

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-05/18-PT

THE PRESIDENT

Before: Judge Patrick Robinson, President

Registrar: Mr. Hans Holthuis

Date Filed: 18 November 2008

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

REQUEST FOR REVERSAL OF
DENIAL OF CONTACT WITH JOURNALIST

The Accused:
Radovan Karadzic

1. Dr. Radovan Karadzic hereby requests, pursuant to Rule 64 *bis* of the ICTY Rules of Detention, that the President reverse the decision of the Registrar to deny contact between him and journalist Zvezdana Vukojevic of the Dutch publication Revu.

2. Rule 64 *bis* provides that:

- A. Without prejudice to the foregoing provisions on communications and visits, the use of communication facilities available at the Detention Unit, by a detainee, with the sole purpose of contacting the media directly or indirectly, shall be subject to the approval of the Registrar.
- B. In his decision, the Registrar may consult with the Commanding Officer and shall have regard to whether such contact with the media:
 - i. could disturb the good order of the Detention Unit; or
 - ii. could interfere with the administration of justice or otherwise undermine the Tribunal's mandate.
- C. A detainee may at any time request the President to reverse a denial of contact made by the Registrar under this Rule. The President may decide to review the Registrar's decision, or if the President determines that the denial of contact constitutes an infringement on the right of the accused to be tried fairly, refer the request to the Trial Chamber to determine.

Statement of Facts

3. Dr. Radovan Karadzic is detained at the United Nations Detention Unit in The Hague. On 16 October 2008, Dr. Karadzic submitted a written request to the Registrar to meet journalist Zvezdana Vukojevic of Revu magazine. He wrote:

As you know for many years, the Prosecutor of this Tribunal and others have demonized me in the media without any opportunity for me to present my side of the story. I note in particular that the Prosecutor, the United States Department of State, and former Ambassador Richard Holbrooke have all frequently and publicly denied the existence of an agreement not to pursue the prosecution of me here at the ICTY. I think it is only fair that I be allowed to respond in the same fora.

4. Dr. Karadzic also provided information on the bona fides of the journalist as well as her contact information and date of birth.¹

¹ A copy of Dr. Karadzic's letter is attached as Annex "A" to this Request.

5. On 11 November 2008, Dr. Karadzic received correspondence from Ms. Anna Osure, Deputy Head of Office of Legal Aid and Detention Matters, denying the request on behalf of the Registrar.

6. The reasons for denying the request were that (1) "such contact with the media on the premises of the UNDU would expose the prison and its security mechanisms to the public and would thus represent a real threat to the safety and security of the UNDU"; and (2) "the possibility of sensational reporting cannot be excluded, which, in the Registrar's view could potentially have negative consequences for you and also interfere with the administration of justice or otherwise undermine the Tribunal's mandate".²

Argument

7. The Rules of Detention, as applied by the Registrar, constitute an unreasonable restriction on the right to freedom of expression.

8. Article 19 of the United Nations Covenant on Civil and Political Rights provides, in pertinent part, that:

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 1. For respect of the rights or reputations of others;
 2. For the protection of national security or of public order (ordre public), or of public health or morals.

9. In the United States, a prisoner, even one already convicted of a crime, retains his or her right of freedom of expression. However, this right may be restricted when in conflict with the need to maintain internal security within the corrections facilities themselves.³ Thus, a proportionality test is used to determine whether the restriction on the right to freedom of expression is reasonable, given the interests of the prison

²² The Registrar's letter is attached as Annex "B" to this Request.

³ *Pell v. Procunier*, 417 U.S. 817, 822-23 (1974)

authorities and the alternative means of exercising the right that remain open to the inmate.⁴ Included in this assessment is whether the regulation is an 'exaggerated response' to prison concerns.⁵

10. It is suggested that this proportionality test must be applied even more stringently in favor of the rights of a prisoner to freedom of expression when the prisoner, like Dr. Karadzic, is in pretrial detention and retains the presumption of innocence.

11. The rationale for prohibiting face-to-face interviews of prisoners in the American prison system was explained by the United States Supreme Court in *Saxbe v. Washington Post Co.*, 417 U.S. 843 (1974). The Court said that:

The experience of the Bureau accords with that of the California Department of Corrections, and suggests that the interest of the press is often concentrated on a relatively small number of inmates who, as a result, [become] virtual 'public figures' within the prison society and gai[n] a disproportionate degree of notoriety and influence among their fellow inmates. As a result, those inmates who are conspicuously publicized because of their repeated contacts with the press tend to become the source of substantial disciplinary problems that can engulf a large portion of the population at a prison.⁶

12. Applying this rationale to the United Nations Detention Unit, there is no suggestion by the Registrar, nor any evidence from past practice, of any disciplinary problems among inmates that would result from Mr. Karadzic giving interviews with the news media. His notoriety is already established from the position he held during the events in the former Yugoslavia. Therefore, in the UNDU, a pretrial detention facility containing only a small number of inmates, the justification for prohibiting contact with the media is not as strong as in a federal or state prison in the United States, containing thousands of inmates convicted of violent crimes.

13. In *Pell v. Procunier*, 417 U.S. 817 (1974), the United States Supreme Court confronted a challenge by a convicted prisoner to a regulation which prohibited face-to-face contact with the news media. The Supreme Court upheld the regulation on the basis that the prisoner had other alternative means of communicating with the news media, such as by letter or telephone. The Court said:

⁴ *Turner v. Safley*, 482 U.S. 78, 89-91 (1987)

⁵ *Turner v. Safley*, 482 U.S. 78, 90 (1987)

⁶ *Saxbe v. Washington Post Co.*, 417 U.S. 843,848-49 (1974)

In order properly to evaluate the constitutionality of § 415.071, we think that the regulation cannot be considered in isolation, but must be viewed in the light of the alternative means of communication permitted under the regulations with persons outside the prison...One such alternative available to California prison inmates is communication by mail.⁷

14. The United States Supreme Court also noted that prisoners were free to have face-to-face interviews with journalists who fit into categories of persons who were otherwise authorized to visit inmates, such as family members and previous acquaintances. The Court said that:

This is not a case in which the selection is based on the anticipated content of the communication between the inmate and the prospective visitor. If a member of the press fell within any of these categories, there is no suggestion that he would not be permitted to visit with the inmate. More importantly, however, inmates have an unrestricted opportunity to communicate with the press or any other member of the public through their families, friends, clergy, or attorneys who are permitted to visit them at the prison. Thus, this provides another alternative avenue of communication between prison inmates and persons outside the prison.⁸

15. The Supreme Court concluded that restrictions on face-to-face interviews with journalists were legitimate "so long as reasonable and effective means of communication remain open and no discrimination in terms of content is involved."⁹

16. In *Johnson v. Stephan*, 6 F.3d 691, 692 (10th Cir. 1993), the United States Tenth Circuit Court of Appeals held that state prison officials were permitted to deny television news personnel access to their prison to conduct a face-to-face interview with the inmate. Because there were alternative means for communicating with the media (the inmate was free to communicate through the mail and telephone), the Court held that there was no violation of the inmate's First Amendment rights.

17. Applying this rationale to the United Nations Detention Unit, it is clear that the regulations and practice of the Registrar would be struck down if in the United States. There are no alternative means for Dr. Karadzic to communicate with the news media. He is prohibited by Rule 64 *bis* (A) of the Rules of Detention from "the use of communication facilities available at the Detention Unit, by a detainee, with the sole purpose of contacting the media directly." This precludes him from contact with the news

⁷ *Pell v. Procunier*, 417 U.S. 817,823-24 (1974)

⁸ *Pell v. Procunier*, 417 U.S. 817,824-25 (1974)

⁹ *Pell v. Procunier*, 417 U.S. 817,826 (1974)

media in writing or by telephone—the very avenues which allowed the regulations against face-to-face visits in the United States to be upheld.

18. In addition, he is prohibited from meeting members of the news media who were previous acquaintances by the operation of Rule 61(B) of the Rules of Detention which provides that:

The Registrar shall refuse to allow a person to visit a detainee if he has reason to believe that the purpose of the visit is to obtain information which may be subsequently reported in the media.

19. The Registrar has consistently refused to authorize communication by the UNDU detainees with the news media, either directly or indirectly, and has revoked communication privileges when ICTY detainees have done so.¹⁰ Dr. Karadzic is unaware of a single instance in the 14 year history of the ICTY where the Registrar has allowed an interview between a detainee and a member of the news media in any form, whether by face-to-face visit, written communication, or telephone.

20. This practice is unheard of in the United States¹¹ and would clearly be held to be an unreasonable violation on Dr. Karadzic's right to freedom of expression were he to be incarcerated there.

21. The same is the case in Europe. Freedom of expression is guaranteed by Article 10 (1) of the European Convention on Human Rights. Rule 24.12 of the European Prison Rules states that '[p]risoners shall be allowed to communicate with the media unless there are compelling reasons to forbid this for the maintenance of safety and security, in the public interest or in order to protect the integrity of victims, other prisoners or staff'.

22. The commentary on Rule 24 provides that:

Rule 24.12 seeks to maintain a balance in this highly controversial area of communication by prisoners. Freedom of expression is the norm but public authorities are allowed to restrict freedom of expression in terms of Article 10.2 of the ECHR. The use of the term "public interest" allows prohibition of such communication on grounds other than those relating to internal concerns with safety and security. These would include restrictions in order to protect the

¹⁰ *Prosecutor v. Milosevic*, No. IT-02-54-T, *Decision of Deputy Registrar* (11 December 2003, 8 January 2004, 6 February 2004); *Prosecutor v. Seseelj*, No. IT-03-67-PT, *Decision of Deputy Registrar* (11 December 2003, 8 January 2004, 6 February 2004, 9 March 2004, 9 April 2004, 7 May 2004, 9 June 2004).

¹¹ See www.spj.org/prison-CA.asp for a list of regulations on contact between prisoners and the news media in the United States compiled by the Society of Professional Journalists.

integrity of victims, other prisoners or staff. However, the term “public interest” will need to be interpreted relatively narrowly so as not to undermine what prisoners are being allowed by this rule.

23. The principle that limitations on a prisoner’s right to freedom of expression must be subject to a proportionality test has been recognized by courts which have applied Article 10 of the ECHR. In *R (Hirst) v Home Secretary*, a refusal to allow access to a prisoner, who was an advocate of prisoners’ interests, to live radio shows was invalidated. Elias J., in the High Court Judgement, held that where the law permits interference with a prisoner’s right to freedom of expression to occur, the government must show that the means used to impair the right go no further than is necessary to accomplish those legitimate objectives.¹²

24. Similarly, in *R. v Secretary of State for the Home Department ex p Simms and Another* (1999) a refusal by the United Kingdom Prison Service to allow prisoners unrestricted access to journalists in order to further claims of wrongful conviction was overturned.¹³

25. The same conclusion may be drawn from the *Yankov* Judgement of the European Court of Human Rights. The case concerned a prisoner who had criticized the way prisoners were treated. The Court, when applying the proportionality test, found that an interference with the freedom of expression can be justified because of the need to ensure that civil servants enjoy public confidence in conditions free of undue perturbation, but solely where there is a real threat in this respect.¹⁴

26. The Court held that while the right to freedom of expression is subject to exceptions, those exceptions must be construed strictly, and the need for any restrictions must be established convincingly.¹⁵

27. In The Netherlands, Article 40 of the Penitentiary Principles Act (*Penitentiaire Beginselenwet*) provides that the governor of the institution can give his or her permission for such an interview if and to the extent that this is compatible with the maintenance of order and security within the institution, the protection of public order

¹² [2002] EWHC 602; [2002] UKHRR 758. Paragraph 40.

¹³ 3 All ER 400 [1999]

¹⁴ ECHR *Yankov*, Judgement, 11 December 2003, Appl 39084/97, par. 141.

¹⁵ ECHR *Yankov*, Judgement, 11 December 2003, Appl 39084/97, par. 129

and public decency; the protection of the rights and freedoms of others, and (D) the preventing or resolving of criminal offences.

28. More importantly, paragraph 2 of Article 40 holds that the governor may, in light of the aforementioned objectives, attach conditions to permitting a journalist access to a detainee or a prisoner. Paragraph 3 states that the governor may even decide to supervise the actual interview if necessary.

29. The appellate body has underlined the importance of the principle of proportionality: if possible objections to permitting an interview can be met by attaching conditions to granting permission, this route must be opted for.¹⁶

30. The ICTY and ICTR Appeals Chambers have itself applied a proportionality principle when balancing the rights of the accused, such as the right to be present at one's trial, to the need for a fair and expeditious trial.¹⁷

31. The Registrar's failure to apply any proportionality principles to its decision in Dr. Karadzic's case demonstrates that his decision denying the interview would violate European human rights norms as well.

32. The reasons given by the Registrar for refusing the interview appear to be ill conceived. First, he contends that "such contact with the media on the premises of the UNDU would expose the prison and its security mechanisms to the public and would thus represent a real threat to the safety and security of the UNDU."

33. This position is belied by the Registrar's own website, which contains pictures of all of the public (and private) areas of the United Nations Detention Unit,¹⁸ as well as a detailed video tour of the Detention Unit.¹⁹ The areas depicted in the photographs and video are far more extensive than anything which would be observed by a journalist on a visit to the interview room to meet with Dr. Karadzic.

¹⁶ See RSJ, Case Number 07/0943/GA, 12/11/2007.

¹⁷ *Prosecutor v Stanasic & Simatovic*, No. IT-03-69-AR73.2, *Decision on Defence Appeal of Decision on Future Course of Proceedings* (16 May 2008); *Prosecutor v Karemera et al*, No. ICTR-98-44-AR73.10, *Decision on Nzirorera's Interlocutory Appeal Concerning his Right to be Present at Trial* (5 October 2007); *Zigiranyirazo v. Prosecutor*, No. ICTR-2001-73-AR73, *Decision on Interlocutory Appeal* (30 October 2006)

¹⁸ A copy of the web page is attached as Annex "C" to this Request.

¹⁹ The video tour can be accessed at www.un.org/icty/cases-e/factsheets/detunit-video.htm

34. In addition, the President's own staff, including an Associate Legal Officer, has visited the United Nations Detention Unit, and written publicly about it.²⁰

35. Even if there were an issue of security at the UNDU, the Registrar failed to consider other alternatives, such as having the interview conducted on the premises of the Tribunal, or allowing the interview by video link, in writing, or by telephone.

36. The Registrar also denied the interview on the grounds that "the possibility of sensational reporting cannot be excluded, which, in the Registrar's view could potentially have negative consequences for you and also interfere with the administration of justice or otherwise undermine the Tribunal's mandate". This content-based objection is clearly prohibited in the United States and European jurisprudence and constitutes an unjustified and unlimited ban on contacts by an accused with the news media that flunks any proportionality test.

37. Dr. Karadzic notes the hyperbole that accompanied his arrest and arrival at the Tribunal when numerous press statements were made by the Prosecutor and others in which he was demonized.²¹ He notes that former U.S. Ambassador Richard Holbrooke expressed lament that the death penalty was not available for Dr. Karadzic, and has frequently appeared on video and print media to deny the existence of an agreement that Dr. Karadzic would not be prosecuted at the ICTY.²² It is only fair that Dr. Karadzic be allowed to express his views on this agreement, and on the merits of his case.

38. The decision by the Registrar simply parroted the language of Rule 64 *bis* without providing any facts or considering any alternatives. At the ICTR, a decision by the Registrar to deny a meeting between a detainee and a visitor was overturned by the President, who said:

The Prosecutor is required to furnish the Registrar with reasons for requesting a prohibition of contact between the accused and his intended visitors. Such reasons should not constitute a mere repetition of the empowering rule, but should specify

²⁰ Mortenson, *Inside the United Nations Detention Unit*, Slate (10 January 2006). A copy of this article is attached as Annex "D" to this Request.

²¹ See Prosecutor Serge Brammertz Statement on the Arrest of Radovan Karadzic, www.un.org/icty/pressreal/2008/pr1278e.htm (30 July 2008); Brammertz on Karadzic, www.youtube.com/watch?v=qy-b3Tp0Rss (2008)

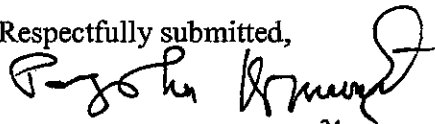
²² "Holbrooke: Karadzic is Osama Bin Laden of Europe", watchingamerica.com/News/3240/holbrooke-karadzic-is-osama-bin-laden-of-europe/; "US Bosnia Negotiator Dismisses Deal Claim", <http://www.reuters.com/article/latestCrisis/idUSN31383687> ("what I said is if anyone deserves the death penalty it is Karadzic and Mladic")

the particular threat or prejudice that is feared and be substantiated by information to enable the Registrar to make an informed decision.²³

39. The decision of the Registrar in this case should likewise be overturned. The Registrar's ban on contact with the news media constitutes a violation of Dr. Karadzic's right to freedom of expression and makes no effort to apply principles of proportionality as required by human rights law. It is respectfully requested that the decision be reversed.

Word count: 3346

Respectfully submitted,



RADOVAN KARADZIC²⁴

²³ *Prosecutor v Nindiliyimana et al*, No. ICTR-2000-56-T, *The President's Decision on a Defence Motion to Reverse the Prosecutor's Request for Prohibition of Contact Pursuant to Rule 64* (25 November 2002) at para. 9

²⁴ The assistance of legal intern Denis Abels, working under Professor Goran Sluiter at the University of Amsterdam Faculty of Law, is gratefully acknowledged.

Dr. Radovan Karadzic

The Honorable Hans Holthuis
Registrar
International Criminal Tribunal
for the former Yugoslavia

Dear Mr. Holthuis,

Pursuant to Rule 64 *bis* of the Rules of Detention, I am respectfully requesting that you approve a face-to-face interview between me and a journalist here at the UNDU.

I have been contacted by Zvezdana Vukojevic, a journalist working for Revu, a weekly magazine here in The Netherlands. She has requested to interview me with the purpose of writing an article in her magazine.

As you know for many years, the Prosecutor of this Tribunal and others have demonized me in the media without any opportunity for me to present my side of the story. I note in particular that the Prosecutor, the United States Department of State, and former Ambassador Richard Holbrooke have all frequently and publicly denied the existence of an agreement not to pursue the prosecution of me here at the ICTY. I think it is only fair that I be allowed to respond in the same fora.

Ms. Vukojevic is a bona-fide journalist, who has worked on assignments not only for Revu, but for the British Broadcasting Company. She is also the author of a book on the Natalie Holloway case. Her stories have been published in the *Algemeen Dagblad* newspaper, the magazine *HP De Tijd*, and the newspaper supplement *Volkskrant Magazine*.

For your further information, Ms. Vukojevic was born on 16 September 1978 in Amsterdam and is a citizen of The Netherlands. She is a 2001 journalism graduate of the Hogeschool van Utrecht. She may be contacted at:

Haaksbergweg 75
1101 BR Amsterdam Zuidoost
Postbus 23059
1100 DN Amsterdam
tel. 020 751 8400
mob.06 38109311

ANNEX "A"

The Honorable Hans Holthuis
--page two--

I would appreciate your prompt and positive consideration of this request.

Respectfully submitted,

Dr. Radovan Karadzic

cc: Trial Chamber III

10 November 2008



United Nations
Nations Unies



International
Criminal Tribunal
for the former
Yugoslavia

Registry

Tribunal Pénal
International pour
l'ex-Yougoslavie

Greffes

Dear Mr. Karadžić,

Re: Your request for an interview with a journalist

I write further to your request to the Registrar of 20 October and 7 November 2008 to approve a face-to-face interview in the United Nations Detention Unit ("UNDU"), between yourself and Ms. Zvezdana Vukojević, a journalist working for a Dutch weekly magazine ("Interview Request").

I note that pursuant to Rule 64bis of the *Rules Governing the Detention of Persons Awaiting Trial Before the Tribunal or Otherwise Detained on the Authority of the Tribunal* ("Rules of Detention"), the use of communication facilities at the UNDU for the purpose of contacting the media is subject to the Registrar's approval.

When assessing a UNDU detainee's request to contact the media directly or indirectly, the Registrar takes into consideration whether such contact with the media could disturb the good order of the UNDU, or whether there is a risk that such contact interferes with the administration of justice or otherwise undermines the Tribunal's mandate. In making this determination, in accordance with Rule 64bis(B) of the Rules of Detention, the Registrar has also sought the view of the Commanding Officer of the UNDU.

I wish to outline a number of factors that warrant consideration. Most importantly, the Registrar is concerned that such contact with the media on the premises of the UNDU would expose the prison and its security mechanisms to the public, and would thus represent a real threat to the safety and security of the UNDU, especially if the visiting journalist publicly describes such details. Additionally, the possibility of sensational reporting cannot be excluded, which in the Registrar's view could potentially have negative consequences for you and also interfere with the administration of justice or otherwise undermine the Tribunal's mandate.

The Registrar opines that the envisaged interview poses a high risk to be detrimental to the safety and security as well as the good order of the Detention Unit, and is likely to interfere with the administration of justice or otherwise undermine the Tribunal's mandate.

In view of these considerations, the Registrar has denied your Interview Request.

Should you need further information on the matters discussed above, please do not hesitate to contact my office.

Yours sincerely,

Anna Osure,
Deputy Head of the Office for
Legal Aid and Detention Matters

TO: Mr. Radovan Karadžić
UNDU

CC: Mr. Peter Robinson

Churchillplein 1, 2517 JW The Hague. P.O. Box 13888, 2501 EW The Hague. Netherlands
Churchillplein 1, 2517 JW La Haye. B.P. 13888, 2501 La Haye. Pays-Bas

Tel.: 0031 70 512 5906 Fax: 0031 70 512 8637

ANNEX "B"

Photographs of the Detention Unit

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Photographs of the Detention Unit



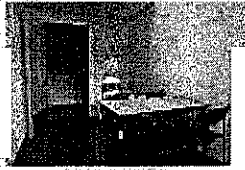
Video of the Detention Unit



Security Control



Lawyers Meeting Room



Residential Wing

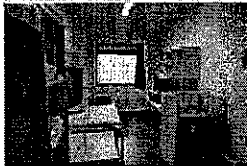


All visitors must pass through a variety of security procedures both within the unit itself, as well as the Host Prison.

Specific visiting rooms may be reserved to allow detainees to meet with their defence counsel confidentially.

The residential cells are distributed between a number of wings, each with access to a communal corridor.

Standard Cell



Communal Area



Each 15m² cell exceeds international standards for space, lighting and facilities and is designed for single occupancy. Each contains a bed, desk, shelving, cupboard, toilet, hand basin, TV and intercom for communication with the officers whilst the cell is locked.

The detainees in each wing have access to a communal recreation area where they may prepare meals and

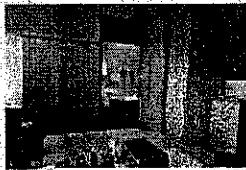
Interact.

Education and Occupational Therapy



Detainees have the opportunity to attend educational and occupational therapy sessions in subjects such as English, computer skills and art.

Medical Service



Comprehensive medical services are available to all detainees and are overseen by the Medical Officer and his dedicated staff.

Gym

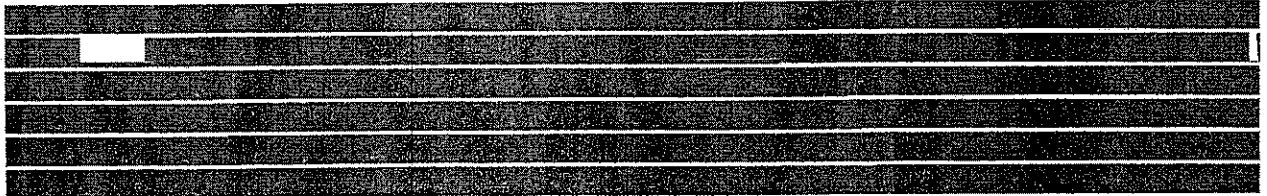


Games and recreation for a variety of sport and fitness pursuits are available to detainees.

Spiritual Room



Each detainee is entitled to spiritual freedom and may meet with accredited representatives of their faith.



Slate

DISPATCHES

Inside the United Nations Detention Unit

The bizarro world in which Slobodan Milosevic eats cake with a Bosnian Muslim.

By Julian Davis Mortenson

Updated Tuesday, Jan. 10, 2006, at 6:57 AM ET

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From: Julian Davis Mortenson

Subject: Where Accused War Criminals Build Model Ships and Play Volleyball

Posted: Monday, Jan. 9, 2006, at 6:17 AM ET

It started off like any other night out in the Canary Islands. A pair of diners at a four-star hotel on the vacation island of Tenerife ordered their wine and were just settling down for the evening. But what had been shaping up as a relaxing holiday outing came to a sudden and unceremonious end when a Spanish special-forces team burst in the room, swarmed the two men's table, and dragged them out the door in handcuffs. The target of this unexpected dinner theater? Ante Gotovina, who had been the object of a worldwide NATO manhunt for the last four years as one of the Yugoslavia Tribunal's most wanted fugitives. Within days, the former Croatian general was hustled off to The Hague to appear before that court, where he pleaded not guilty to charges that he had unleashed an orgy of savagery on Serb civilians during Croatia's bloody Krajina offensive in 1994.

Between the crash and glamour of Gotovina's capture last month and the protracted earnestness of his trial (which may not begin until late 2006) looms a long stretch of downtime. And this raises a serious practical question: Where do you stash an accused war criminal before he goes to trial? In Gotovina's case, there's no serious possibility of his being granted pre-trial release; given the forged passports, fake identities, and network of hideaways that he came up with during his time as a fugitive, the tribunal is unlikely to take his word that he'll be back in time for trial. Instead, Gotovina will remain where he is now: the United Nations Detention Unit, an extraordinary facility that exists solely for the purpose of housing accused war criminals. Last year, I got to see the whole thing up close when I went along with a small group of tribunal co-workers to meet the warden and tour the facility.

The detention unit is tucked away behind drab brick walls in a mostly residential part of a Dutch seaside resort called Scheveningen, not far from the rolling sand dunes and winding paths of a nature preserve. Despite the innocuous exterior, the entry point is all business: metal detectors, grim guards, and eventually a wave through the doorway that leads into the prison proper. I felt a flicker of anxiety when the first door slammed shut behind us, leaving the group in a small, unmarked room with pale yellow walls and a thick metal door on each end. From there, we were squired through a mind-numbing series of locked doors, blank hallways, spotless staircases, and windowless antechambers until we finally reached the warden's small office, with its window overlooking one of the central courtyards.

ANNEX "D"

Tim McFadden is a former Irish army officer in his mid-50s who seems to have walked into the job of prison warden straight out of central casting: ruddy cheeks, carefully buffed charm, and a buttery brogue that would have you nodding along even if he were reciting the Dutch tax code. He got his start in the prison business during the 1970s, when the Irish army put him in charge of a new military facility created for "politically oriented" prisoners from the various factions of the island's ongoing turmoil. McFadden later moved on to a long stint as a U.N. peacekeeper, and his background in the Irish prisons eventually led him to a job designing and running the detention center at the Rwanda Tribunal. When the Yugoslavia Tribunal needed to develop a dedicated space for a detainee population that ballooned from four to 30 during the second half of 1997, he was recruited to The Hague to do it all over again.

McFadden took us for a walk through the cell blocks, which hardly seemed worthy of the name. If you could tune out the cells' ponderous steel doors, the accommodations looked like nothing so much as a string of dorm rooms in a college residence hall: poster-covered walls, well-stocked bookshelves, big wardrobes, homey quilts spread over the bed, comfortable chairs, and spacious desks usually crowned by a laptop. Actually, with radios, coffee machines, and full private bathrooms, the cells looked at least as comfortable as your average Super 8. Each floor had a rec room with good-size windows, a tatty little cooking area, a pile of board games, a communal television (usually turned to one of the Serbo-Croat channels that gets piped in from back home in the Balkans), and sometimes even a pingpong table or a dartboard. Detainees roam freely around their assigned floor during most of the daytime hours, so as we walked through the corridors, there they were, folding laundry, playing chess, watching television, reading in the rec room, or chatting in small groups in the hallway, invariably offering us neighborly hellos and greeting the warden by name.

It was all startlingly cheery—even homey. When I asked McFadden about this during a later conversation, he spoke at length and with passion about the presumption of innocence and about having to remove some guards who'd come in on loan from the Dutch government when it became clear that they were unable to separate the inmates from the crimes they're accused of. There was genuine empathy in his voice as he talked about the situation almost all the detainees face when they arrive. As he put it, these are older men who have typically never been charged with a crime. Because of their age, and because they are not career criminals, it's extremely difficult for them to adjust to life behind bars in an alien world where everything, from the language of their wardens to the food they eat, is foreign to them. Virtually all of them, he said, suffer major depression after they arrive; some become suicidal.

One of the most practical things McFadden can offer in the face of this transition shock is a full menu of ways to fill up each passing day. As he later put it, in prison "your biggest enemy is time. So, the function of the occupational therapy program is to fill that time in order to maintain their emotional welfare so that they're not going into crisis. It's very easy to drive them mad from lack of freedom." In an odd aside, he recalled that this hadn't been as much of an issue at the Rwanda Tribunal prison, where the African inmates seemed to him to be "able to switch off certain things within their body and just let the time pass." But for prisoners from "the Western atmosphere," forced inactivity is misery, so they flock to anything that passes the time.

Inmates here certainly don't lack for entertainment options. Besides television, radio, and access to any print media they choose to subscribe to, the prisoners have access to English classes (which boast almost universal attendance), computer workshops, and a range of art instruction from ceramics and painting to more esoteric techniques like model-ship building. There are comfortable visiting facilities, including rooms reserved for conjugal visits. Weekly religious services are led by Muslim, Roman Catholic, and Serbian Orthodox priests, who are

shipped in by tribunal authorities. And evenings are time for gym class, when a roomful of pudgy fiftysomethings rushes around playing volleyball or indoor soccer under the close supervision of a trained physical-education instructor.

Indicted War Criminal Volleyball was a peculiar enough idea, but my sense of cognitive dissonance reached its height in the arts-and-crafts room. I just couldn't wrap my mind around the image of deposed army generals working with the construction paper, plastic-tipped scissors, and pots of glue that were strewn around the Formica tabletops, or messing around with the clay that was somewhat lumpily stored on shelves to the side of the room. But that's just what they do: One still-unfired vase was oddly beautiful, with a painstakingly molded iguana hunching sharply out of one side and winding its way around the vase's outer curve. It reminded me, strangely, of something that one of my law-school professors often said about her choice to become a defense lawyer: "I can defend 'those people' because I believe that a person is not defined by the worst thing they've ever done."

I didn't know how to feel. Assuming that the prosecutor's office hasn't suddenly started going to trial with less evidence than we've seen to date, a large number of the men who nodded at our little group as we circumnavigated the jail committed awful crimes. Guilty or not, it's critical that they be treated decently. But seeing that principle put into practice—going from watching BBC video of executions carried out during the Srebrenica massacre to talking to a U.N. employee who sees it as his job to worry in almost fatherly fashion about the comfort of people who are accused of perpetrating them—is morally disorienting. How much decency is necessary? How does McFadden feel when one of the prisoners whose happiness he's been so preoccupied by is convicted of mass murder? Does he wonder if he should have been quite so chatty with the guy in the hallways? I know why he can't let himself ask these questions, but I also wonder whether, in his shoes, I would be able to maintain an inner wall with anything like the discipline he claims.

From: Julian Davis Mortenson

Subject: The Bizarro World in Which Slobodan Milosevic Eats Cake With a Bosnian Muslim
Posted Tuesday, Jan. 10, 2006, at 6:57 AM ET

As warden of the Yugoslavia Tribunal's detention center, Tim McFadden deals with all kinds of administrative hassles. How do you ferry a dozen prisoners across town every day to and from the tribunal courtrooms? How do you stop defense counsel from sneaking liquor to their clients during private legal consultations in the prison? What do you do when you see an inmate's lawyers walking in the front gate at the same time their client is talking on the privileged phone line, allegedly with the two of them? How do you juggle the judicial segregation orders ("keep Defendant A away from Defendants B and C so they won't collude with or threaten each other") that pile up until they start to look like the old mindbender about getting a fox, a chicken, and a sack of grain across the river on a raft?

One thing he doesn't have to worry about, McFadden insists, is the challenge of supervising a willy-nilly mixture of Balkan ethnicities in a claustrophobic prison hothouse. Because despite what you might expect, there are no ethnic ghettos here. Croats, Muslims, and Serbs all crowd together in an ironic tableau of the kind of ethnic harmony that was so elusive when these men were in power back home. For a first-time visitor, this is bewildering: How can it possibly work?

Things were different when McFadden first arrived in 1997. The few tribunal inmates spent virtually all their time in solitary lockup, taking even their daily exercise alone in the prison yard. Changing this state of affairs was the new warden's top priority. "I wasn't going to allow it," he says. "That type of segregation is very close to isolation. Isolation in prison parlance is a punishment. ... The first day I went there I said, 'Let them out.' " But his decision wasn't just about inmate welfare. McFadden remembered all too well his experience at the political prison in Ireland, where prison administrators initially isolated the warring factions in separate units—an arrangement that rapidly became a disaster. "We lost control. We couldn't speak to them. Each faction had a leader we had to work through. The leader said, 'Go on hunger strike,' and everybody went on hunger strike until he said, 'Come off hunger strike.' An individual who didn't even want to be on hunger strike didn't have much choice in that situation because of the pressure on him." Mixing the groups yielded a more tractable population in Ireland, so it stood to reason it might have the same effect in Holland.

While the proposal to mix ethnicities did not go over well with the tribunal administration—McFadden had to threaten resignation to push the changes through—he insists that it has worked almost without a hitch. To his mind, the lack of tension among the ethnic groups is no surprise: "In many, many ways, they're very much culturally interlinked." This can easily be overstated—the devastation of the region didn't come about because of Yugoslavs' happy sense of unity and brotherhood—but there is something to the argument. Wrenched away from everything they know, these inmates have been dropped in someone else's country, surrounded by someone else's language, and forced to confront the massed resources of a thousand-person tribunal that they believe exists solely to railroad them into guilty verdicts. Under these alienating circumstances, bunking next door to people who share the same language, who enjoy the same food, who have overlapping traditions and pop-culture touchstones, and who share the same enemy in the tribunal's head prosecutor—all of this can overwhelm whatever ideologies seemed so important when Yugoslavia was ablaze with ethnic passion.

McFadden goes on to make a striking point about how the specific and the personal have come to be more relevant to these inmates than the abstract and the ideological. It's the turncoats, he says, who inspire real hatred: the defendants who plead guilty and agree to testify against their co-perpetrators. This strikes a chord as I recall the Serb paramilitary leader Vojislav Seselj and something he said during his blustering testimony at the Milosevic trial. When discussing the other prisoners in the detention unit, Seselj's rage and contempt were saved entirely for his fellow Serbs who had proved to be "really rotten" not because of the unarmed prisoners they had killed, but because they had turned on their erstwhile comrades and copped a deal with the tribunal prosecution. When it came to his Kosovar and Bosnian Muslim "enemies," on the other hand, Seselj jovially recounted the war stories he'd swapped with them in the prison common rooms. It sounded like the world's strangest post-game film session: "[One of them] told me," he said with a gruff laugh, "that there had been an ambush set up [to kill me during a visit to the disputed territory]. But I took another route, and they missed me." His tone of voice lacked even the slightest trace of ill will, conveying instead what was almost affectionate admiration for the Muslim commander's good old college try.

What's more, these interethnic bonds appear to go beyond arms-length tolerance within the prison walls: "I have observed lasting friendships and mutual support," McFadden says, "that go outside their interaction within the prison, which cross the ethnic boundaries." It often begins with the shared struggle of the inmates' families to negotiate the difficult path to visit their loved ones in Holland. "If you have a [Muslim] family from a backwater village in the back of beyond in some mountain town in Bosnia, and you say to that woman, 'Uproot and bring two kids and go to The Hague, and then get the train from Schiphol Airport, and then get the No. 17 tram ...' then how is she going to know what to do? But someone who's done that

before and who may be of Serb origin can say, 'Look, my wife is coming on the same flight and she knows the way.' So, they put the two [wives] together and, you know what? They like one another! Because one has the knowledge the other doesn't have. And that's very common. [In the evenings] a lot of the family members actually go to eat together! So, it's not just a phenomenon within these walls, it actually extends outside."

I was skeptical at first. But then I remembered how, as our small group was walking down one of the prison corridors, we heard the murmur of a small gathering. It turned out to be a cell block celebration for a prisoner who was being released later that week. As we passed by the open door of the recreation room, McFadden leaned in and told the group that he would drop by for a chat once he'd seen us on our way. I glanced into the room while McFadden was talking, and there, plopped in the middle of about five other inmates, sat Slobodan Milosevic. His hair and casual clothes were rumpled, a piece of sheet cake sat on a paper plate in front of him, and he was holding a bite halfway to his mouth on a plastic fork. Right next to him at the low table, also sitting on the hard plastic seat of an elementary-school-style chair, was one of the tribunal's most prominent Bosnian Muslim defendants. And I thought to myself, the Yugoslav people, to the extent they ever existed at all, have vanished from the face of the earth. But somehow an ersatz version lives on within the walls of this high-tech jail, where Slobodan Milosevic—the Serb once known as the Butcher of Belgrade—can now share a quiet piece of cake with a Bosnian Muslim at a farewell party for their mutual friend.

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