

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

Case No. IT-98-32/1-R77.2

IN THE TRIAL CHAMBER

Before: Judge Howard Morrison, Presiding
Judge Burton Hall
Judge Guy Delvoie

Registrar: Mr. John Hocking

Date: 20 May 2011

THE PROSECUTOR

v.

JELENA RAŠIĆ

Public Redacted

DEFENCE PRE-TRIAL BRIEF

The Office of the Prosecutor:

Mr. Paul Rogers

Counsel for the Accused:

Ms. Mira Tapušković

TABLE OF CONTENTS

I. Introduction.....	1
II. Miss Rašić Takes Issue With the OTP’s Reliance on Zuhdija Tabaković.....	1
A. The Prosecution’s Case is Based on the Statements of a Confessed Fraud.....	1
i. Miss Rašić Was Inexperienced, Unfamiliar with the Case, and Vulnerable	2
ii. Tabaković Misinterpreted Miss Rašić’s Intentions.....	3
iii. Tabaković Manipulated Miss Rašić and her Team.....	3
iv. Tabaković Cheated and Deceived His Co-conspirators.....	4
v. Mr. X Schemed with Tabaković to Cheat the Institution.....	5
B. Tabaković Clearly Exaggerated and Embellished His Account of Events.....	5
i. Tabaković’s Reasons for Contacting the OTP Were Wholly Inconsistent.....	5
ii. The Quantity and Quality of the People He Allegedly Needed to Recruit Changes Drastically.....	6
iii. Tabaković Vindictively Slandered Miss Rašić.....	7
iv. Tabaković Embellished his Knowledge of Milan Lukić’s Influence on the Case....	7
v. Amount of Money Owed Changes Multiple Times.....	7
III. Miss Rašić Takes Issue With Allegations that She Knew the Statements Were False.....	8
A. Miss Rašić Exercised Due Dilligence According to Her Skills and Ability and Therefore Had No Knowledge that the Statements Were False.....	8
B. The Remaining Evidence on Which the OTP Attempts to Establish her Knowledge is Wholly Circumstantial.....	10
i. Use of the Map Accords with Effective and Common Practice in Witness Preparation.....	10
ii. Rašić Was Not Upfront About her Position Because She Feared Retaliation.....	11
iii. The Similarity of the Statements Was Not Suspicious	11
iv. The Payment to Miss Rašić Fails to Establish a Pattern of Conduct.....	11
v. Rašić Was Unaware of Whether Dragan Šekarić was Involved.....	12
vi. The OTP Conflates and Exaggerates the Relevance of Other Inconsistencies.....	12
IV. Miss Rašić Takes Issue with the OTP’s Application of the Law and Jurisprudence.....	13

I. Introduction

1. Pursuant to Rule 65ter(F) of the Rules of Procedure and Evidence, the Defence for Miss Jelena Rašić hereby submits its Pre-Trial Brief (“PTB”). On 8 July 2010, the Prosecution indicted Miss Jelena Rašić under Rule 77 (A)-(G), for knowingly and willfully interfering with the Tribunal’s administration of justice, by procuring witness statements for the *Lukić & Lukić* trial which later proved false. The OTP Pre-Trial Brief asserts, based on the evidence of a manipulative, vindictive and deceitful witness, and on otherwise circumstantial evidence, that Miss Rašić paid the witnesses in exchange for their statements and knew that they were false.

2. The allegations against Miss Rašić are without merit as a matter of law and fact. Absent the slanderous allegations of a single witness, Miss Rašić was a case manager on a vast and complex trial, who completed her duties to the best of her abilities given her limited experience and training, and who could not have known about the witness’ intent to deceive her. Further, given her limitations, she would not have been aware that the statements were false.¹ At most, the facts could establish that Miss Rašić was merely negligent: a level of *mens rea* that could never amount to contempt.²

II. Miss Rašić Takes Issue With the OTP’s Reliance on Zuhdija Tabaković

A. The Prosecution’s Case is Based on the Statements of a Confessed Fraud

3. Miss Rašić takes issue³ with the Prosecution’s exaggerated interpretation of the facts as presented by the witness, Mr. Zuhdija Tabaković: the only witness to claim that Rašić paid him and others for their statements. Mr. Tabaković is a confessed fraud, who seemingly has forged his entire career on the exploitation, manipulation, and deception others, particularly those who are weaker than he.⁴

¹ OTP PTB fn.238

² *Aleksovski*, Case No. IT-95-14/1-AR77, Judgment on Appeal by Anto Nobile Against Finding of Contempt, 30 May 2001, para. 45

³ Rule 65ter(F)(i)-(ii)

⁴ *Prosecutor v. Tabaković*, IT-98-32/1-R.77.1, Confidential, Joint Motion for consideration of Plea Agreement; Agreed Fact #50

Only a man of this dubious character would interpret his conversations with Miss Rašić to imply that she intended to somehow bribe him.

i. Miss Rašić Was Inexperienced, Unfamiliar with the Case, and Vulnerable

4. Miss Rašić became a low-level case manager, based on her personal acquaintance with Milan Lukić,⁵ for whom she used to babysit.⁶ Lacking sufficient experience or training, she was hired for her translation skills⁷ and willingness to do the more tedious administrative tasks.
5. In this context, it was not her place to question the reasons of her superiors for selecting witnesses to make a statement, or to evaluate whether those statements were true.⁸ She was never trained as an attorney or investigator, and indeed was not qualified to be one. She studied economics—a subject generally unrelated to the work of the Tribunal—in Belgrade.⁹ Additionally, she divided her time between her studies and her job during her first year on the case,¹⁰ which would have limited her time and ability to thoroughly review the work she performed. Ultimately, “her position within the team was basically to do what she was told.”¹¹ With such a low level of responsibility, she would not have, or even need an intimate knowledge of the factual issues in the *Lukić* case to perform her duties. Therefore, she would not know whether the statements proved Milan Lukić’s alibi.¹² When she learned that Mr. Tabaković could provide a statement, she merely followed orders and called to meet him.¹³

⁵ OTP 65ter #13, (V000-8091) p.10; Supporting material Tab.# 39 p.12

⁶ OTP 65ter #13, (V000-8091) p.12

⁷ OTP 65ter #13, (V000-8091) p.9

⁸ Supporting material Tab.# 39 p.22

⁹ OTP 65ter #13 (V000-8091) p.5

¹⁰ OTP 65ter #13 (V000-8091) p.5; Supporting material Tab.# 39 p.17-18

¹¹ Supporting material Tab.# 39 p.49

¹² OTP PTB paras.37-39

¹³ OTP 65ter #13 (V000-8092) p.22

ii. Tabaković Misinterpreted Miss Rašić's Intentions

6. Having diligently “followed the reports from The Hague” on television,¹⁴ Tabaković would have known that witnesses received accommodation, had their expenses covered by the Tribunal, and were sometimes relocated to other countries. He sought to exploit any representative of the institution for similar benefits. Mr. Tabaković's first communication with Miss Rašić—discussing his financial problems and pressure¹⁵— resembled many of the interviews that he gave to the OTP where he sought money or even more valuable benefits, such as relocation, in exchange for his cooperation.¹⁶ Meanwhile, someone other than Miss Rašić informed him that he would make money.¹⁷ Therefore, he probably misunderstood her mention of per diem and expenses¹⁸ to mean that she would bribe him personally.
7. In December 2008, he was unemployed and desperately needed the money.¹⁹ So when the payments that he baselessly expected never materialized, he sought revenge by fabricating these allegations in attempts to get money out of the OTP instead. The fury with which he presented his case initially to investigator Don King—repeatedly demanding money for his information while refusing to give his name—betrays his avaricious and vindictive motivations.²⁰

iii. Tabaković Manipulated Miss Rašić and her Team

8. As a young, inexperienced, and female non-Bosnian, Miss Rašić was an easy target for Tabaković. When he was given the statement to read,²¹ and when he re-read the statement right before certifying,²² he never once told her that he

¹⁴ OTP 65ter #43, pp.5-6. Indeed, Mr. Tabaković followed the Lukić trial regularly, and consequently knew a lot about the members of the Lukić team and its key witnesses. OTP 65ter #50 p.3-4, 27, 29; OTP 65ter #54 p.19, 38, 63; OTP 65ter #52 p. 21, 34, 38, 60

¹⁵ OTP 65ter #13 (V000-8093) p.21

¹⁶ OTP 65ter#32 p.4, 11-12; OTP 65ter #46 p. 4;

¹⁷ OTP 65ter#32 p.15

¹⁸ OTP 65ter #13 (V000-8092) p.30

¹⁹ OTP 65ter #43 p. 40.

²⁰ Supporting Material #16, ERN0674-2690-0674-2691

²¹ OTP 65ter #54, p. 29

²² OTP 65ter #32, p.21

was not present at the Drina River banks in June 1992, or that the statement was false. She had no reason to believe otherwise.

9. Though he asserted that Miss Rašić directed him to find corruptible characters, he instructed the other witnesses how to behave, and told them not to tell Miss Rašić the truth.²³ These warnings would be wholly unnecessary and indeed superfluous if Rašić were involved in the scheme.
10. Tabaković also lied to members of the *Lukić* team. The ease with which he maintained the façade of a truthful witness during a meeting for several hours with experienced counsel indicates that he is not a man to be trusted.²⁴
11. Contrary to the OTP's allegations,²⁵ Tabaković preserved his own interests by concealing the falsity of the statements from the *Lukić* counsel, and merely attributed the scheme to Rašić. The Defence will prove that Tabaković intended to take advantage of the defence team. If the defence team knew that the statements were false, he would not be able to do so. Further, making these allegations early in his cooperation with the OTP effectively prevented the OTP from revealing what it knew to the defence, and thus ensured that he could continue to exploit both sides simultaneously. Since Rašić, by that time, was his only contact on the team, she was an easy scapegoat.

iv. Tabaković Cheated and Deceived His Co-conspirators

12. Tabaković masterfully manipulated even his co-conspirators. Evidence suggests that Tabaković actively concealed from Mr. X that the statement was for Milan Lukić. Tabaković, as Mr. X's friend, knew that if Mr. X had known the truth, he would never have signed.²⁶ In addition, both Tabaković and Mr. X cheated Mr. Y, who was drunk, out of his "fair share."²⁷

²³ OTP 65ter #76 pp.134-135; OTP 65ter #55, pp.30-31; OTP 65ter #57 pp.20-21, 22

²⁴ OTP 65ter#43, p.127

²⁵ OTP PTB para.34

²⁶ OTP 65ter#57 pp.59-61

²⁷ OTP 65ter#55 p.14; OTP 65ter#76 pp.64-69

v. Mr. X Schemed with Tabaković to Cheat the Institution

13. Mr. X admitted that he conspired with Tabaković to steal from the institution, thus undermining Tabaković's account. Mr X. explained that his and Mr. Tabaković's agenda from the beginning was to defraud the both Tribunal and the Defence.²⁸ Tabaković's lies to the OTP about Miss Rašić are in furtherance of this agenda.

B. Tabaković Clearly Exaggerated and Embellished His Account of Events

14. Tabaković exaggerated, embellished, and flat-out lied about fundamental issues for this case.

i. Tabaković's Reasons for Contacting the OTP Were Wholly Inconsistent

15. Tabaković dubiously proclaimed that he decided to confess to the OTP because "it was not OK what I was involved in."²⁹ However, he previously stated that he passed the information on "simply for money," and indeed threatened to withhold the information if he were not compensated at least €2.500.³⁰ Several times after his first contact with the OTP on 29 December 2008,³¹ he repeatedly demanded the same amount.³² He manipulatively discussed "huge pressure"³³ and his wife and children³⁴ in attempts to appeal to the sentiments of the interviewers.³⁵ When he realized that the OTP would not pay him, he pressured them for any amount at all.³⁶ He also tried to "blackmail" the Tribunal, and refused to testify if he were not relocated.³⁷ Later he admitted that he began to

²⁸ OTP 65ter#57 p.49

²⁹ OTP 65ter#32, p.4

³⁰ Supporting material Tab.#16, ERN0674-2690-0674-2691

³¹ Supporting material Tab.#16, ERN0674-2690-0674-2691

³² OTP 65ter #32 pp.7-8

³³ OTP 65ter #46, p.4

³⁴ OTP 65ter #32, pp.11-12; OTP 65ter #51, p.8

³⁵ OTP 65ter #38, p.10

³⁶ OTP 65ter #76, pp.35-48 ("I was asking for some money...some satisfaction." He then asks the interviewer, "you are making your salary right now?"..."and the gentleman here, is he also making the money?...I could have also worked somewhere for one hour today and made my daily wage."); OTP 65ter #46, p.7 ("I have...financial difficulties. But I did not ask for money...Although in my opinion it would make sense. I was never offered any wages or any reimbursement...any wages for my arrival...And you should have done so..."); OTP 65ter #51, p.7; OTP 65ter #76, p.164

³⁷ Transcript *Lukić&Lukić* trial, 03 April 2009, p.6707

cooperate with the Prosecution in order to get “something back,”³⁸ i.e. cash or relocation. Remarkably, even after he had provided several interviews to the OTP, he implied his ongoing intention to accept the money from the *Lukić* defence, to which he felt entitled, despite the “impropriety.”³⁹

16. His continual efforts to be financially compensated or to be relocated indicate his true intentions for contacting the institution. Tabaković would face public punishment from the Muslim community for his testimony on behalf of one Serb, Milan Lukić, who allegedly committed crimes against Muslims. It is not uncommon for the identity of witnesses to be revealed despite protective measures, so he sought money in exchange for the risk. His financial motivations undermined his credibility, because the more egregiously he colored the allegation, the more likely it would be for him to get something in return.

ii. The Quantity and Quality of the People He Allegedly Needed to Recruit Changes Drastically

17. Tabaković embellished his alleged “assignment” from Miss Rašić to find other people who could corroborate the statements. At first, Tabaković told Don King that he would need to find “three to five others” to sign the statements.⁴⁰ Tabaković at that time also claimed that four people had *already* been paid. Thereafter, the number of people allegedly needed varied from interview to interview.⁴¹

18. Tabaković also prevaricated with respect to the *quality* of people whom he was purportedly tasked to recruit. He repeated on several occasions that he was charged with finding people who were unemployed or who had weak morals.⁴² Later he stated that Rašić sought someone who was in the BiH Army

³⁸ OTP 65ter #76, p.139

³⁹ OTP 65ter# 76, pp.129-130; OTP 65ter #52 p.32; OTP 65ter #32, p.30; OTP 65ter #32 pp.43-44; OTP 65ter #76, pp.22-23; OTP 65ter #51, p.28; *see also* Supporting material Tab. #15, 06742692

⁴⁰ Supporting material Tab.#15, ERN0674-2692

⁴¹ OTP 65ter #32, p.19; OTP 65ter #51 p.5; OTP 65ter #51, p.9. Don King seemed to think that Tabaković had as many as *six* names. Mr X also quoted Tabaković saying, “I met a man, he needs 2, 3, 4, 5 people from [REDACTED].” OTP 65ter #57, p.11

⁴² Supporting material Tab. #15, ERN0674-2692; *see also* OTP 65ter #54 p.51

[REDACTED], and indeed denied that Miss Rašić “mention[ed] anything” regarding the financial situation of the potential candidates.⁴³

iii. Tabaković Vindictively Slandered Miss Rašić

19. In an apparent attempt to avenge himself for Miss Rašić’s failure to pay him, Tabaković baselessly slandered Rašić with respect to her position on the Lukić team. He asserted that she was fired from her job for “messaging something up.”⁴⁴ However, far more reliable sources, including the former Lead Counsel for Milan Lukić,⁴⁵ [REDACTED],⁴⁶ and Miss Rašić herself,⁴⁷ all affirmed that she left the team because budget problems halted payments to staff.⁴⁸ Asserting that Rašić had been involuntarily dismissed from her job advanced his efforts to impugn her character.

iv. Tabaković Embellished his Knowledge of Milan Lukić’s Influence on the Case

20. Exemplifying his inclination to lie and exaggerate, Tabaković alleged that Milan Lukić influenced “almost 80 percent” of the witnesses in the case,⁴⁹ then later rescinded this allegation.⁵⁰

v. Amount of Money Owed Changes Multiple Times

21. Tabaković vacillated as to the amount that Rašić allegedly owed him. He first asserted that he was promised 2,500 Euros: then 5,000.⁵¹ While he clarified that the amount was 5000 *Marks*, he never corrected the OTP when they questioned him about the 5000 *Euros*. He made this *exact* same mistake several times in subsequent statements.⁵²

⁴³ OTP 65ter #76 pp.12-13

⁴⁴ OTP 65ter # 43 pp.17, 25, 26; OTP 65ter # 52, pp. 30-31; OTP 65ter # 52, p.30; OTP 65ter #57, p.43

⁴⁵ Supporting material Tab.# 39, p.18

⁴⁶ OTP 65ter #60

⁴⁷ OTP 65ter #13, (V000-8095) pp.16-19

⁴⁸ Supporting material Tab.# 39 p.55

⁴⁹ OTP 65ter #43 pp.29-31

⁵⁰ OTP 65ter #51 pp.28-29

⁵¹ OTP 65ter #52 pp.33, 83-84

⁵² OTP 65ter #54, pp.32, 37, 39

III. Miss Rašić Takes Issue With Allegations that She Knew the Statements Were

False

22. Unfortunately for Miss Rašić, events occurred outside her knowledge which would implicate her despite her innocence. While the evidence allegedly suggests that the witnesses were bribed, only Mr. Tabaković affirms that Miss Rašić personally had any involvement in these payments. Nothing else proves that Miss Rašić paid Tabaković, and she was not aware of any payments to the other two men, as she was never present to see the payments made.⁵³ The OTP's assertion that Rašić had any hand in these payments was entirely speculative.⁵⁴

23. The other witnesses state that Tabaković encouraged them to lie to Rašić about their knowledge of the contents of the statements, suggesting that only Tabaković knew that the statements were false. All other evidence indicates that Miss Rašić, meanwhile, exercised the due diligence expected of her in collecting the witness interviews.

A. Miss Rašić Exercised Due Dilligence According to Her Skills and Ability and Therefore Had No Knowledge that the Statements Were False.

24. The manner of operations on the Lukić Defence created circumstances in which Rašić would not suspect that the statements were false. Given her limitations and lack of training, counsel, not Rašić, were responsible for drafting documents.⁵⁵ As such, counsel met with their client, Milan Lukić, and drafted statements based on Lukić's recollections and information provided by him and other sources.⁵⁶

25. Because the team did not have the budget to send a skilled investigator to the field to conduct its investigations,⁵⁷ it became Rašić's duty to do so. Based on her experience and skill set, the most she could do was have the witness read the

⁵³ OTP 65ter #55 pp.17, 19, 61; OTP 65ter #57 pp.30-33; OTP 65ter #82 p.14. *See contra* OTP 65ter #76, p.36

⁵⁴ OTP PTB S. II.6 (alleging that Rašić "ensured" the men were paid through an intermediary).

⁵⁵ OTP 65ter #13 (V000-8093) p.2

⁵⁶ OTP 65ter #13 (V000-8091) p.21

⁵⁷ Supporting material, Tab. #39 p.18; Transcript, *Lukić & Lukić* trial, 9 December 2008 p.3779

- statement, affirm that it was true and accurate or offer any changes where it was not, and fill in additional personal details. As shown below, this is precisely what Rašić did with all three witnesses. Given the regular operations of the team as such, whether the statements were pre-prepared before she met with the witnesses wholly fails to indicate any culpability for contempt.⁵⁸
26. When she collected the three witnesses' statements, she met with them and explicitly verified the statements with each of them before they signed. Contrary to Tabaković's account,⁵⁹ the first time she met with him, it was in her hotel, where she made notes of their discussion on her laptop.⁶⁰ Tabaković agreed with what was written,⁶¹ and at the time he was the only source she had.
27. The testimonies of Mr. X and Mr. Y, which prove that Miss Rašić attempted to verify the statements, indicate that only Tabaković committed contempt. According to the other witnesses, Tabaković said that they could "sign something" to make some money.⁶²
28. When she met with Mr. X, she handed him the statement and asked on several occasions whether he read it, and X lied that he had.⁶³ Thus, Rašić explicitly attempted to verify the statement, but Mr. X deliberately misled her; if she were aware of the falsity of the statement, there would have been no need to do so.
29. Mr. Y also attempted to conceal his ignorance of the contents of his statement from Rašić, further suggesting that she did not know the statements were false.⁶⁴ He deceived her into believing that he was telling the truth, implying that she had legitimate intentions, while Mr. Y did not.⁶⁵ The OTP's allegations that Rašić had knowledge of the falsity of the statements are therefore meritless.

⁵⁸ see *contra* OTP PTB para.48

⁵⁹ OTP 65ter # 32 p.16

⁶⁰ OTP 65ter # 13 (V000-8092) pp.25-26; Tabaković inadvertently alluded to the hotel in which the statements were prepared, though he denied being going there OTP 65ter #32 pp.32-33

⁶¹ OTP 65ter # 13 (V000-8092) p.26

⁶² OTP 65ter #55 p.12

⁶³ OTP 65ter #57 pp.20, 21, 22, 24-25

⁶⁴ OTP 65ter #55 pp.24-25, 38

⁶⁵ OTP 65ter #55 p. 38

30. Furthermore, Miss Rašić even attempted to follow up with the witnesses when errors in the statements needed correction and new statements needed signing. Because Mr. Y had given her a false mobile number,⁶⁶ and she had difficulty contacting Mr. X,⁶⁷ she asked Tabaković to contact them. Tabaković “said that he personally had signed the statement on Saturday and the two others on Sunday when he met with Jelena again.”⁶⁸ Both Mr. X and Mr. Y repudiated assertions that they signed the statements more than once.⁶⁹ Both even suggested that their signatures were forged.⁷⁰ As such, Count 5 of the Indictment is wholly unfounded.

B. The Remaining Evidence on Which the OTP Attempts to Establish her Knowledge is Wholly Circumstantial

i. Use of the Map Accords with Effective and Common Practice in Witness Preparation

31. The OTP unduly conflates the relevance of the map which illustrated the witnesses’ statements.⁷¹ In preparing any witness, attorneys commonly provide witnesses with materials to help them better remember and relay their testimonies, and to withstand cross-examination. These materials can be anything: documents, sketches, previous statements and any other physical evidence. Common law jurisdictions allow parties to present almost anything to a witness to better refresh their memory.⁷² Therefore, whether Miss Rašić recalled giving the map to Tabaković is irrelevant.⁷³ In any event, no evidence proves that Miss Rašić, in fact, wrote her name and number on the back of the map, so the OTP’s assertion, that Tabaković could only have received the map from Rašić, is speculative.⁷⁴

⁶⁶ Ibid p. 53 (“She asked if I had any mobile phone numbers, I made one up”)

⁶⁷ OTP 65ter #13 (V000-8093) p.15

⁶⁸ OTP 65ter #52 p.8

⁶⁹ OTP 65ter #57 pp.40-41, 44; OTP 65ter #55, pp.27-28; OTP 65ter #86 pp.9-10

⁷⁰ OTP 65ter #84 pp.7-9; OTP 65ter #86 p.8

⁷¹ OTP PTB paras.15-19

⁷² Doctrine of Past Recollection Recorded, *see e.g. People v. Taylor*, 80 N.Y.2d 1, 7, 586 N.Y.S. 545, 548 (1992).

⁷³ OTP PTB para.47

⁷⁴ OTP PTB para.47

ii. Rašić Was Not Upfront About her Position Because She Feared Retaliation

32. Rašić had been threatened by strangers, in front of her own house, because she worked for the Lukić team.⁷⁵ [REDACTED]. These threats and “uncomfortable situations”⁷⁶ to which she was subject would naturally encourage her to mislead people about her true work and responsibilities out of sheer self-preservation. If she forgot precisely what she told [REDACTED] about her job, it does not reflect on her credibility.⁷⁷

iii. The Similarity of the Statements Was Not Suspicious

33. The similar statements of the witnesses at the Drina River would not necessarily raise Rašić’s suspicion or suggest that she knew they were false.⁷⁸ First of all, as the statements were prepared by counsel, she would not question them. Further, both witnesses were supposed to have been in the same place at exactly the same time. Therefore, those two people would have substantially similar, if not identical statements. Indeed, if it were otherwise, the credibility of their testimonies would come into question upon cross-examination; a diligent counsel would ensure that they were as similar as possible, and a diligent case manager would reasonably rely on the witness’ confirmation that they were true.

iv. The Payment to Miss Rašić Fails to Establish a Pattern of Conduct

34. The OTP PTB attempts to establish a pattern of conduct, alleging that Rašić took 2,000 Euros from the Lukić family. [REDACTED]⁷⁹ [REDACTED]. Additionally, she was required to pay for her travel expenses from her own salary, but in March and early April 2008, she had not yet received her first salary. So if she did receive this money, it was to cover her expenses until she was paid.⁸⁰ [REDACTED].⁸¹ Therefore, the payment of these funds, if true, reflected only the financial difficulties that the Lukić Defence Team was enduring at the time.

⁷⁵ Supporting material Tab. #39, p.23

⁷⁶ Supporting material Tab. #39, p.19

⁷⁷ OTP PTB para.53

⁷⁸ OTP PTB para.46

⁷⁹ R65ter Exhibit #60, para.5

⁸⁰ R65ter #13 (V000-8091) pp.14-16

⁸¹ R65ter Exhibit #67; Transcript, *Lukić & Lukić* trial, 9 December 2008 p.3779

v. Rašić Was Unaware of Whether Dragan Šekarić was Involved

35. Rašić takes issue with the OTP's assertion that she pointed Dragan Šekarić out to the witnesses or indicated in any way that Šekarić would pay them.⁸² Only Tabaković alleged that relationship. Further, even if it were true, nothing proves that Miss Rašić knew of any wrongdoing because she was not present when the witnesses were paid.

vi. The OTP Conflates and Exaggerates the Relevance of Other Inconsistencies

36. Many of the inconsistencies that the OTP highlights seem more likely the typical defensive and frightened response of a young woman whose interviewer trapped, attacked and challenged her.⁸³
37. Further, contrary the OTP's accusations, Rašić's account of how her team operated was not inconsistent, and did not indicate any wrongdoing. Her general description of how she conducted interviews with witnesses matched her description of the particular interviews she conducted with the witnesses in this case. She received instructions and information⁸⁴ about the witnesses from counsel in The Hague. Depending on the case,⁸⁵ she took notes on a laptop,⁸⁶ relayed those notes to counsel, who would draft the statement and send it back to her for the witnesses to sign. She never specified the contents of those "notes," and indeed, it would not have been illegitimate if her notes only contained the personal data of the witnesses she interviewed, because it would ultimately be the witness who had to correct any errors in the statement.
38. When investigators pressed her specifically regarding the statements of Tabaković, Mr. X and Mr. Y, she clarified that "actually" she had followed a different procedure—relaying her notes via telephone to counsel.⁸⁷ This particular process is not inconsistent with her general procedure, i.e. to give the

⁸² OTP PTB para 23-24, 51

⁸³ OTP 65ter #13, (V000-8094) pp.16-20

⁸⁴ OTP 65ter #13, (V000-8091) pp.22, 31

⁸⁵ OTP 65ter #13, (V000-8092) p.24

⁸⁶ OTP 65ter #13, (V000-8092) p.41

⁸⁷ OTP 65ter #13, (V000-8092) p.42

information to counsel so that they could write the statement. To “hand[] over,”⁸⁸ to “pass over”⁸⁹ and to “sen[d]”⁹⁰ are all terms synonymous with this procedure. Furthermore, a review of the BCS transcript reveals that Miss Rašić was consistent that she relayed the information by telephone.⁹¹

IV. Miss Rašić Takes Issue with the OTP’s Application of the Law and Jurisprudence

39. While the Defence does not contest that Rule 77(A) is authoritative in this case, interpretations thereof in the jurisprudence do not necessarily establish Miss Rašić’s culpability. First and foremost, nothing in *Brđanin* suggests that *any*⁹² act or omission intended to interfere with the Tribunal’s administration of justice amounts to contempt. Such an interpretation is impermissibly broad.
40. Secondly, the OTP notably has no jurisprudential or legal basis to its assertion that the *mens rea* requirement “for an accused who procures a false witness statement will be met where the accused acts with either direct or indirect intent.”⁹³ There is no basis for this assertion, particularly because this sweeping interpretation could render culpable for contempt any counsel who inadvertently overlooks something in a document, which he did not write, which renders the statement false. Further, as here, it could render Miss Rašić culpable for contempt when all misdeeds were committed by none other than Tabaković. This is a manifestly unfair outcome.
41. The OTP’s citation to the *Blaškić* case was inapposite;⁹⁴ it used the concept of “substantial likelihood” in the context of “ordering” under Article 7(1) of the ICTY Statute. Rašić was in no position to issue any orders; her duties were solely to obey orders given by counsels.

⁸⁸ OTP 65ter #13, (V000-8092) p.25

⁸⁹ OTP 65ter #13, (V000-8092) p.32

⁹⁰ OTP 65ter #13, (V000-8092) p.39

⁹¹ *See contra* OTP PTB para.45

⁹² OTP PTB para.54

⁹³ OTP PTB para.55

⁹⁴ OTP PTB para.56

42. In any event, this jurisprudence would fail to establish Miss Rašić's culpability for contempt. The statements in question, at the time they were taken, and even up until their submission to the Prosecution, would fall outside the realm of contemptible acts for several reasons. First, she collected witness statements by counsels' instructions, and knew that it is up to them to consider whether this statement was going to be used or not. If she did not know for certain at the time that the statements would be used, she could not be aware of the substantial likelihood that her conduct would interfere with the administration of justice. Second, while they appeared on the Defence's *65ter* list, they were never in fact submitted to the Chambers, but only to the Prosecution, as evidence. They were later withdrawn because they were cumulative.⁹⁵ They therefore could never have interfered with the administration of justice to begin with because the Chamber would never have considered them.

Respectfully submitted,



Mira Tapusković

Word Count: 4,592

Submitted on this 20th day of May 2011
at the Hague, Netherlands

⁹⁵ OTP *65ter* #49, *Lukić&Lukić*, IT-98-32/1-T Milan Lukić's Second Motion to Amend Rule *65ter* List, Confidential, 23 January 2009 para.4