

# Guantanamo prisoners “locked up in a world of shadows”

## A discussion with the lawyer of Murat Kurnaz

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*Almost two-and-a-half years ago, Murat Kurnaz was arrested in Pakistan by American security forces and transported to Guantanamo Bay in Cuba. (See “German resident incarcerated in Guantanamo Bay for two-and-a-half years”) Since then, he has been held in this American enclave without any charges being made against him. Murat, a Turkish citizen, was born in Germany and is a legal resident alien of that country. Two years ago, his correspondence with his parents in Germany ceased, and with it any contact with the outside world. Only the security forces have access to him.*

*Earlier this month, the World Socialist Web Site was able to speak to his attorney, Bernhard Docke, in Bremen, who has yet to meet his client. Bernhard Docke specialises in criminal law.*

**WSWS:** You have represented Murat Kurnaz for almost two years. Have you been able to see or speak to your client, and do you know how he is?

**Bernhard Docke:** No, it is a grotesque situation. I do not know him personally; I have never spoken to him and have had no correspondence with him. This is the first time in my professional life that I have faced such an absurd situation—and I hope it will be the last. There are also no formal contacts with the US authorities, because it is clear a priori that lawyers are not to be involved, they have no access to Guantanamo, whose gates remain closed. For these reasons, we have no up-to-date information about the state of Murat’s mental and physical health. Since there have been no letters from him for over two years, we fear that he is not well.

**WSWS:** Following his arrest, Murat Kurnaz sent his family one letter and two postcards from Guantanamo. The last postcard, however, was dated March 2002. Did it describe how he was being treated?

**BD:** No, prisoners are not permitted to do that. All prisoners’ mail is censored, and if they write in any detail about how they are being treated, their mail is not sent. He says only in relatively dry words that he is all right under the given circumstances, that he has done nothing wrong and hopes to be home again soon.

**WSWS:** Why hasn’t Murat Kurnaz written since March 2002?

**BD:** We don’t know. Officially, the Americans say there are no problems with correspondence. According to the US, prisoners from all sections of the camp have the right to send letters, even those considered to be hard-core prisoners. Since the release of the British detainees at the beginning of March, we know that, in practice, the reality is completely different. The withholding of mail is used to pressure detainees. If you cooperate, which from the point of view of the interrogators means supplying them with information they can use, then you will be able to send and receive mail. But if the interrogators take the view that you are not cooperating sufficiently, then mail is used to apply pressure.

**WSWS:** Have the US authorities, primarily the US military, said what charges Murat Kurnaz faces or revealed what he is accused of?

**BD:** There has been no indictment. The situation is that Guantanamo has been established quite consciously and deliberately outside any legal jurisdiction, in contravention of international law and also in contravention of American law. There is no intention of making indictments there; there is no intention to allow any legal checks. An indictment would mean one would have to summarise the accusations and submit them for examination by a court. That is not intended. What is intended is that individual prisoners may face a military tribunal—meanwhile, six have been picked out who face proceedings before a military tribunal.

**WSWS:** That means it is still not clear what accusations have been made against Murat Kurnaz?

**BD:** No, the Americans do not communicate in principle. The general notion exists about Guantanamo that the worst of the worst are being held there—members of the Taliban or Al Qaeda. Whether this applies to particular prisoners, however, is not said. Surely, there must have been an attempt to classify the individual prisoners. Documents will have been established providing information about each individual. But this information is not provided to lawyers outside. As far as we have heard, the individual prisoners have also not been told what they are accused of concretely. They can only surmise from the kind of questioning they face, what their interrogators think, who they are.

**WSWS:** Prisoners were released from Guantanamo at the beginning of March, including some from Britain. You hoped that Murat Kurnaz might also have been among those released. In your opinion, why is he still being held?

**BD:** I have no access to the inner workings of the Department of Defence. In my view, Murat Kurnaz is one of those who should be classified as lightweight, if one analyzes all the conditions by which he came to Pakistan: he was 19 years old, lived here in Bremen with his parents, had no foreign experience at all, had no military or weapons training, and knew neither English nor Arabic. He arrived only very late in Pakistan—i.e., only three or four days before the first bombs fell in Afghanistan—and was arrested in Pakistan, not in Afghanistan in the area of fighting. As the chief federal prosecutor here has determined, he also had no contacts with any extremist or Islamic groups.

Taking all this together, much speaks for the fact that Murat Kurnaz does not at all correspond to the picture that Bush and Rumsfeld like to present of the prisoners, that they are the worst of the worst. Therefore, I always hoped that Murat Kurnaz would be among those who could be released without the Americans seeing any security risk.

Now, of course, I don’t know who has said what about Murat Kurnaz, and what evidence the Americans might have that incriminates him. If prisoners are subject to so-called “stress and duress” interrogation methods for long periods, all kinds of things are said. Everyone wants to

save themselves and says something. If they incriminate their fellow prisoners under such circumstances, I don't know whether one can point the finger morally. In any case, I don't want to make any moral judgements about the fact that, under conditions amounting to torture, prisoners incriminate each other. What should be condemned is that such methods exist and are employed.

WSWS: The US administration invented the term "enemy combatants" for the prisoners in Guantanamo, sometimes also calling them "illegal combatants." How is this to be evaluated legally?

BD: This term was invented by the US in the aftermath of the September 11 attacks. There is an established legal system for dealing with this phenomenon, to deal with terrorist attacks against Americans in America—but the US is now proceeding in opposition to this system. The US government has invented a new term, which apparently gives them the right to act outside the valid legal structures that prescribe legal protections for prisoners of war under the terms of the Geneva Conventions.

The Americans have invented a new term to be able to divest themselves of all legal obligations and say, we have the right to do what we want with people who do not recognise our legal order, free from any legal constraints. And that is what they are doing by transporting prisoners to the military base at Guantanamo and keeping them there; saying Guantanamo is part of Cuba and is not subject to American sovereignty. The result is that American courts have no jurisdiction there. Without the light of judicial control being shone on Guantanamo, the prisoners are held there in a world of shadows.

WSWS: On April 20, the Supreme Court in Washington heard a class action suit as to whether US law is responsible for the prisoners in Guantanamo. A decision is expected at the end of June. You joined this class action. Why did you decide to take this step?

BD: Originally, there were two cases that went through the lower courts and finally ended in the Supreme Court. One involved 12 Kuwaitis, and the other two Australians and two Britons. The Supreme Court itself heard these two cases—which the prisoners themselves believed to have been lost—without being legally forced to, and said, we want to say something about the cases.

That was in November 2003. The Bush administration regarded this as a legal affront. Bush said: this lies outside your competence, this is the hour of the executive, I am not subject to legal control in times of war against terrorism. And hardly had the Supreme Court said, we want to examine this, than the efforts of the Department of Defence became visible to break open Guantanamo a little, and show that individual cases are being examined. That led to the knowledge that by the end of January, 100 to 140 prisoners were to be released. Moreover, military tribunals were to be started and annual reviews introduced regarding whether a prisoner was still assessed to be dangerous or whether he could be released.

As well as these efforts, there was an attempt to avoid proceedings before the Supreme Court, if possible, by creating conditions to halt the two cases. There was discussion whether the Kuwaitis could possibly be released before April 20, 2004, or that there could be negotiations over their release if they withdrew their case. The two Britons were released on March 10, 2004, and David Hicks, one of two Australian prisoners, is to face a military tribunal. That would give him a different legal status, literally removing the cases from the jurisdiction of the Supreme Court. To make sure that the Supreme Court has enough cases to hear, we joined the class action, after consulting the American lawyers who represent us.

WSWS: Shortly after she found out that her son was being held in Guantanamo, your client's mother, Rabiye Kurnaz, asked the German Foreign Ministry to intercede on Murat's behalf. How did the German government react?

BD: There are three or four letters from the Foreign Ministry in all, addressed directly to the Kurnaz family and then to me. They regret that

their son is in this situation, but that they can do nothing for him since Murat Kurnaz has Turkish nationality, and the Americans limit discussions regarding individual cases to the respective country of the detainee. The German side was rebuffed by the Americans with the argument: what are you doing interfering in bilateral problems that we are discussing with Turkey? You have nothing to say about the fate of Murat Kurnaz.

We then turned to Turkey. It took a while before we got a reaction, by which I mean that they are now beginning to take an interest in Murat Kurnaz. Mrs. Kurnaz even flew to Ankara and met officials from the Foreign Ministry. When we were in Washington, the Turkish ambassador told us that they are in constant contact with the US authorities and that the Turkish government is demanding the release of its citizens by the US. But I simply know too little about how much pressure they are bringing to bear on the Americans.

WSWS: How are the criticisms of Guantanamo made by numerous human rights groups received by American public opinion?

BD: I think this is an important point. At the beginning of March, we were in the US for one week with a delegation, including three other families affected, and their lawyers. We went to Washington, to the Capitol, and spoke with senators and congressional representatives. In this discussion, it became very clear that some people on the American side understand that Guantanamo is isolating them internationally, even from the closest allies.

They are asking: What can actually still come out after two years of interrogation, do we need this? And why can't the prisoners write to their relatives? Moreover, it is starting to register that the Americans are losing their claim to occupy the moral high ground, to be able to criticise other countries concerning human rights violations. The first thing that they face is the rebuff—you and your Guantanamo, what right do you have to criticise us?

The danger exists that Guantanamo will be exported everywhere and imitated in other countries, leading to the abandonment of international legal standards.

A further question that is being asked in the US is what will happen to our boys, to our soldiers and civilians in future conflicts? What if they were detained abroad in future conflicts and we have disassociated ourselves from the Geneva Conventions, should we fear that our soldiers face the same martyrdom that the foreigners in Guantanamo now face?

In any case, things no longer resemble the situation of two years ago. When the Centre for Constitutional Rights first began to draw attention to Guantanamo and submitted the first prisoners' complaints with the American courts, they received a great deal of hate mail and many threats. The atmosphere has now changed completely.

I want to show this by citing a small example, which is naturally not representative, but which was symbolic for us. We were interviewed many times by American television stations, and it caused quite big waves in Washington when we went to the Supreme Court. Mrs. Kurnaz and I were in a taxi in Washington and should have paid \$20 for the fare. However, the taxi driver knew who we were, and said he was ashamed of his president. He said the least he could do was only charge us half price. That was his kind of apology for what the Americans had done with Mrs. Kurnaz's son. This really touched Mrs. Kurnaz. It gave her strength and showed that America is not Bush, it is many, many people, who also think that what their president is doing at the moment is wrong.

WSWS: The change in mood is surely also linked with the legitimacy of the Iraq war, which is coming increasingly into question.

BD: Of course. The climate is marked by the fact that the public is now learning that the obsession with Iraq meant that no attention was paid to what led up to September 11 and the danger of Al Qaeda. It is now generally accepted that Bush began this war with a lie. The situation predicted by all the experts has now come about, whereby the army has

gone into a situation from which it can find no way out, and the political pressure on the government is growing.

WSWS: Can you think of any other ways of mobilising support for Murat outside the legal process?

BD: As far as Murat Kurnaz is concerned, I face the problem that all my legal recourses are useless. All the things I would do in any other case—making contact with my client, inspecting the legal files, submitting a case for bail, contacting the public prosecutor’s office—none of this works. The prisoners stand outside all legal norms and are in a special situation. I have frequently likened it to the Middle Ages, as a regression to the times before the Enlightenment. If now, the question is also posed that the Supreme Court says we do not recognise the competence of the American courts, then we are in a situation in which I do not know how one can carry on juridically.



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