Mastermind of the Third Reich* (1996) and in more abbreviated form in *Hitler's War*. This was perfectly correct usage. Mr Irving pointed out in his reply that the entry might be evidence against Goebbels but it was not against Hitler, particularly given the non-homicidal references in the diaries, on dates near this entry (e.g., April 26, May 29, 1942: "Most of all [*am liebsten*], Hitler wanted to settle them in central Africa" rather than Siberia), where Goebbels actually claims to be quoting Hitler's views, as opposed to regurgitating his own (and cf. *Hitler's Table Talk*, May 15, July 24, 1942). The entire passage is in direct speech (i.e. Goebbels's own views), not reported speech (as it would be if reporting Hitler's views).

Mr Irving also emphasised that the proper translation shows that Goebbels is speculating on the fate of the unemployable 60 percent of the Jews deported ("Im großen kann man wohl feststellen, daß 60% davon liquidiert werde müssen") rather than knowing for certain: "By and large one can perhaps state that sixty percent of them will have to be liquidated.") Prof. Evans omitted the word *wohl*, with all the uncertainty that it implied. This was a blatant manipulation of the text. The word *wohl* shows that the SD report that Goebbels its summarising in this lengthy entry was not conclusive in this respect. The entry does not even state that Hitler was shown the report to which Goebbels is alluding.

For the diary entry of March 27, 1942 to be taken as conclusive proof that Hitler knew of and approved of the Final Solution is perverse and unreasonable, is it is incompatible with the Schlegelberger Document of approximately the same date (give or take a day or two) in which Hitler is specifically quoted, in a document drafted by a lawyer, as demanding that the solution of the Jewish Problem be postponed until after the war.

The reference to "unrelenting": Mr Irving put it to Prof. Evans that the midnight knock of the Gestapo, the forced evacuation from Berlin in cattle trucks to "the East" was a "brutal and unrelenting" means.