

American Kafka: Susan Lindauer Demands "The Trial"

Saturday, 4 October 2008, 12:14 am
Article: Michael Collins

American Kafka: Susan Lindauer Demands "The Trial"



Image

Part 1

Michael Collins
"Scoop" Independent News

(Wash. DC) Accused "unregistered Iraqi agent", Susan Lindauer, is now challenging the September 15th decision of federal district court Judge Loretta Preska, which continues to find Lindauer to be "incompetent to stand trial." Lindauer's attorney Brian Shaughnessy filed a Motion for Reconsideration of Preska's Kafka-like ruling that Lindauer is "incompetent" because of Lindauer's belief and plea that she is "Not Guilty." Lindauer also demands her right to a "Speedy Trial," as guaranteed by the Sixth Amendment of the U.S. Constitution.

Nominated for Federal appeals court by President Bush just days before her ruling in this case, Preska's Sept. 15 opinion effectively denied Lindauer her right to a "speedy and

public trial," which is required by the Sixth Amendment of the U.S. Constitution. Judge Preska's expanded interpretation of "incompetence" to stand trial may now open the gate for competency challenges by defendants throughout the federal court system.

The judge opined that Lindauer lacked "a connection to reality" in the specific area of assisting in her own defense. The following passage from the judge's decision reveals the types of Kafka-like, "Catch 22" double binds that the government and this judge create in this case. From the Sept, 15 decision by Judge Preska:

"Also during that court conference (Dec. 19, 2007), after the court admonished Ms. Lindauer not to speak out in court without first discussing it with her attorney, the transcript reflects that Ms. Lindauer, upon being admonished again, stuffed Kleenexes into her mouth, which, again, is not the response of someone rationally connected to the proceedings." p. 171, lines 5-10)
Hon. Loretta A. Preska, U.S. District Court, Southern District of New York, Sept. 15, 2008

The "court conference" referenced by the judge was the conference of Dec. 19, 2007. Lindauer had fired court appointed attorney Samuel Talkin and retained attorney Brian Shaughnessy of Wash., DC, a former federal prosecutor with four decades of courtroom experience.. According to Lindauer, Shaughnessy had informed the court that he could attend court any day of the week but Wednesday. The judge insisted on holding the hearing on the one day attorney Shaughnessy could not be in court. Therefore, for all intents and purposes, Lindauer had no attorney in court to defend her. After all, she had already fired attorney Talkin.

Hearing objectionable requests and statements at that conference, Lindauer spoke up to defend herself. One of those requests was a suggestion by the prosecutor that she be sent back to Carswell Federal Medical Center, the place of her original seven month pretrial incarceration for psychiatric evaluation. It was made by assistant U.S. attorney Ed O'Callahan (now with the McCain campaign in Alaska, working for the Palin "truth squad") who had sought to forcibly drug Lindauer with psychoactive drugs in May of 2006.

Would Judge Preska have preferred that Lindauer use a cell phone to call her lawyer in D.C., tell him her objection, and then hand the phone to the judge so that Lindauer's new defense counsel could make the objection? Or would Judge Preska have preferred that Lindauer rely on terminated attorney Talkin who, despite being fired by Lindauer, showed up in court that day?

How is it that this defendant, judicially found to be legally incompetent to stand trial, was without her new defense counsel at a pretrial conference?

How is it that the Judge insisted on meeting on the only day of that week that Lindauer's new defense counsel said was impossible to make?

This truly is the stuff of Kafka's "The Trial." A judge uses the defendant's own defense at a hearing where she had no lawyer as evidence that the defendant is incompetent to assist in her own defense and therefore is incompetent to stand trial (See Franz Kafka and The Trial).

Would it have been "competent" for the defendant to sit silently after the very same court had previously remanded her to a federal prison hospital on a Texas military base for seven months for a psychiatric evaluation and observation that was legally supposed to take no more than 120 days (according to federal law, 18 U.S.C. 4241)?

Would it have been competent of Lindauer to remain silent when dealing with a U.S. Attorney's office that had sought to physically forced her to take Haldol (an older generation antipsychotic, psychoactive medication that causes serious side effects, including symptoms of Parkinson's disease)?

How "competent" would Lindauer have been if she had trusted the criminal justice system when she knew that an internal report from the federal prison psychiatrist had recommended against involuntary medication and that this report had not been introduced into evidence by now-fired attorney Talkin and was only introduced into evidence by new defense counsel Shaughnessy)?

Do we have some brave new world standard for trials, where defendants are deemed "incompetent to stand trial" when they defend themselves in the absence of defense counsel? Where's the "connection to reality" in that? Franz Kafka, please reply.

Kafka-esque? Without any doubt. The general attitude of the prosecutors and the judge reflect this line from "The Trial": "**You see, everything belongs to the Court.**"

It is virtually unheard of for the prosecution to agree to with a defendant seeking a delay of trial due to "incompetence." It's even rarer that the prosecution takes the lead in arguing that a defendant is incompetent when the defense argues for defendant's competence and demands a trial.

In fact, defense attorney Shaughnessy could find no reported federal or state criminal case in which the defendant, the defense attorney, and defense psychiatric experts attested to the defendant's competence to stand trial and the judge ruled that the defendant was incompetent to stand trial.

The Judge's Opinion on Incompetence to Stand Trial, and the Defense Motion for Reconsideration and Declaration by the Defendant

Judge Preska heard the testimony of Lindauer's defense expert on Sept. 11, 2008, psychiatrist Richard Ratner, M.D, of Washington, D.C. On Sept. 15, she heard the testimony of prosecution psychiatrist Stewart Kleinman, M.D. Immediately following that testimony, Preska ruled that Lindauer is "incompetent to stand trial."

Judge Preska based her ruling on the following argument:

"I think both of the medical experts have agreed that Ms. Lindauer does suffer from a mental disease or defect. The more operative question seems to be whether or not Ms. Lindauer has an appreciation of the proceedings against her and is adequately able to assist in her defense. I credit in general the testimony of Dr. Stewart Kleinman, M.D."

Decision of Judge Preska, Sept. 15, 2008 ("Decision")

Defense attorney Shaughnessy responded in his Motion for Reconsideration. He pointed out that Preska was in fact wrong when she used "delusions and hallucinations" as proof that Lindauer was incompetent. The prison psychiatrist who observed her for seven months "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."

Shaughnessy cited evidence that "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." Motion for Reconsideration, ("Motion") p. 2

(N.B. Treatment notes from her release from Carswell through the present show that there were no signs of a serious mental illness, including hallucinations and delusions. Exhibits, "Monthly Treatment Reports, pp. 5-10

"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." Motion, p. 4

The overall fallacy in the court decision and the assessment of Dr. Kleinman was summarized in this elegant paragraph, reflecting even more Kafka-esque thinking by the court, namely that Lindauer's defense, that she was a U.S. intelligence asset, is a sign that Lindauer is "incompetent to stand trial":

"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.**" (Emphasis mine) Motion, p. 3

Lindauer maintains her innocence. She asks for a trial to prove that she was an intelligence asset who worked for the United States of America for nine years. Then the judge says in effect:

Oh, you're pleading innocent. Sorry, but we can't allow you a trial, since your claim of innocence the fact that you claim your innocence indicates that you're u are not legally "competent to stand trial."

In order to maintain this position, both Judge Preska and Dr. Kleinman, M.D., must know that Lindauer will be found guilty of the charges. But, of course, that can't be the case. Yet both maintain that Lindauer should have no trial because she pled "Not Guilty" and planned an affirmative "Public-Authority Defense," as per Rule 12.3 of the Federal Rules of Criminal Procedure..

The details of the decision and motion to reconsider are well worth reviewing and can be found in the attachments from the court record.

As to the fundamental argument that Lindauer is not able to assist in her own defense, the attached Declaration by Susan Lindauer, filed with the motion, is perhaps the best evidence of all. In this sworn declaration, Lindauer skillfully and coherently dissects the prosecution case, the ruling, and demolishes the notion that she's unable to assist in her own defense. Her closing argument in the declaration summarizes her defense and explains why she's so adamant in seeking a trial.

"The Defense advises the Court that psychiatrists lack the expertise in intelligence matters that would be necessary to evaluate whether my operations were effective or not. I have been indicted for establishing high ranking contacts inside the Iraqi Embassy at the United Nations, and that I stand accused of conducting preliminary talks with Iraqi officials on the return of the weapons inspectors. Whatever Dr. Kleinman thinks of my approach, the facts of the case show that it most definitely did enable me to establish high ranking contacts with various Middle Eastern diplomats at the United Nations." Declaration by Susan Lindauer, Sept. 30, 2008

Before his formally concluding request that Lindauer be found "competent" and before asserting Lindauer's right to a "Speedy Trial," defense counsel Shaughnessy states:

"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."

Something is Very Wrong With This Ruling

What's does the government fear about from a trial? Could it be the witnesses and their testimony that there was adequate prewar intelligence regarding Iraq? We've been led to believe otherwise in the usual display of obfuscation by the White House. Would another side to the story, based on evidence examined in open court, be a threat to someone?

On September 11, 2008, both the defense counsel and the new assistant U.S. attorney waived the in-court testimony to be offered by prosecution psychiatrist Stewart Kleinman, M.D. at a planned hearing on Sept.15, 2008. They left, assuming that this would be accepted by the judge.

But Judge Preska surprised both by proceeding with the hearing on the 15th with Kleinman testifying in open court. Preska must have surprised them even more when, at the end of Kleinman's testimony, she read her already-written decision on Lindauer's competence from a teleprompter-like computer screen at the judge's bench

The previous judge on the case, former Chief Judge of the District Court and current U.S. Attorney General, Michael B. Mukasey, took four months to review the evidence before ruling on Lindauer's competence and the prosecutor's motion for forced medication. What motivated Judge Preska to write her decision on Lindauer's competence before Preska had even heard Kleinman's testimony and defense counsel Shaughnessy's cross examination of Kleinman? (Mr. Kafka, would you please respond to the question?)

Yet, as though Judge Loretta Preska had "psychic powers" to anticipate the testimony of Dr. Kleinman and defense counsel Shaughnessy's cross examination, Preska delivered a prepared opinion immediately after Kleinman's last words of testimony at the Lindauer's competency hearing.

And then there's this. By declaring Lindauer to be "incompetent to stand trial," Judge Preska may have set up the possibility that Lindauer will be returned to in-patient psychiatric "treatment," as if Susan Lindauer is some sort of government chattel, instead of a free citizen of the United States of America with all the rights guaranteed by the U.S. Constitution. See the language of 18 U.S.C. § 4241 regarding at "Determination of Mental Competency"::

"If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for treatment in a suitable facility"

Could this be the motivation, witting or subconscious, for Judge Preska's decision on Lindauer's competence?

As Franz Kafka said in "**The Trial**," "[E]verything belongs to the court."

Truly the stuff of Kafka.

END

This article may be reproduced in whole or in part with attribution of authorship and a link to this article.

Court records on competency hearing:

Decision of Judge Preska, Sept 15, .2008

Motion for Reconsideration by Lindauer attorney Brian Shaughnessy, Oct, 1, 2008

Declaration by Susan Lindauer. Filed with Motion for Reconsideration, Oct 1, 2008

Exhibits - 3 - filed with Motion for Reconsideration, Oct. 1, 2008

Previous "Scoop" coverage on USA v. Susan Lindauer:

American Cassandra: Susan Lindauer's Story by Michael Collins 17 October 2007

Bush Political Prisoner Gets her Day in Court by Michael Collins June 11, 2008

An Exclusive Interview with Bush Political Prisoner Susan Lindauer by Michael Collins

June 2008 911 Prediction Revealed at Susan Lindauer Competency Hearing by Michael Collins June 17, 2004

Did Justice Order Forced Psychiatric Medication? by Michael Collins, Sept. 12, 2008.

ENDS