

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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THE UNITED STATES OF AMERICA,

-against-

SUSAN LINDAUER,

Defendant.

**MOTION FOR RECONSIDERATION
OF THE COURT'S DECISION ON
DEFENDANT'S COMPETENCE AND
FOR HER RIGHT TO A SPEEDY TRIAL**

Case No. 03 Cr. 807

ORAL ARGUMENT REQUESTED

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**DEFENDANT REQUESTS RECONSIDERATION
OF HER COMPETENCE AND HER RIGHT TO A SPEEDY TRIAL**

COMES NOW Defendant, Susan Lindauer, by and through counsel, and requests that this Court reconsider a judicial finding regarding her competence to stand trial, pursuant to 18 U.S.C. § 4241. Ms. Lindauer also requests a speedy trial of the indictment pending against her.

FACTUAL BACKGROUND

Ms. Lindauer was indicted in March 2004 and accused of acting as an unregistered agent for the Iraqi government. She has been accused of traveling to Baghdad and seeking to influence a federal official by submitting letters to President Bush's Chief of Staff Andy Card, who is her second cousin, and to former Secretary of State Colin Powell, in order to present an option developed by the CIA prior to the Invasion.

Ms. Lindauer has steadfastly proclaimed her innocence and asserted that she acted as an agent or asset for the U.S. Intelligence Community, supervised by handlers for the CIA and Defense Intelligence Agency in Washington, DC.

The Defense intends to prove these points at trial, and would have done so already except that the U.S. Government opposed Ms. Lindauer's competence to stand trial -- even though counsel argues for her ability to assist in the preparation of her defense.

In major part, the U.S. Government, Defendant's former counsel, and Mr. Sam Talkin have disputed Ms. Lindauer's statements about her status as a longtime CIA/DIA asset, in order to assert "proof" of her legal incompetence to stand trial.

In September 2006, in his decision about her competence, former Chief Judge Michael Mukasey stated: "Dr. Kleinman, the government's retained psychiatrist, testified to three groups of symptoms that led him to his diagnosis of 'psychotic disorder not otherwise specified' ... However, as [Kleinman] explained, it is only the delusions – false fixed beliefs – that interfere significantly with Ms. Lindauer's ability to assist in her own defense; it is not the hallucinations or the mood disorder."

Dr. Kleinman's reports and testimony allege that Ms. Lindauer is incompetent to assist properly in her own defense in part because of her allegedly-"false fixed belief" in her innocence, her allegedly-"false fixed belief" that she acted as a long-time Asset for the U.S. Government, and her allegedly-"false fixed belief" that a jury of her peers would find her not guilty. In short, Dr. Kleinman expressed his opinion that Ms. Lindauer is incompetent because she has pleaded "Not Guilty" to the charges.

Contradicting Dr. Kleinman's evaluation are reports filed by Family Health Services in Hyattsville, Maryland, where Ms. Lindauer was required to attend meetings on a weekly basis for one

year from March 2004 through March, 2005. Dr. Bruke Taddessah recorded that he observed "no signs of psychosis, no signs of mood disturbances, no delusional thinking and no depression." He wrote that there was no basis for psychiatric intervention. Nevertheless, Ms. Lindauer was ordered to surrender to Carswell Federal Medical Center on October 3, 2005, which she obeyed despite strong disagreements with the evaluations.

Lindauer was held at Carswell for seven months, before getting transferred to the Metropolitan Correctional Center (M.C.C.) in New York for four (4) months. Prison psychologists at Carswell FMC declared that Ms. Lindauer remained incompetent to stand trial. Carswell likewise based its decision on Lindauer's "falsely fixed" notion of her work as an Asset covering the Iraqi Embassy for the purpose of anti-terrorism. (See Exhibits).

In testimony before Judge Mukasey on May, 9, 2006, Dr. Colin Vas from Carswell FMC admitted that over seven months of incarceration, staff observed no signs of hallucinations and no signs of hearing voices, nor any depression or bipolar disorder. Carswell reported that Ms. Lindauer walked 4-6 miles on the track every day, and consistently participated at "indoor recreation activities." Ms. Lindauer also spent many hours at the prison law library studying up on her case. In its monthly reports, Carswell wrote: "Good physical health. Socializes well. Good intellectual functioning." And "no behavioral problems."

In September, 2006, Chief Justice Michael Mukasey, now the U.S. Attorney General, found Lindauer to be incompetent to assist properly in her own defense. However, the Judge also found that further psychiatric treatment in an in-patient psychiatric facility would not improve her competence.

In September 2006, Judge Mukasey also found: “[T]here is no indication that Lindauer ever came close to influencing anyone [in the U.S. Government], or could have... Lindauer has been found to pose a threat neither to herself nor to others... The government's interest here in prosecuting this Defendant is significantly weaker than it was in either [the] Sell or Gomes [cases]. It would be a denial of reality of ‘the facts of the individual case’ to find otherwise.”

Judge Mukasey ordered that Ms. Lindauer could not be forcibly drugged with psychoactive drugs, and on September 8, 2006 released her from indefinite pre-trial confinement, without setting any date for a trial on the merits of the charges that she has requested from the beginning.

As indicated in his decision, Chief Judge Mukasey may have expected the U.S. Department of Justice to drop its charges against Ms. Lindauer. They have not.

After her release from Carswell, records of her weekly meetings at Counseling Plus from September, 2006 to August, 2007 validate the earlier findings by Dr. Taddessah at Family Health Services. Lindauer was reported to suffer "Post Traumatic Stress caused by her experiences at Carswell"--- and nothing more. Reports from Counseling Plus over the year consistently state that Ms. Lindauer suffers "no depression, no bipolar disorder, no signs of psychosis, and no signs of hallucinations or hearing voices. She is fully oriented to her surroundings at all times."

In a hearing on June 17, 2008, the Court heard testimony from two lay witnesses, who both swore that in 20 years combined knowledge of Lindauer, she has exhibited no signs of mental illness. Ms. Kelly O'Meara, a former Congressional Chief of Staff, testified that in the period of the indictment,

Lindauer moved in circles with senior Congressional Staff and Washington journalists. O'Meara verified that Lindauer maintained a long-time close relationship with Mr. Paul Hoven, a recognized "intelligence passer" who worked closely with Dr. Richard Fuisz, a known CIA operative linked to Middle East Terrorist investigations, and that Mr. Hoven took O'Meara to the family homes and offices of legendary figures in the Washington DC intelligence community. O'Meara's testimony rebutted statements allegedly made by Mr. Hoven to the FBI, which had been relied on in Dr. Kleinman's earlier reports.

Dr. Parke Godfrey, an Associate Professor of Computer Science at York University, testified that he spoke with Ms. Lindauer by phone two or three times a week, and met with her in person once a week, throughout most of the 1990s. Like O'Meara, Dr. Godfrey said that he observed no symptoms of mental illness in Ms. Lindauer. Dr. Godfrey confirmed that in the months before 9/11, Ms. Lindauer warned him about a major anticipated attack on the southern part of Manhattan that would most likely involve airplanes and the World Trade Center. Dr. Godfrey was very specific that she warned about a reprise of the 1993 attack. His testimony has negated questions by psychiatrists as to whether Ms. Lindauer had been delusional in claiming that she warned about such an attack before September 11, 2001. The Court has determined through participatory testimony that she was not.

The U.S. Government has offered no proof of Ms. Lindauer's legal incompetence from her incarceration at Carswell Federal Medical Center, despite confining her for seven months. Testimonies from her long time friends and associates corroborate Ms. Lindauer's assertions about her CIA/DIA contacts and indicate that she is legally competent (albeit unconventional in certain specific beliefs, though by no means all of her beliefs).

Testimony and reports from Defense psychiatric expert Dr. Richard Ratner described Ms. Lindauer and some of her interests as "eccentric and unconventional." However, Dr. Ratner found that Ms. Lindauer had no mental illness or defect that might render her legally incompetent to assist properly in her own defense. In fact, Dr. Ratner strongly emphasized that Ms. Lindauer is very much competent to assist her own defense in the current time period.

Virtually alone in his opinions, Dr. Kleinman stated in his reports and testimony that Ms. Lindauer is incompetent to assist in her own defense, and provided some evidence for his opinion.

The Court agreed with Dr. Kleinman, citing Ms. Lindauer's in-court behavior as inappropriate for a possible trial scenario, and ruled that she is still incompetent, and thus unable to get a trial on the merits of her case. Ms. Lindauer asks this Court to reconsider the finding on her competence.

ARGUMENT

A) A Finding That Defendant Is Incompetent To Stand Trial Is Not Supported In The Record.

In the U.S. vs. Hemsli case, the defendant was a violent and psychotic 'nut-job,' accused of "mount[ing] a violent and unprovoked attack with a metal rod on a VA Hospital police officer," while Mr. Hemsli was already confined for psychiatric evaluation and treatment in a VA hospital.

The court-appointed psychiatrist "concluded that Hemsli suffered from a major psychiatric disorder, having some elements of schizophrenia and some elements of a manic-depressive or bipolar disorder. Her report stated that it was 'only on rare, non-threatening occasions that he is able to maintain his composure,' and that Hemsli was 'disruptive, paranoid, and there is very substantial denial and rationalization, making it difficult for him to [ever] focus on his legal needs.' ...

“In [the] view [of the only psychiatrist to testify], his illness prevented him from acting effectively on his intellectual understanding, and he would ‘not be able to cooperate rationally with his lawyer in his own defense.’ During [psychiatrist] Goldstein's testimony, Hemsí interrupted more than a dozen times with ad hominem attacks on her.”

“Hemsí [by counsel] did not present any expert psychiatric testimony on his own behalf. Hemsí testified, responding to a brief direct examination and to a cross-examination that was made lengthy by the fact that his responses were often rambling, confused, irrelevant, or incomprehensible.”

“Hemsí's attorney, John Byrnes, testified in support of Hemsí's competency, but he responded to the key question: "Can he assist in his defense in terms of relating the events to me and in giving me help in that area which he has already done? The answer is yes. Can he assist properly in his defense in terms of making all of the decisions that he should make? Whether he can do all of that rationally, whatever, I don't know whether I can answer that question.””

In the courtroom, at infrequent times, Ms. Lindauer has suffered from ‘unrestrained discourse.’ Ms. Lindauer has infrequently risen to object to statements by the Prosecutor or the Judge that Ms. Lindauer considers objectionable. Everyone who knows Ms. Lindauer knows that she does not like to be gagged – legally or otherwise. Her frustration has been compounded by denial of a trial for 4 ½ years. Thus, although such objections and even putting a Kleenex over her mouth (when told to be silent) may be inappropriate and unnecessarily dramatic, are they really signs of Ms. Lindauer’s legal incompetence? Notably, on that specific occasion, Ms. Lindauer's new attorney was not able to attend Court with her that day, and she was forced to work with her former attorney, while the Prosecutor tried to revoke her bail for reasons that she considered unacceptable. When she spoke out, in fact she said, "I have no attorney present. I want my attorney. I have a new

attorney. He has received payment for legal services. I demand that the Court postpone any decision until my attorney can be present."

Challenged by the Court that she was represented by former attorney, Mr. Sam Talkin, she admittedly got very upset, and said, "He is not my attorney. I want my attorney to be present." Subsequently, new Counsel successfully challenged a compromise which had been negotiated by her former attorney to stop her from going back to Carswell FMC.

In Dusky v. United States, 362 U.S. 402 (1960), the U.S. Supreme Court ruled that the test of federal criminal legal competency is "whether [Defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and whether he has a rational as well as factual understanding of the proceedings against him." As per attestations by Ms. Lindauer, defense counsel, and defense experts, even the government's own psychiatrist, Dr. Kleinman, the Defendant meets the U.S. Supreme Court standard for legal competency to assist properly in her own defense. Ms. Lindauer wants a trial on the merits of her case.¹

Ms. Lindauer's reputation and career continue to be harmed by the 4 ½ year-old indictment, which she is not allowed to defend herself against. Neither this Court, the Justice Department nor the Intelligence Community may want the factual precedents set by this case to remain on the federal judicial record, or in the international public mind. For this reason, Ms. Lindauer has indicated that she might accept a workable solution, including dismissal, which would recognize the

¹ U.S. vs. Giffen. SDNY. Defendant's assertions in Giffen seem equivalent to Ms. Lindauer's. Giffen claims that the CIA directed him to spread hundreds of millions of dollars around Kazakhstan, yet the U.S. Attorney is not seeking to bar Giffen from trial by suggesting Giffen is incompetent for his startling assertions. Lindauer's connections with key figures in the intelligence community are well supported, although her actions are similarly out of the mainstream of normal behavior—as are many such intelligence activities, which require extreme risk-taking and creativity in problem solving. Yet the U.S. Attorney cites those factors to declare that she is incompetent.

value of her work in anti-terrorism, after a judicial finding of her legal competence is attained. Once it becomes plain that Ms. Lindauer has been truthful—not delusional or psychotic—in making claims about her work as an Asset focused on anti-terrorism, the possibility of such a resolution might become more acceptable and understandable to the Court.

B) Dr. Kleinman’s Assertions and The Court’s Observation of Ms. Lindauer’s In-Court Behavior Do Not Rise to the Level Required for a Continued Judicial Finding of Incompetence.

In this Court’s September 15th decision, the Court stated: “I also note and credit Dr. Kleinman's testimony to the effect that Ms. Lindauer believes that her prosecution emanates from a conspiracy in which multiple individuals have maliciously and falsely portrayed her as mentally ill. I note that among the individuals Dr. Kleinman testified that Ms. Lindauer found responsible for her prosecution were Andrew Card, I. Lewis Libby, Colin Powell, and Vice President Cheney.” Page 172, Lines 11-16 of the Transcript of the September 15th Hearing.

Ms. Lindauer has never said, to Dr. Kleinman, or to anyone else, that Ms. Lindauer believes that Andy Card, Colin Powell, Scooter Libby and/or Dick Cheney were involved in a “conspiracy” to portray Ms. Lindauer **as mentally ill or incompetent**. However, Ms. Lindauer did deliver the letter contained in **Exhibits**, on which Ms. Lindauer’s prosecution is based, both to Andy Card and former Secretary of State Colin Powell, who was the next door neighbor of her CIA handler, Dr. Richard Fuisz. Also, some of the earlier letters to Andy Card, detailing the progress of Ms. Lindauer's work with Dr. Fuisz to resume the weapons inspections in Iraq, were shared with Vice President Richard Cheney’s Chief of Staff I. Lewis (“Scooter”) Libby. It is noted that Libby was accused in a civil lawsuit of “outing” Valerie Plame as a CIA agent, in political retaliation for her husband’s opposition to Bush Administration policies on Iraq. Therefore, if Ms. Lindauer has concluded that Andy Card and/or Colin Powell and/or Scooter Libby and/or Vice President Richard

Cheney are somehow “responsible” for her **indictment**, then such inference may have been warranted.

In the September 15th decision, the Court states: “As Dr. Kleinman testified, Ms. Lindauer's suggestion of a meeting with Osama bin Laden where he disclosed to her the location of a bomb, her personal letters, including demands and threats to Hosni Mubarak of Egypt, also demonstrate a lack of connection with reality.” Hearing Transcript page 171, lines 16-20.

While we recognize that Dr. Kleinman did testify to these matters in Court, the Defense disputes that his comments accurately represent what Ms. Lindauer said to him in their meetings. Those meetings were audio taped, and parts of the transcript are included in the accompanying Affidavit.

At trial, the Defense intends to call witnesses and provide supporting evidence that will show Ms. Lindauer did in fact function as a CIA and Defense Intelligence asset involved in anti-terrorism. The Defense will prove that Dr. Richard Fuisz was a major CIA operative linked to terrorism investigations in the Middle East for almost two decades, and that Paul Hoven had known associations with Defense Intelligence. The Defense will prove that both men supervised the actions that Ms. Lindauer took regarding Libya and Iraq, for which the U.S. Government is now prosecuting her. For Ms. Lindauer to ‘suggest’ that she met Osama bin Laden, or that she contributed to one of the earliest investigations into where he might build political alliances in the Middle East, may be only a small indication of the stronger evidence of her long-time work with U.S. intelligence that she intends to prove at Trial. See Lindauer Affidavit.

Dr. Kleinman's statements about Ms. Lindauer's possible meeting with Osama bin Laden are one of several examples of how his reports or testimony are contradicted by transcripts of audio taped meetings with Ms. Lindauer. See Lindauer Affidavit. After reviewing transcripts of the audio-taped meeting on June 8, 2007, the Court may conclude that Dr. Kleinman's portrayals are overly simplistic at best or grossly erroneous at worst.

Either way, Ms. Lindauer's suggestion of a meeting with Osama bin Laden is not relevant to her guilt or innocence, and does not provide evidence of "a lack of connection with reality" for the purposes of evidencing her competence (or lack thereof) to assist properly in her defense. However, Ms. Lindauer's proffered proof of a "Public-Authority Defense" may be the reason that the U.S. Government is determinedly opposing a finding of competence for Ms. Lindauer and her right to stand trial.

In its September 15 decision, the Court states: "As Dr. Kleinman testified, Ms. Lindauer's claims of special powers and, as he stated in his report, his relation of her stating that she experiences ideas of reference, that is, experiencing external phenomena as containing special meaning associated with herself, is also unconnected to reality." Hearing Transcript page 171, lines 11-15.

That the Defense Intelligence Agency and CIA have cultivated individuals with psychic-type abilities is widely reported by credible authors in recent books with wide international sales and on credible internet sites. Very simply, U.S. intelligence replicated a program developed by the Soviets during the Cold War. Approximately 395,000 internet pages are available on Google, regarding military remote viewing alone. Although "remote viewing" is not what Ms. Lindauer claims to have done, she can prove that both the CIA and Defense Intelligence had knowledge of,

and endorsed her application of what she claims to be her psychic gifts, in order to establish difficult relationships in the Middle East. Ironically, Ms. Lindauer might have enjoyed greater success because she did so.

Whereas Dr. Kleinman evidently desires to suggest that Ms. Lindauer's assertions about her so-called 'psychic abilities' are evidence of a thought process "unconnected to reality," in fact psychic phenomenon is something that many other people find interesting and wish to cultivate. As it relates to this case, U.S. intelligence does not care much about how their agents and assets discover and gather valuable intelligence truths—so long as that information proves reliable and accurate.

In a separate part of his testimony, Dr. Kleinman opined against Ms. Lindauer's competence because she is convinced of her innocence of criminal activity. After hearing testimony and weighing the evidence, the Court may come to agree with Ms. Lindauer. For this reason we strongly urge the Court not to pass judgment until the Defense has presented its evidence at trial.

In its decision, the Court states: "Ms. Lindauer does not seem to have a rational understanding of the roles of [court] personnel in her case. For example, Ms. Lindauer's explanation of the means and most likely means available to resolve this criminal charge as related by Dr. Kleinman seems to have no contact with reality. Ms. Lindauer's suggestion that her entering into a non-disclosure agreement with the government and the government's paying her some \$2 million out of some \$13 million that she claims is owed certainly does not evidence a rational view of the means of resolving this case. With respect, for example, to the supposed plea offer, the fact that Ms. Lindauer stated that she received an offer to plead to a single charge and to receive time served and the prosecutors

denying that such an offer had ever been made certainly does not evidence a rational understanding of the process against her.” Hearing Transcript page 169 at lines 16-25 to page 170 at lines 1-5.

Although Ms. Lindauer's personal objections to the Court's statement about Dr. Kleinman's assertion about a plea bargain was indeed an inappropriate in-court behavior, it may also have evidenced her keen, legally competent memory for relevant facts about what Dr. Kleinman discussed with her in their meetings

Tape recordings of Ms. Lindauer's meeting with Dr. Kleinman and her former defense counsel, Sam Talkin, on June 8, 2007 show that on three separate occasions, Kleinman introduced lengthy discussions of a possible plea deal into his questioning. Over an hour or more he pushed Ms. Lindauer to explain why she would not accept it. Ms. Lindauer's former defense counsel, Mr. Sam Talkin, was present throughout these sessions, and she has explained that he told her a plea was being discussed should that be of interest to her. These discussions could have naturally caused Ms. Lindauer to believe that such a plea bargain was under consideration to settle the case.

C) Dr. Kleinman's Opinion Against Ms. Lindauer's Proffer of a Public-Authority Defense is Unsupportable.

Dr. Kleinman has attested in numerous reports since 2005 that Ms. Lindauer's belief that she worked as an Asset for U.S. intelligence indicates proof of her legal incompetence. We believe that documents and witness testimony will in fact, demonstrate that Ms. Lindauer is not delusional when she asserts her innocence. A good indication that Ms. Lindauer is competent to assist properly in her own defense is that Ms. Lindauer herself prepared much of the attached Declaration of Susan Lindauer and wrote substantial portions of this Motion for Reconsideration. Although Ms. Lindauer certainly is an exasperating client with whom to work, she is certainly “competent” by any and all standards.

CONCLUSION

WHEREFORE, Ms. Lindauer requests that this Court find her legally competent to assist in her defense pursuant to 18 U.S.C. § 4241, and that the Court set a date for trial on the merits.

Respectfully submitted,

/s/ Brian W. Shaughnessy
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of October 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the following:

AUSA MICHAEL FARBIARZ, US Attorney's Office, Southern District of New York, One St. Andrews Plaza, New York, NY 10007.

/s/ Brian W. Shaughnessy

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
THE UNITED STATES OF AMERICA,

ORDER

-against-

SUSAN LINDAUER,

Case No. _____

Defendant.

-----X
Upon consideration of Ms. Lindauer's Motion for Reconsideration Of The Court's Decision On Ms. Lindauer's Competence And Of Her Right To A Trial, it is hereby

ORDERED, this ___ day of _____ 2008, that Ms. Lindauer's Motion is GRANTED.

It is further ORDERED that Ms. Lindauer, her counsel, and the AUSA appear before this Court on and at the scheduled status conference date and time to set a date for a trial.

JUDGE

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