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1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK  
2 -----x

3 UNITED STATES OF AMERICA,  
3

4 v.  
4

03 Cr. 807 (LAP)

5 SUSAN LINDAUER,  
5

6 Defendant.  
6

7 -----x

8 September 15, 2008  
9 3:30 p.m.  
9

10 Before:  
10

11 HON. LORETTA A. PRESKA,  
11

12 District Judge  
12

13  
14 APPEARANCES

15 MICHAEL J. GARCIA  
15 United States Attorney for the  
16 Southern District of New York  
16 BY: MICHAEL FARBIARZ  
17 Assistant United States Attorney  
17

18 BRIAN SHAUNESSY  
18 Attorney for Defendant  
19

19 ALSO PRESENT: LILLIE GRANT, U.S. Attorney's Office  
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1 MR. FARBIARZ: Excuse me, Judge. Thank you.  
2 THE COURT: -- 18, United States Code, Section 4241.  
3 Under that provision, a defendant will be deemed incompetent to  
4 stand trial if a court determines "by a preponderance of the  
5 evidence that the defendant is presently suffering from a  
6 mental disease or defect rendering her mentally incompetent to  
7 the extent that she is unable to understand the nature and  
8 consequences of the proceedings against her or to assist  
9 properly in her defense."

10 In United States v. Hemsy, 901 F.2d 293 (2d Cir.  
11 1990), the Court of Appeals has expanded on the statutory  
12 definition, citing the Dusky case, referred to by Dr. Kleinman.

13 In discussing the standard, the Court of Appeals noted  
14 that "the inquiry involves an assessment of whether the accused  
15 can assist 'in such ways as providing accounts of the facts,  
16 names of witnesses, etc.'" But it is not sufficient merely that  
17 the defendant can make a recitation of the charges or the names  
18 of witnesses, for proper assistance in the defense requires an  
19 understanding that is 'rational as well as factual.' In making  
20 its assessment, the court may take into account a number of  
21 factors, including the defendant's comportment in the  
22 courtroom." Id. at 295 (citations omitted).

23 Here I am persuaded that although, as pointed out by  
24 Dr. Kleinman, Ms. Lindauer is a highly intelligent individual  
25 who is generally capable of functioning at a high level in many

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1 ways, she is also presently suffering from a mental disease or  
2 defect rendering her mentally incompetent to the extent that  
3 she is unable to understand the nature and consequences of the  
4 proceedings against her or to assist properly in her defense.

5 In so finding, I rely, of course, on the testimony of  
6 the experts and their report. As both experts note,  
7 Ms. Lindauer is making an effort to present a socially  
8 acceptable appearance and, in Dr. Kleinman's words, to minimize  
9 any mental defect or disease. As Dr. Ratner pointed out,  
10 Ms. Lindauer has experienced auditory and visual  
11 hallucinations.

12 I think both of the medical experts have agreed that  
13 Ms. Lindauer does suffer from a mental disease or defect. The  
14 **more operative question seems to be whether or not Ms. Lindauer**  
15 **has an appreciation of the proceedings against her and is**  
16 **adequately able to assist in her defense.**

17 I credit in general the testimony of Dr. Kleinman for  
18 several reasons. First, Dr. Kleinman relied on a far larger  
19 range of material than Dr. Ratner did. I do appreciate very  
20 precisely that both doctors agreed that it is Ms. Lindauer's  
21 present mental state and not her past mental state that is at  
22 issue here. Nevertheless, however, I find that Dr. Kleinman's  
23 review and reliance on a far greater universe of material does  
24 lend more credibility to his report.

25 As he pointed out during his testimony, for example,  
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1 his review of writings of Ms. Lindauer made at times and in a  
2 context not involved in the legal process are particularly  
3 revealing, particularly on the issue of the existence of  
4 medical defect or disease.

5 Many of the recent examples given by Dr. Kleinman  
6 corroborate both the existence of present mental disease or  
7 defect and, more importantly, Ms. Lindauer's failure to  
8 appreciate adequately the charges against her, the process in  
9 which she is involved, and to assist her attorney.

10 I am certainly cognizant of Dr. Kleinman's testimony  
11 to the effect that Ms. Lindauer in a generic sense understands  
12 the function of a jury, the function of the prosecutor, the  
13 function of the defense attorney and the role of the judge.  
14 However, she does not seem to have, and I credit Dr. Kleinman's  
15 testimony to this effect, Ms. Lindauer does not seem to have a  
16 rational understanding of the roles of those personnel in her  
17 case.

18 For example, Ms. Lindauer's explanation of the means  
19 and most likely means available to resolve this criminal charge  
20 as related by Dr. Kleinman seems to have no contact with  
21 reality. Ms. Lindauer's suggestion that her entering into a  
22 non-disclosure agreement with the government and the  
23 government's paying her some \$2 million out of some \$13 million  
24 that she claims is owed certainly does not evidence a rational  
25 view of the means of resolving this case. With respect, for

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1 example, to the supposed plea offer, the fact that Ms. Lindauer  
2 stated that she received an offer to plead to a single charge  
3 and to receive time served and the prosecutors denying that  
4 such an offer had ever been made certainly does not evidence a  
5 rational understanding of the process against her.

6 THE DEFENDANT: Excuse me, Judge Preska. That offer  
7 was made in front of Mr. Kleinman by Mr -- explained to me in  
8 front of Mr. Kleinman by Sam Talkin. We have that on tape. So  
9 I would be happy to provide a copy of the tape to you so you  
10 can listen to it.

11 THE COURT: Thank you, Ms. Lindauer. I think we have  
12 discussed in the past, you and I, speaking out in court.

13 Similarly, in response to Dr. Kleinman's inquiry about  
14 how Ms. Lindauer thought the jury would respond to her,  
15 Ms. Lindauer's answer that that was a stupid question also  
16 betokens a lack of a rational understanding of the process.

17 Ms. Lindauer's discussion of the supposed incident  
18 with then Judge Mukasey, wherein it was reviewed that Judge  
19 Mukasey had arranged for her to meet an attorney who had  
20 represented, among others, General Noriega, again, betokens a  
21 lack of a rational understanding of the process.

22 Ms. Lindauer's response to Dr. Kleinman in which she  
23 denied that she had ever agreed to be psychiatrically evaluated  
24 for three days in an inpatient facility also betokens a lack of  
25 connection with reality. As set forth on pages 29 through 32

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1 of Dr. Kleinman's 2008 report, the transcript of the court  
2 conference of December 19, 2007 shows Ms. Lindauer in her own  
3 voice consenting to a three-day evaluation, as long as we  
4 understand it is for three days.

5 Also during that court conference, after the court  
6 admonished Ms. Lindauer not to speak out in court without first  
7 discussing it with her attorney, the transcript reflects that  
8 Ms. Lindauer, upon being admonished again, stuffed Kleenexes  
9 into her mouth, which, again, is not the response of someone  
10 rationally connected to the proceedings.

11 As Dr. Kleinman testified, Ms. Lindauer's claims of  
12 special powers and, as he stated in his report, his relation of  
13 her stating that she experiences ideas of reference, that is,  
14 experiencing external phenomena as containing special meaning  
15 associated with herself, is also unconnected to reality.

16 As Dr. Kleinman testified, Ms. Lindauer's suggestion  
17 of a meeting with Osama bin Laden where he disclosed to her the  
18 location of a bomb, her personal letters, including demands and  
19 threats to Hosni Mubarak of Egypt, also demonstrate a lack of  
20 connection with reality.

21 Ms. Lindauer's assessment of a likelihood of winning a  
22 trial as 95 percent at least and Ms. Lindauer's discussion of  
23 the sentencing process also indicates a lack of understanding  
24 or appreciation of the judicial process. I am, of course,  
25 cognizant that Dr. Kleinman testified that Ms. Lindauer

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1 understood that the guidelines are not mandatory, but having an  
2 irrational understanding or expectation of the way in which the  
3 sentencing process would proceed demonstrates Ms. Lindauer's  
4 inability to perceive accurately the charges against her and  
5 the consequences of these proceedings.

6 I also note and rely on Dr. Kleinman's testimony that  
7 Ms. Lindauer's observations are not what we see in many  
8 criminal defendants, an unusual or sometimes unwarranted  
9 optimism, but a complete inability to appreciate the process.

10 I also note and credit Dr. Kleinman's testimony to the  
11 effect that Ms. Lindauer believes that her prosecution emanates  
12 from a conspiracy in which multiple individuals have  
13 maliciously and falsely portrayed her as mentally ill. I note  
14 that among the individuals Dr. Kleinman testified that  
15 Ms. Lindauer found responsible for her prosecution were Andrew  
16 Card, I. Lewis Libby, Colin Powell, and Vice President Cheney.

17 Accordingly, I credit and agree with Dr. Kleinman's  
18 evaluation that Ms. Lindauer continues to suffer from a mental  
19 disorder which so impairs her thinking, particularly judgment,  
20 regarding her legal circumstances that she remains incompetent  
21 to stand trial.

22 Is there anything else today, counsel?

23 MR. FARBIARZ: Judge, I think only one thing, which is  
24 if we might set a subsequent conference date.

25 THE COURT: Exactly. About how long would you like to  
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