

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-5/18-T

OFFICE OF THE PRESIDENT

Before: Judge Patrick Robinson

Registrar: Mr. John Hocking

Date: 28 January 2011

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

REQUEST FOR REVERSAL OF DECISION
TO MONITOR TELEPHONE CALLS

The Office of the Prosecutor:
Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:
Radovan Karadzic

1. Dr. Radovan Karadzic respectfully requests, pursuant to Regulation 22 of the *Regulations to Govern the Supervision of Visits to and Communications with Detainees*, that the President reverse the decision of the Registrar to record and monitor all of his telephone calls.

2. The recent revelation by *Wikileaks* that the Commanding Officer of the United Nations Detention Unit has revealed the tenor and contents of monitored and recorded communications of the late President Slobodan Milosevic with his wife and others leads Dr. Karadzic to conclude that the recording and monitoring of detainee communications is being abused.

The Regime

3. Regulation 20 of the *Regulations to Govern the Supervision of Visits to and Communications with Detainees* provides that:

The Registrar may order that telephone conversations be recorded or monitored:

(A) to ensure the detainee does not attempt to:

- (i) arrange escape;
- (ii) interfere with or intimidate a witness;
- (iii) interfere with the administration of justice; or
- (iv) otherwise disturb the maintenance of security and good order in the detention unit; or

(B) if an order for non-disclosure has been made by a Judge or a Chamber pursuant to the Rules of Procedure and Evidence.

4. Regulation 21 provides that:

(A) If one of the situations listed in Regulation 20 arises, the Registrar may order all telephone calls to and from that detainee, other than with counsel and diplomatic representatives, to be recorded or monitored for a period not exceeding thirty days.

(B) Renewals of the period, which shall not exceed thirty days, shall be reported to the President.

(C) The detainee and his counsel shall be notified of the Registrar's decision within twenty-four hours.

5. Regulation 22 provides that "the detainee may at any time request the President to reverse any decision of the Registrar taken under Regulation 21."

6. Pursuant to these regulations, the Registrar has, as a matter of routine, ordered the recording and monitoring of all telephone conversations of all detainees except those which are covered by attorney-client or diplomatic privilege.

7. On 13 January 2011, the Registrar issued the Impugned Decision, in which he extended the recording and monitoring of all telephone conversations of all detainees of the United Nations Detention Unit for another 30 days.¹ The practice of the Registrar has been to issue such a letter every 30 days to every detainee and to record all non-privileged telephone conversations from the moment they arrive at the detention unit, without exception.

Lack of Good Cause

8. Dr. Karadzic's behavior at the Detention Unit and before the Tribunal has been exemplary in the 2 ½ years since his arrival in The Hague. There has not been a single breach of a non-disclosure or confidentiality order, not a single protected witness' identity has been compromised or revealed, not a single person has reported any threats or intimidation from Dr. Karadzic or his defence team, there has never been the slightest hint that Dr. Karadzic might try to escape, and Dr. Karadzic has done nothing in the 2 ½ years to disturb the good order and security of the detention unit.

9. Therefore, there is no reason why all of his telephone calls should be recorded and monitored. The Registrar's inclusion of him in its blanket orders to record every conversation of every detainee is unreasonable.

The Abuse

10. The recent revelation that former United Nations Commander Timothy McFadden has disclosed information he obtained from monitoring and recording the telephone conversations of the late President Slobodan Milosevic is shocking and disturbing.

11. Dr. Karadzic has attached a cable from Legal Counselor Clifford Johnson of the United States Embassy in The Hague in which he describes an hour long meeting with Commander McFadden in the presence of a physician retained by the United States.² Among the information revealed by Commander McFadden was:

¹ A copy of this decision is attached as Annex "A".

² A copy of the cable is attached as Annex "B".

- (A) McFadden is privy to the contents of Milosevic's monitored telephone conversations and visits as well as the reports of the physicians that have examined him.³
- (B) Throughout the one-hour discussion, McFadden gave the impression of being fully and personally aware of all of the details of Milosevic's detention, though he noted that Milosevic remains a private man who does not generally share his thoughts.⁴
- (C) Milosevic calls his wife, Mirjana Markovic, every morning, continuing what McFadden described as an "extraordinary relationship"; Milosevic could manipulate a nation, he said, but struggled to manage his wife who, on the contrary, seemed to exert just such a pull on him.⁵
- (D) McFadden referred to a broad range of emotions and approaches that Mira Markovic deployed to goad or cajole Milosevic to take particular actions. When he failed to heed her advice, she was not beyond telling him that bad outcomes could have been avoided had he listened to her. Markovic served as a source of information, comfort, motivation, and strategy for Milosevic and he relied heavily on her guidance. When Markovic pressed Milosevic to do something he did not want to do, Milosevic rarely pushed back directly but simply never acted on the particular entreaty.⁶
- (E) Previously, Markovic would keep him up to date on wrangling within the SPS and tell him who he needed to call to patch up feuds, solve conflicts, or provide political guidance to.⁷
- (F) In the process of discussing Milosevic's contacts, McFadden illuminated the nature of the relationship among the so-called legal associates (Serb lawyers who have no courtroom privileges but enjoy privileged communications with the defendant), the amici and Milosevic. McFadden said that Milosevic believes that "he is surrounded by fools" both inside and out of the courtroom,⁸
- (G) Milosevic's public distancing of the *amicus curiae* actually masks the fact that his legal associates regularly liaise with the amici to discuss and coordinate defense strategy and questioning of witnesses. The fact that senior prosecutors on the Milosevic team are wholly unaware of this cooperation (as were we) underscores Milosevic's ability to work

³ Para. 2

⁴ Para. 2

⁵ Para. 3

⁶ Para. 3

⁷ Para 4

⁸ Para 5

effectively behind the scenes, through third parties, and leave few fingerprints.⁹

12. This information could only have come from the recording and monitoring of President Milosevic's telephone calls, particularly with his wife.

13. The President is respectfully requested to consider how the authorities of the Detention Unit have abused the authority to monitor and record conversations in a blanket manner as authorized by the Registrar when determining the reasonableness of the Registrar's decision to monitor and record all calls of all detainees.

14. While Dr. Karadzic does not have standing to complain about the violation of the rights of President Milosevic, the President may wish to consider, *proprio motu*, whether to appoint a Trial Chamber to determine whether an *amicus curiae* should be appointed pursuant to Rule 77(C)(ii) to investigate the interference with the proper administration of justice caused by the revelation of President Milosevic's private thoughts, legal strategy, and private health issues.

15. It is unknown to what extent, if any, officials of the United Nations Detention Unit or the Registrar, have discussed with third parties information obtained in whole or in part through monitoring or recording of Dr. Karadzic's conversations. In order to determine the prejudice to Dr. Karadzic from the recording practices which are the subject of this motion, it is respectfully requested that the President order the Registrar to make a submission, pursuant to Rule 33(B), of a statement under oath from the Commander of the Detention Unit, and the former Commanders since July 2008, setting forth all instances in which they have discussed Dr. Karadzic's case with persons outside of the Registry and the information revealed in those discussions.

The Law

16. The Impugned Decision and its lack of reasoning violates Article 8 of the European Convention of Human Rights (ECHR), since it fails to refer to the grounds on which the interference with Dr. Karadzic's right to privacy is deemed necessary.

17. According to Van Zyl Smit and Snacken, '[w]here telephone facilities are made available, the Court has applied the provisions of Article 8(2), by analogy with the right to respect for correspondence, to any restriction on their use or interference with

⁹ Para. 6

them, such as interception of conversations'.¹⁰ These scholars further refer to the 'Commission nationale consultative des droits de l'homme Sanctionner dans le respect des droits de l'homme. I. Les droits de l'homme dans la prison (Paris: la documentation Française, 2007, 50)' which holds that '[i]nterception and registration of telephonic conversations is a far-reaching intervention into the private life of the prisoner, which seriously hampers communication about personal issues and may lead to emotional isolation of the prisoner'.¹¹

18. In *Lambert v. France*, the European Court of Human Rights held that 'telephone conversations are covered by the notions of "private life" and "correspondence" within the meaning of Article 8, the admitted measure of interception amounted to "interference by a public authority" with the exercise of a right secured to the applicant in paragraph 1 of that Article'. In this respect, the circumstance in *Lambert* that it concerned the interception carried out on the line of a third party, was in the opinion of the Court 'of little importance'.¹² In *Doerga v. the Netherlands*, it was not disputed 'that the tapping and recording of the applicant's telephone conversations and the retention of these recordings by the prison authorities constituted an interference with the applicant's rights under Article 8 § 1 of the Convention'.¹³

19. The Impugned Decision also fails to comply with Dutch law. The Dutch Appeals Commission (Beroepscommissie) of the Council for the Administration of Justice and Protection of Juveniles (Raad voor de Strafrechtstoepassing en Jeugdbescherming) has decided in respect to the monitoring and recording of telephone calls in penitentiary institutions that a regular balancing of interests is required concerning the necessity of the continuation of such measures.¹⁴ It has held that the prison governor must carry out such a weighing of interests at one-monthly intervals; the balancing exercise must be substantiated with a written report and find its basis in sufficiently clear criteria.¹⁵

¹⁰ Dirk van Zyl Smit and Sonja Snacken, *Principles of European Prison Law and Policy*, Oxford University Press, 2009, p. 227.

¹¹ Dirk van Zyl Smit and Sonja Snacken, *Principles of European Prison Law and Policy*, Oxford University Press, 2009, p. 227.

¹² ECtHR, *Lambert v. France*, judgment of 24 August 1998, Application no. 88/1997/872/1084, par. 22.

¹³ ECtHR, *Doerga v. the Netherlands*, judgment of 27 April 2004, Application no. 50210/99, par. 43.

¹⁴ RSJ, 8 February 2010, 09/2749/GA and 09/2787/GA.

¹⁵ RSJ, 8 February 2010, 09/2749/GA and 09/2787/GA.

20. According to Kelk, '[r]estrictions on contact by phone can only be made in individual cases and when necessary'.¹⁶ This scholar refers to other case law by the RSJ where the latter held that is therefore not permitted where in a particular penitentiary institution all telephone calls by all detained persons are recorded and/ or monitored.¹⁷

21. The Impugned Decision also violates the European Prison Rules (EPR). Rule 24 holds, as far as relevant:

'24.1 Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.

24.2 Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.'

22. According to the official Commentary to the EPR, [t]o adhere to the limits set by Article 8.2 of the ECHR on interference with the exercise of this right by a public authority, restrictions on communications should be kept to the minimum. At the same time, Rule 24.2 recognises that communication of all kinds can be restricted and monitored for purposes of internal good order, safety and security of the prison (...). It may also be necessary to limit communication in order to meet the needs of continuing criminal investigations, to prevent the commission of further crime and to protect victims of crime. Restrictions on these grounds should be imposed with particular caution, as they require decisions about matters often outside the knowledge of the normal operations of the prison authorities. It may be good policy to require court orders before making restrictions on these grounds. Monitoring too should be proportionate to the threat posed by a particular form of communication and should not be used as an indirect way of restricting communication (...). Further, the rules according to which restrictions are imposed 'must be spelt out clearly', the restriction 'must be the least intrusive justified by the threat' and '*in order to justify a restriction, the threat must be demonstrable*' which

¹⁶ C. Kelk, *Nederlands Detentierecht*, Derde Herziene Druk, Kluwer, Deventer 2008, p. 228.

¹⁷ C. Kelk, *Nederlands Detentierecht*, Derde Herziene Druk, Kluwer, Deventer 2008, p. 228.

implies, for example, that ‘*an indefinite period of censorship (...) is not acceptable*’.

(Emphasis added.)

The Remedy

23. The fact that a regime exists whereby the Registrar must justify the monitoring and recording of telephone calls of detainees, must renew the authorization every 30 days, and where a right of appeal of such decisions lies to the President indicates that the blanket recording of all calls of all detainees during the entire period of their detention is unreasonable even under ICTY standards. The Registrar’s administration of this wholesale monitoring and recording is arbitrary and should be reversed.

24. Dr. Karadzic recognizes that monitoring of detainee communications, on the basis of reasonable suspicion, or even some “spot” monitoring, would be reasonable to ensure the good order and security of the detention unit. However, the monitoring of all communications of all detainees at all times is unwarranted, excessive, and subject to the kind of abuse which is now documented above.

25. Therefore, Dr. Karadzic respectfully requests that the President reverse the Impugned Decision to monitor all of his conversations and to direct the Registrar to come up with a reasonable approach which balances the needs of the Tribunal with Dr. Karadzic’s right to privacy in his marital, legal, and health affairs.

Conclusion

26. The revelations of the disclosure of personal information obtained from monitoring and recording of conversations at the United Nations Detention Unit impugns the integrity of this Tribunal and points out the abuse from the unnecessary and unreasonable blanket monitoring and recording of detainee conversations.

27. The President is urged to restore the integrity of the Tribunal by (1) *proprio motu* appointing a Trial Chamber to investigate the possible interference with the administration of justice in the *Milosevic* case; (2) holding UNDU commanders accountable by requiring a Registry submission in which any revelations of Dr. Karadzic’s communications to third parties are disclosed; and (3) reigning in the

wholesale monitoring and recording of Dr. Karadzic's telephone conversations by reversing the Impugned Decision of the Registrar.

Word count: 2587

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', with a stylized flourish at the end.

Radovan Karadzic¹⁸

¹⁸ The assistance of Denis Abels, PHD candidate at the University of Amsterdam Law Faculty, in the research for this pleading is gratefully acknowledged.

ANNEX "A"

13 January 2011



United Nations
Nations Unies



International
Criminal Tribunal
for the Former
Yugoslavia
Registry

Tribunal Pénal
International pour
l'ex-Yougoslavie
Greffé

Dear Madam/Sir,

I refer to the Deputy Registrar's letter of 13 December 2010 regarding the monitoring of telephone conversations of your client on the basis of decisions of the Registry.

In accordance with Regulations 20 and 21 of the Regulations to Govern the Supervision of Visits to and Communications with Detainees,¹ I have decided to renew the monitoring of the telephone conversations of your client for a further period of 30 days from **14 January 2011 to 13 February 2011 inclusive**.

Please do not hesitate to contact Ms. Jaimee Campbell, Head of OLAD, at +31 70 512 5147 should you seek any additional information on this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Hocking', with a long horizontal line extending to the right.

John Hocking
Registrar

TO: All Defence Counsel

Encl. 1

¹ IT/98/Rev. 4

- 1 Mr. Gregor Guy-Smith, defence counsel for Idriz Balaj
- 2 Mr. John Ostojić, defence counsel for Ljubiša Beara
- 3 Mr. Christopher Gosnell, defence counsel for Ljubomir Borovčanin
- 4 Mr. Richard Harvey, defence counsel for Lahi Brahimaj
- 5 Mr. Steven Kay, defence counsel for Ivan Čermak
- 6 Ms. Dijana Tomašegović-Tomić, defence counsel for Valentin Čorić
- 7 Mr. Dragoljub Đorđević, defence counsel for Vlastimir Đorđević
- 8 Mr. Luka Mišetić, defence counsel for Ante Gotovina
- 9 Mr. Ben Emmerson, defence counsel for Ramush Haradinaj
- 10 Mr. Radovan Karadžić, self-represented accused
- 11 Mr. Mihajlo Bakrač, defence counsel for Vladimir Lazarević
- 12 Mr. Tomislav Višnjić, defence counsel for Milan Lukić
- 13 Mr. Djuro Čepić, defence counsel for Sredoje Lukić
- 14 Mr. Branko Lukić, defence counsel for Sreten Lukić
- 15 Mr. Goran Mikuličić, defence counsel for Mladen Markač
- 16 Ms. Natacha Faveau Ivanović, defence counsel for Radivoje Miletić
- 17 Mr. Branislav Tapušковиć, defence counsel for Dragomir Milošević
- 18 Mr. Miroslav Vasić, defence counsel for Mile Mrkšić
- 19 Ms. Jelena Nikolić, defence counsel for Drago Nikolić
- 20 Mr. Tomislav Višnjić, defence counsel for Dragoljub Ojdanić
- 21 Mr. Peter Haynes, defence counsel for Vinko Pandurević
- 22 Mr. John Ackerman, defence counsel for Nebojša Pavković
- 23 Mr. Novak Lukić, defence counsel for Momčilo Perišić
- 24 Ms. Vesna Alaburić, defence counsel for Milivoj Petković
- 25 Mr. Zoran Živanović, defence counsel for Vujadin Popović
- 26 Mr. Bozidar Kovačić, defence counsel for Slobodan Praljak
- 27 Mr. Michael Karnavas, defence counsel for Jadranko Prlić
- 28 Mr. Fahrudin Ibrišimović, defence counsel for Berislav Pusić
- 29 Mr. Toma Fila, defence counsel for Nikola Sainović
- 30 Mr. Vojislav Šešelj, self-represented accused
- 31 Mr. Mihaljo Bakrač, defence counsel for Franko Simatović
- 32 Mr. Novak Lukić, defence counsel for Veselin Šljivančanin
- 33 Mr. Slobodan Zecević, defence counsel for Mico Stanišić
- 34 Mr. Wayne Jordash, defence counsel for Jovica Stanišić
- 35 Mr. Senka Nožica, defence counsel for Bruno Stojić
- 36 Mr. Antonio Apostolski, defence counsel for Johan Tarčulovski
- 37 Mr. Zdravko Tolimir, self-represented accused
- 38 Mr. Dragan Krgović, defence counsel for Stojan Župljanin

ANNEX "B"

Reference ID Created Released Classification Origin

03THEHAGUE2835 2003-11-1216:04 2011-01-1800:12 SECRET//NOFORN Embassy
The Hague

This record is a partial extract of the original cable. The full text of the original cable is not available.

S E C R E T SECTION 01 OF 05 THE HAGUE

002835 SIPDIS NOFORN DEPARTMENT FOR S/WCI - PROSPER/RICHARD,
EUR/SCE -GREGORIAN/MITCHELL, L/EUR - LAHNE, INR/WCAD -
SEIDENSTRICKER/MORIN E.O. 12958: DECL: 1.6 FIVE YEARS AFTER CLOSURE
OF ICTYTA... ",

SUBJECT: ICTY: AN INSIDE LOOK INTO MILOSEVIC'S HEALTH AND SUPPORT
NETWORK REF: THE HAGUE 2568

Classified By: Legal Counselor Clifton M. Johnson per reasons 1.5(b)-(d)

¶1. (S/NF) Summary: The head of the detention unit of the International Criminal Tribunal for the former Yugoslavia (ICTY) provided Embassy legal officers and USG physician with details of Slobodan Milosevic's health status, daily regimen, legal and financial network, frame of mind, and contacts outside the Tribunal. Among many revealing details, this official -- who sees and speaks with Milosevic more regularly and closely than nearly anybody else -- provided information indicating that Milosevic's heart condition, while manageable on a day-to-day basis, is serious and not readily controlled by medication. At the same time the official discounted reports that Milosevic suffers from diabetes or, at least at present, depression. The official described a confident, engaged Milosevic who with his wife's assistance ably manages a web of legal and political contacts. Through his Belgrade legal advisers that rotate through the Hague he exercises control over Social Party of Serbia (SPS) activities and coordinates legal strategy with the amici curiae, friends of the court. Meanwhile, the accused's financial situation is precarious, necessitating a recent hat-passing exercise by the SPS in order to generate funds to pay household staff and the travel of his lawyers. End Summary. ¶

¶2. (S/NF) Tim McFadden an experienced Irish prison warden and head of the ICTY's detention facility in Scheveningen, provided embassy legal officers and USG physician an unprecedented overview of Slobodan Milosevic's life and activities since coming to trail. McFadden, whom one ICTY Registry official described as ""the best of the best,"" is in a unique position not only to describe Milosevic's detention, as he sees the defendant and interacts with him on a daily basis, but also to assess him on a relative basis to other ICTY detainees. Moreover, McFadden is privy to the contents of Milosevic's monitored telephone conversations and visits as well as the reports of the physicians that have examined him. McFadden has had long experience in managing tough prisoners, as he managed a number of UK prisons holding Irish Republican Army detainees; another Registry official described ICTY detainees as ""pussycats"" compared to McFadden charges in the UK. Throughout the one-hour discussion, McFadden gave the impression of being fully and personally aware of all of the details of Milosevic's detention, though

he noted that Milosevic remains a private man who does not generally share his thoughts.

-----Associates and Frame of Mind-----

¶3. (S/NF) McFadden firmly rejected reports that Milosevic was suffering from depression noting that the accused has given "no indication that he would be anything but defiant to the process" of his prosecution and that he demonstrates only a "limited inclination toward depression." He noted that Milosevic's inability to see his son, daughter, daughter-in-law, wife and grandson, especially the latter two, causes him substantial unhappiness. On the other hand, McFadden said that Milosevic "has a job that distracts and preoccupies so that he is not apparently inclined to depression." He calls his wife, Mirjana Markovic, every morning, continuing what McFadden described as an "extraordinary relationship"; Milosevic could manipulate a nation, he said, but struggled to manage his wife who, on the contrary, seemed to exert just such a pull on him. McFadden referred to a broad range of emotions and approaches that Mira Markovic deployed to goad or cajole Milosevic to take particular actions. When he failed to heed her advice, she was not beyond telling him that bad outcomes could have been avoided had he listened to her. Markovic served as a source of information, comfort, motivation, and strategy for Milosevic and he relied heavily on her guidance. When Markovic pressed Milosevic to do something he did not want to do, Milosevic rarely pushed back directly but simply never acted on the particular entreaty. McFadden referred back to the relationship a number of times in the discussion as the central one in Milosevic's life. McFadden made clear that Milosevic's blood pressure spike in September (ref) caused serious alarm at the Tribunal, driving registry officers to consider ways in which to reduce his stress and, as one contact had previously said, "make him happy." McFadden even described his proposal that the Registry find a way to bring Markovic to The Hague from Russia with some immunity from arrest (which the Deputy Registrar noted was not feasible), because McFadden believed so strongly that getting the two together could help keep down Milosevic's stress and perhaps his blood pressure. He added, however, that even that was a risk because "she can be a very volatile person."

¶4. (S/NF) In the absence of his wife, Milosevic himself has had to coordinate the various groups providing him with legal and other assistance, previously her domain. It appears that her absence has left a substantial hole in his ability to organize the various entities purporting to assist him. He tries to maintain what McFadden called "functional contacts" with the SPS and the Freedom (Sloboda) Association, but "the Belgrade crowd doesn't get on with the internationals," a relationship that Markovic used to manage and coordinate. Previously, Markovic would keep him up to date on wrangling within the SPS and tell him who he needed to call to patch up feuds, solve conflicts, or provide political guidance to. Meanwhile, Milosevic's financial position has worsened considerably since the spring (i.e., soon after the assassination of Zoran Djindjic). Milosevic fell five months in arrear in paying his Belgrade household staff and was unable for a period to pay the air tickets of his rotating Belgrade advisers. Ultimately, the condition worsened to such a degree that the SPS was forced to "to pass the hat" to raise money on his behalf. The Registry believes his financial problems will worsen. In an interesting sidenote, McFadden said that his Belgrade contacts organized and the Registry

consented to, an evaluation of Milosevic's medical records by a group of physicians partial to him. The group concluded, following the review about 19 months ago, that his medical treatment (described below) met the requisite standard of care.

¶5. (S/NF) In the process of discussing Milosevic's contacts, McFadden illuminated the nature of the relationship among the so-called legal associates (Serb lawyers who have no courtroom privileges but enjoy privileged communications with the defendant), the amici and Milosevic. McFadden said that Milosevic believes that ""he is surrounded by fools"" both inside and out of the courtroom, though he added in an aside that this was a problem of his own making, as he had surrounded himself with ""fools"" throughout his career out of a fear of being challenged by more competent and intelligent advisors. Milosevic most relishes the opportunity to examine senior level witnesses of his level and is disdainful of the lower level officials and witnesses paraded before him by the prosecution. The two associates who have spent much of the trial in the trial chamber's public gallery (Zdenko Tomanovic and Dragoslav Ognjanovic) are, in McFadden's view, ""messenger boys"" to (unnamed) associates in Belgrade. McFadden knew little of Branko Rakic, the Belgrade lawyer/law professor recently added as Milosevic's third legal associate, but his initial impression was that he was contributing a more methodical, ""legal and logical"" approach to Milosevic's defense and cross-examination preparations. As a result, McFadden expected Milosevic's organization of his defense to improve.

¶6. (S/NF) In contrast to his courtroom disdain of the amici, McFadden said that Milosevic is in fact ""fond"" of them. Moreover, his public distancing of them actually masks the fact that his legal associates regularly liaise with the amici to discuss and coordinate defense strategy and questioning of witnesses. (Comment. Milosevic's adept and hereto unknown coordination with the amici is a striking demonstration of his abilities and methods. By using his Belgrade advisers to liaise with the amici in secret he is able to maintain the optically favorable appearance of a single man defending himself against an unfair and powerful international process. At the same time, he takes full advantage of the legal resources the amici offer and ensures that key technical legal points in his defense are covered so that he can focus on tending to the more political aspects of his defense. The fact that senior prosecutors on the Milosevic team are wholly unaware of this cooperation (as were we) underscores Milosevic's ability to work effectively behind the scenes, through third parties, and leave few fingerprints. End comment). The Registrar noted that, as helpful as the amici might be to Milosevic now, he does not expect the amici to continue in their current role during the defense case. Their departure would be a significant blow to Milosevic's defense unless he finally decides to accept legal counsel or is at least able to beef up his legal support from Belgrade.

-----Physical Health-----

7.(S/NF) McFadden noted that Milosevic's medical records from the former Yugoslavia indicated a long history of hypertension (high blood pressure) that was difficult to control especially when Milosevic was stressed or excessively fatigued. He said that during the past summer a number of things happened that put Milosevic under increased stress and

caused excessive fatigue, including the build up of stress from court appearances and trial preparations, his wife's legal problems that caused her to flee to Russia, the need for Milosevic to give increased time and attention to disputes and problems within the SPS Party (that would have formerly been handled in part by his wife), financial difficulties, and his gradual loss of attention from media. All of these factors appear to have contributed to the increase in Milosevic's blood pressure. Physicians consistently found Milosevic had a diastolic blood pressure above 120 mm mercury (normal should be below 90 mm mercury). Despite treatment with high doses of six medications his blood pressure remained dangerously elevated until the trial schedule was reduced to three days a week. (Note. The only information we have about his medications is that he was near the maximum dose of beta blockers and was also taking a medication that has to be stopped intermittently because of dangerous side effects. End note). Milosevic is now on four medications.

¶8. (S/NF) A reduced trial schedule had been recommended by Dutch physicians (including Dutch cardiologist, Dr. Paul Van Dykman) last year but was rejected by the Court until Milosevic's blood pressure could not be controlled with standard medications. His long history of hypertension has caused mild heart damage (identified by Serb physicians before he was apprehended and transferred to The Hague) but physicians have seen no evidence of a heart attack, stroke, or kidney damage. Three exercise EKGs have been normal and Milosevic will continue to have an exercise EKG twice a year according to McFadden. The last hypertensive episode ended about 6 weeks ago.

¶9. (S/NF) McFadden reports that Milosevic's hypertensive episodes have not correlated with adverse events at the trial or with the appearance of certain witnesses. They have seen no evidence that he is using his blood pressure problems as an issue to slow or otherwise affect the trial. Moreover, Milosevic understands that he has potentially lethal health problems and is a compliant patient. The only two physician recommendations he has refused are (1) to take sedatives recommended by his doctors to lower his blood pressure and (2) to undergo invasive procedures to look for underlying causes of his hypertension and evidence of end organ damage in the brain. He is allowed to cook for himself, which limits control of his diet, but he nevertheless appears to be following a salt restricted diet.

¶10. (S/NF) In contrast to previous reports that Milosevic has diabetes, McFadden stated that there is no evidence in his medical records for this diagnosis and all of his blood sugars have been normal. Milosevic's cholesterol and other lipids have been normal. His weight has been stable since he lost 12 pounds when he was first brought to The Hague. He has not been observed to smoke much; in a recent conversation with McFadden, he claimed not to have smoked in four days and to have no desire to do so. His only request, McFadden said, is for a glass of red wine, but alcohol is strictly forbidden in the detention unit.

¶11. (S/NF) Milosevic is said by McFadden to have a nearly photographic memory, saying that he has "never met a man with his memory." He said that a "very important" detainee, whom he would not identify, warned McFadden early in

Milosevic's detention that Milosevic has a very good memory that would "come back to bite"; with a laugh, McFadden said it had. McFadden has seen no evidence of any deterioration in Milosevic's memory or other mental capacities. He remains McFadden said, as "narcissistic a person" as when he arrived in The Hague. On the other hand, unlike other detainees who constantly complain, Milosevic is cooperative and always accepts McFadden's decisions, often responding, "at least I asked." In general, moreover, Milosevic believes strongly in his own powers and thinks that he is "winning" in the courtroom, an attitude that reinforces his currently stable health. -----

Daily Regimen and Prison Activities-----

¶12. (S/NF) Milosevic's routine varies depending on whether court is in session. Thus, on the three days of court proceedings per week, a typical day begins around 0700 with awake-up call; after he gets ready, he calls his wife around 0730 and leaves for court by 0800. The court sessions run from 0900 to approximately 1400, with two twenty minute breaks. After court, he returns to the detention center, where he has a meal and is allowed one hour of outdoor exercise (McFadden noted that he will walk for a full hour "sun, rain or hail"). Following the hour of exercise, he meets with legal advisors, reads the court transcripts, and otherwise prepares for the next court appearance. In the evening, he will typically read a book (he is an avid reader, especially of "rubbish" and potboiler thrillers like Grisham, and he prefers to read in the original English). On days when he is not in court, he may sleep later, sometimes until 0930 or 1000, have additional exercise time, attend "creativity class," visit with his legal associates, have an afternoon nap, listen to Sinatra discs, and perhaps watch one of the DVD's that a privileged visitor (i.e. most likely his Belgrade lawyers) have smuggled in to him.

¶13. (S/NF) Milosevic has access to a laptop computer but is not allowed on the Internet and cannot use E-mail. His access to the outside world is via phone calls or visits. He is allocated 75 euros per month for phone use, but can make an unlimited number of calls beyond that as long as he pays for the calls -- something he has consistently been able to do. He is allowed an unlimited number of free calls to recognized legal associates on a special detention unit phone. All of his phone calls and visits, except those with the recognized legal associates, are monitored.

¶14. (S/NF) Within the detention community, Milosevic is well liked and respected by other prisoners. Many of them take care to monitor his health and encourage him to watch his own diet, McFadden said. He has refused to see a psychiatrist individually but does participate in the group sessions with the other prisoners on his floor, which are monitored by the detention unit. The psychiatrist who conducts these sessions tells McFadden that she has seen no evidence that he is depressed or has any other significant clinical problem.

¶15. (S/NF) Comment: Slobodan Milosevic's health surely puts him, in McFadden's words, at "higher risk of accident" than similarly situated persons of his age who do not suffer hypertension. Yet his health seems to have stabilized for the time being, particularly since the trial chamber's decision to go to three days per week. Whether

Milosevic can maintain such a schedule will be tested when the defense case begins (perhaps not before September 2004). Some in the Registry and in the Office of the Prosecutor speculate that the courtroom schedule will be further reduced to one day a week in order to allow Milosevic two days of defense preparation and, as the doctors have ordered, four days of rest. The end of the trial seems ever more distant when put in this light. Even with his health stabilized, the impact of the move to the defense phase will cause further pressures of a financial and legal nature which could in turn trigger a downturn in his health. For now, however, Milosevic remains comfortably on top of his game. End comment. SOBEL

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