

In the High Court of Justice

IN BANKRUPTCY

Mr Registrar Simmonds

BETWEEN

Applicant **David John Cawdell Irving**

and

Respondent **Louise Mary Brittain**

of Baker Tilly, Trustee in Bankruptcy of the Applicant's Estate

Points of Claim

I, DAVID IRVING, of David Irving, Lake End House, Dorney, Windsor SL4 6QS
MAKE OATH AND SAY as follows:-

1. I am the Applicant in this action and I make this Witness Statement in support of my claim for damages issued dated October 14, 2003. The calculations herein are based upon and supersede those made in my Statement entitled "Particularising the Losses Suffered" dated April 17, 2008, which can be discarded.
2. There is now produced and shown to me a to a statement marked Tenth Witness Statement of David John Cawdell Irving and its attached Exhibits numbered and marked "Exhibits DJCI.1" to "DJCI.8".

3. The damages are claimed under several different headings, all accruing as a result of the Respondent's wrongful actions.

I. Royalties lost as a result of the Respondent's wrongful actions on or about May 23, 2002 and thereafter.

II. The loss of any opportunity to repair and secure my bruised reputation as an historian.

III. The consequential loss of my ability to have any further dealings with my former or indeed any publishers.

IV. The actual loss of chattels, archives, personal possessions, tools of the trade, irreplaceable films, audio and video records of a lifetime career.

V. The pain and suffering caused by the Respondent's wrongful actions and the litigation that has resulted from them.

General remarks on hard-to-quantify losses:

4. I submit that I am entitled to a substantial award of damages in part as compensation for the actual losses suffered through the respondent's actions, and in part for the loss of the opportunity to enhance or repair my bruised reputation through the timely publication of later works and in particular the biography of Heinrich Himmler on which I have working for over ten years, and which would have dispelled for ever the harmful and ridiculous smear and allegation that I am a "Holocaust denier."

5. Without the restoration to my custody and possession of the microfilms and documents which I had collected for this work, it has been so far impossible to

complete this project, and it may now never appear, and certainly not in the profoundly researched form in which it was originally conceived. I have been left powerless to respond to the smear campaign against me, as a major and important part of the documentation needed for my defense against this well funded campaign was among items wrongfully removed by the Respondent and not returned.

6. Every one of my books published in my forty year career attracted major newspaper acclaim and review in all the leading newspapers of the world. It is my view that through the enforced hiatus resulting from the Respondent's seizure of my archives, and her protracted refusal to return even a part of them until October 2007, it is unlikely that I shall find future publishers of comparable reputation to Macmillan, Hodder, Michael Joseph, and others who have published my works in the past.

7. My only remedy is an award of damages. I would submit that a becoming magnanimity on the Respondent's part, matched on my part by the realistic moderation I have displayed throughout in the face of the Respondent's high-handed tactics, would avoid the need for further enquiry. I have yet to receive from the Respondent an offer commensurate with the *truly immense* losses suffered.

Manuscripts

8. *Introduction:* in May 2002 the Respondents wrongfully seized, among other items, the files and papers which I had assembled in my home relating to a dozen projects – books and manuscripts in various stages of completion, *i.e.* work-in-hand. The discovery (disclosure) process will establish whether the Respondents gave any instructions to their agents to spare these items, projects, research files, and tools of the trade from seizure. Where some can be resuscitated after the six year hiatus, the recoverable losses will reflect only what I would call non-betterment losses, and interest-losses on the sums that would have been earned; other book projects are dead in the water and are now beyond resuscitation, because public interest has

evaporated, or because the Respondents have lost my research files, or have culpably caused or contributed to their loss, as I submit.

9. I have discovered through grim experience during 2007 and 2008 that commercial German, UK and US publishers will not publish any works by David Irving, and often do not even reply to letters. Books over which they would have fought in the years prior to and including 2002, at the height of my prestige and name recognition, now have only the value that I can give them by self publishing. The non publication of these works and the delay has damaged my reputation and set back plans to repair the damage done to it by others. When *The Sunday Times* accepted that they had damaged my reputation by a careless review in 1996 they paid £48,000 damages to me in an out of court settlement. I am satisfied that if that matter had come to court an award many times greater would have resulted.

10. Self-publishing is not financially negligible, for those who have the expertise and the established business accounts with book distributors and bookshop chains; but of course it does little to enhance an established author's reputation, and is in fact used to attack it – as witness the article published by Gitta Sereny in *The Observer* in May 1996, where she explicitly mocked the fact that I had self-published *Goebbels. Mastermind of the Third Reich*.

11. To provide a base for further calculations of losses, here are details on earlier projects, the figures being given to the best of my recollection, and subject to correction upon discovery (disclosure) of surviving records:

COMMERCIALY PUBLISHED:

12. *Rudolf Hess*: in 1987 Macmillan UK Ltd paid a £41,000 advance for English rights alone in this book. I also sold it in Germany and other countries.

13. *The War Between the Generals*: In 1988 Thomas Congdon books, a US start-up, paid an advance of \$110,000 (around £69,000) for English-language rights; it was also sold to Bertelsmann (Knaus Verlag in Germany), Laffont (France), Mondadori (Italy), Hayakawa (Japan), and other countries.

14. My Rommel biography, *The Trail of the Fox*, earned a huge sum of money: in Germany, it sold over 67,500 copies in hardback alone, at DM38 retail price, of which ten percent came to me, roughly £69,300. On top of that it sold to Rowohlt for a paperback edition and enjoyed many other subsidiary deals including being serialised in *Der Spiegel*. I was usually paid fifty percent of subsidiary right sales. The book was a best seller in the UK (Weidenfeld), USA (a million paperback copies sold by Avon Books), France, Spain, Italy, Japan and other countries.

SELF-PUBLISHED:

15. We self-published our own reprint of *Hitler's War* in 1991, printing 2,000 copies at a face value of £30 and selling out all. (We reprinted a new updated and revised edition in 2001, printing 7,000 more copies and these are still selling.) Being self-published, these editions attracted no press coverage and did nothing therefore for my public reputation.

16. Parforce UK Ltd., a company of which I am now a director, printed in 1996 7,000 copies of my Goebbels biography, *Goebbels. Mastermind of the Third Reich*, and reprinted 2,000 more in about 1999; and all 9,000 copies have sold out. I have one copy left. Given that this book's retail price was £25.00, and that half of the total print run was sold through the trade at a 45 to 50 percent discount, the rest at full retail price, and that printing costs were about £15,000, the UK edition profit alone was therefore £153,000 (perhaps not much for eight years' work or more); and we hope this year to reprint. We also sold licences in Germany, Sweden, USA, and Italy for about £50,000. (If the relevant files are not among those lost by the Respondents, more precise figures can be extracted from them by way of discovery, if there is any dispute: the above figures are conservative estimates.)

17. The US publisher paid a \$25,000 advance, about £15,000 (the US edition was never published, as the publisher came under pressure); we sold minor rights to Sweden and Germany.

18. Similarly, we self-published *Nuremberg, the Last Battle* at a retail price of £20.00. This book sold out its first print run of 7,000, and we reprinted. We have also sold minor rights in this book to Germany and Italy and Hungary for advances around £10,000 each.

19. If we take the first volume of *Churchill's War*, vol. i: *Struggle for Power*, Veritas printed 20,000 copies of this book and it has nearly sold out. We sell it at £20.00 retail. (The second volume, *Churchill's War*, vol. ii: *Triumph in Adversity*, is still in print and does not provide such an absolute comparison).

20. *Conclusion*: Until now, a main-title book by David Irving, whether commercially or self-published, could be said to earn well over £200,000 clear profit in its sales career.

21. The Respondent's wrongful actions caused financial losses to my book authoring and publishing which can be recognised as falling into several categories:

(a) **Actual losses.** These have accrued where a book already planned, researched, and part completed will now never appear as a consequence of the Respondent's wrongful actions. For example, sometimes the actual incomplete typescript draft has survived and been returned intact; in theory it could be published after further work with only a loss of six years' interest, but in practice it now lacks the supporting files to complete the project, and major work will be needed for which my remaining life-expectancy will arguably not suffice. I may die with the job unfinished. The loss in that case would be £200,000 or a reasonable estimate still to be agreed between parties, based on the total amount the project would have earned if completed.

(b) **Potential losses.** These, I submit have been caused by the six-year hiatus (what I have called non-betterment, i.e. the opposite of betterment): overall, a book by David Irving published now would be likely to earn less than one published in 2002 or earlier. It is not just that the pipeline blockage in publishing my new books has had a negative effect on my reputation these last six years. The sales prospects of all “war books” have diminished. So has my saleability. The media onslaught on me since 2002 has been formidable. Publishers and newspapers are now, and even more so since my political imprisonment by Austria, universally hostile toward me, so far as I can judge. Newspapers no longer review my books; the last to be even marginally reviewed was *Churchill’s War*, vol. ii: *Triumph in Adversity* published in 2002, at the start of the six-year hiatus (previously my books often figured as Book of the Week, etc.) Some distributors (e.g. Bertram’s) no longer act for me. Waterstone’s no longer stocks my titles. I have found it impossible to engage a literary agent. Publications (*The Spectator*, *The New Statesman*, *History Today*, *The Bookseller*, *Britain at War* magazine) refuse to accept our advertising. This disgraceful boycott-cum-blackout is almost total. The potential loss here is represented by the difference between a reasonable estimate of what any David Irving project would have earned in its lifetime in 2002, at the time of the Respondent’s wrongful actions, and now, after the six year delay.

(c) **Interest losses.** If a project has survived in completeable form and is duly published in the future, there is a loss represented by the interest on the amount the project would have earned had it not been seized in 2002 and published soon after.

THE PROJECTS ENUMERATED:

22. The Respondent’s wrongful actions damaged, diminished, or destroyed the following future projects and work-in-hand:

(a) Mark Deavin, *Macmillan's Hidden Agenda*. Acting as publisher, I had paid author Dr Mark Deavin an advance of £3,000 for world rights to publish this book, and had completed half-editing the text. The Respondents seized the entire files, including the collected original photographs and illustrations and correspondence in May 2002, and only half returned them (box 51) in October 2007. The project can be revived (as agreed with Deavin Sunday, March 16, 2008), but the book (an inside history of the Common Market negotiations) has lost much of its topicality now. Loss: say four years' interest on potential profit on book, said profit being estimated at £200,000.

(b) Joseph Bellinger: *Himmler's Death*. In 1999 and 2000 I had paid the new US author Bellinger an advance of \$11,000 (then approximately £7,000) on royalties for world rights in this incomplete manuscript, and had completed half editing the text. The entire files, including the collected original photographs and illustrations and correspondence were seized, and are now missing. In partial violation of my rights, during the six-year hiatus the author has sold rights to a German publishing house, and there is no realistic prospect of conducting fruitful overseas litigation to obtain redress. Loss: the potential profit on publishing this book and selling sub-licences in the same, said profit being estimated at £200,000, and interest thereon.

(c) On June 9, 1985 I found in the Public Records office "bulky files of CSDIC interrogation reports". These were previously top secret transcripts of conversations between Nazi prisoners in British custody, recorded with hidden microphones. Exploiting them took immense, detailed, and labour-intensive research. In 1989 I completed most of this and engaged researcher SSG to assist in writing and researching the book, which now had a working title in English "Overheard". I sold Germans book rights for an immediate advance of DM25,000. On November 2, 1989 the German publisher, having seen parts of the typescript, was lukewarm, finding the project would be "soiling their own nest". But on March 25, 1992 I agreed with my German publisher on terms to complete the project and the work continued for several years, trawling

through the hundreds of thousands of reports. The advance of DM 25,000 marks has since been clawed back. The finished manuscript – sent back by the German publisher for further editing – languished in my files, as one of several projects pending publication in English. In November 1993 I was banned from Germany. The Respondents seized the project in May 2002 with everything else in May 2002. In the intervening six years other authors, alerted by my own researches, published two books on the subject, effectively killing all prospect for a 2008 David Irving version, as two publishers have recently confirmed. Loss: potential profit on publishing this book, said profit being estimated at £200,000, and interest thereon.

(d) *Memoirs of early youth and later years* (written and dictated between 1949 and 1987), half written. Total loss – seized in 2002 and destroyed. I have had to rewrite from memory. Loss: Hard to define; clearly not zero; but I would assess a notional damage of £20,000.

(e) *Forschungsamt*. In about 1990 I delivered to a German publisher a German-language book, “Das Reich hört mit.” It was a history of the previously unresearched German wiretap and codebreaking agency, the Forschungsamt. They published it in Germany with great success. I planned (and still plan) to publish an English-language version later. The Respondents removed the only copy of the half-German typescript in May 2002, and returned it (Box 49 (d)) in October 2007. Loss: interest on potential earnings of say £50,000.

(f) *Guernica to Vietnam*. The Respondents removed the only copy of this half-German typescript in May 2002, and returned it (Box 77 (d)) in October 2007. Published successfully in German. English original text was to be published as a small illustrated book. Its chances are now non-existent. Realistically speaking, a probable loss of around £20,000.

(g) *Hitler's War Lite*. 283-page English text. This typescript was to be worked up into a short, primarily picture book. The Respondents removed the only copy

of this typescript in May 2002, and returned it (Box 94 (c)) in October 2007.
Loss: interest on potential earnings of say £50,000.

(h) *The Mare's Nest Lite*: original treatment of my book *The Mare's Nest* condensed to 80pp. This typescript was to be worked up into a short, primarily picture-book history of the German V-weapons campaign. The Respondents removed the only copy of this typescript in May 2002, and returned it (Box 94 (g)) in October 2007. Loss: interest on potential earnings of say £50,000.

(i) *Global Vendetta*: This book project – a history of my going battle against the worldwide attempts to silence me – is now beyond resuscitation, because the Respondents removed in May 2002 the archive box (Exhibit 1, Numbered Series of Archive Boxes, box No.30) containing the only copy of this typescript and all supporting files; they are completely lost and cannot be reproduced, as the thousands of pages of documents were obtained by Freedom of Information applications and other means from the Canadian, United States, and Australian governments. Loss: Realistically speaking, a probable loss of around £20,000 plus the interest thereon.

(j) *Heinrich Himmler*: work on this biography is still stalled by my inability to read the Himmler microfilms returned to me after six years, late in 2007. The film reader-printer was wrongfully seized. Had I not been prevented from completing this book by the seizure of my tools and files in 2002 and the total destruction of many of them since then, the book would have appeared in 2003. If published on time, in 2003 or 2004, it would by now have earned an overall worldwide income of over a quarter million pounds. Given the flagging interest in WW2 topics, and the appearance of Himmler biographies by serious rivals (Professor Longerich) who may have had wrongful access to my research files, my prospects are diminished by an estimated one hundred thousand pounds. The book will now appear in 2009 at the earliest. I have lost six years' interest on the income.

23. I now turn to the financial losses incurred by the loss or destruction of actual possessions as listed in the Exhibits to my last Witness Statement, and the cost, where practicable, of their replacement.

Exhibit 1. Numbered series of White Archive Boxes

Summary: This list as exhibited describes 80 boxes, each of 1.56 cubic feet, 42 of which were shipped to Illinois as being of no further need and in anticipation of a later sale of my complete papers to a US university. The remainder were retained at Duke Street as being of immediate need for future projects, and 31 of them are agreed between the parties as being lost without hope of retrieval. (Four more boxes are missing but some scattered items from their contents are located in the boxes returned.)

These archive boxes contained the research and writing product of a 45-year writing career. They would all have joined with the Illinois set of boxes to create a collection to be sold to a US university for an asking price of half a million pounds five years ago, when I last negotiated. Events in the meantime, including the seizure of the papers, the death of Dr Howard Gottlieb the archivist in Boston and my own imprisonment, have created a hiatus in the negotiations. The loss of certain archives is particularly painful: the bulk of my original research on Dr Goebbels, including unique documents and diaries from the KGB archives and classified access to the highly restricted Berlin Document Center of the US Mission, over eight years, was in boxes 15, 22, 43, 53 and 54 (Exhibit 1: Numbered series of White Archive Boxes); of these files only box 22, the litigation against *The Sunday Times* for breach of contract, has survived, the Respondents have lost the other four – over six cubic feet of papers, on which four boxes I would put a collective value, or alternatively a notional replacement cost, of £50,000. I deal with boxes 51 and 35 below. I would put a value, or alternatively a notional replacement cost, on each of the other 25 missing boxes of three to five thousand pounds, which would result in a realistic total loss of £100,000.

Exhibit 2. Box 51 “Judenfrage”

This box (and box 35) are included in Exhibit 1 described above, but are dealt with here separately because of their special value. They contained essential files on the Nazis and the Holocaust, collected over thirty years or more and vital for my biography of Heinrich Himmler. The value of Box 51 value was assessed by Professor Deborah Lipstadt’s neutral experts as considerable (see letter of Mishcon de Reya to DLA, November 26, 2003). I estimate conservatively that it would cost me £50,000 to replicate the lost research in this one box alone, even if I were not now banned from some of the countries housing the archives concerned. *As stated in my letter to the DLA on December 28, 2007, the experts’ own report is evidence that the box was among those removed and lost by the Respondents, were they ever to deny it.* The missing Box 35 is of similar value, containing other irreplaceable materials on the Holocaust for my Himmler biography. I therefore submit that I am entitled to put a total value, or alternatively a notional replacement cost, on these two boxes of £100,000.

Exhibit 3. White archive boxes of items collected for the Goebbels biography

This exhibit lists fourteen (1.56 cubic foot) archive boxes of rare materials collected for research on books including the Goebbels biography; and twelve boxes of 1.56 cubic feet of rare materials collected for the Churchill, Hess, Gehlen and other books. All are lost. I put a value, or alternatively a notional replacement cost, of three to five thousand pounds on each of these 26 boxes, which would result in an average total of £104,000.

Exhibit 4. Audio and videotapes.

The Respondents have by their wrongful actions caused the loss of a total of 232 video and audiotapes, my entire such collection (of the 236 listed, four are to be found in other boxes returned to me, as reported in my letter to DLA of

February 25, 2008). It is impossible to assess a price for the pain that the loss of some of these records has caused (e.g. the voices of parents and other next of kin since deceased), or for the loss of vital historical records – e.g. the only known recordings of Hitler’s private staff, now long dead, discussing him. Thirty-two of the tapes are such historical research records: I put a notional value on each of £5,000; the remaining two hundred tapes – exclusive interviews, speeches around the world, lectures, are no less irreplaceable, but I put a notional average value on each of £500. The total loss amounts to £260,000.

Exhibit 5. Domestic items (as per the exhibited list “last known locations” attached)

In short, the agents removed goods with an estimated replacement cost of £18,032.88, and left behind goods which were subsequently lost with a value of £11,875.00, so the total amount here to be claimed is £29,907.88 including the printer reader (below). In support of my typical valuations I attach also the clipping from a national newspaper giving the prices that MPs can claim for replacing domestic items, the so-called “John Lewis List.”

Exhibit 6. Microfilm reader printer

This item is included in Exhibit 5 above and its replacement cost £6,240.00 is part of that exhibit’s total. It is also dealt with here because of its special value: Kodak Recordak Microfilm printer-reader replacement estimate: Kodak 200DSV machine, body: £2600, lens £375, 35mm film carrier RC9B £1,265, Powerfilm software £1700, peripherals up to £300), total £6,240.00. It was clearly an essential tool of the trade, and the Respondents’ agents’ own inventory establishes that it was removed from the premises. It has not been returned to me.

Statement Of Truth

24. I believe that the facts stated in this Witness Statement are true.

Signed:  ...

David John Cawdell Irving

Dated: Monday, May 26, 2008

Served this twenty-sixth day of May 2008 by David Irving of Lake End House, Dorney,
Windsor SL4 6QS acting in person.

By the Applicant in person

David Irving

Lake End House,

Dorney,

Windsor SL4 6QS

Telephone 01628 661 478