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*Bernhard Docke**

INTRODUCTION

In May 2002, Rabiye Kurnaz entered my office in Bremen, Germany, and signed a power of attorney. She expected me to bring her son, Murat Kurnaz, home from the U.S. Naval Base at Guantánamo Bay as quickly as possible. Unfortunately, bringing him home was not so easy.

I.

Murat Kurnaz left Bremen for a pilgrimage through Pakistan in October 2001¹—perhaps the worst possible time to travel to that region.² Earlier that year, Kurnaz married a very devout Muslim young woman and in an effort to learn more about Islam himself, traveled to Pakistan to immerse himself in Islamic studies.³ Shortly thereafter, he was arrested, without cause, by Pakistani police and sold for \$3,000 to American forces

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1 Affidavit of [Name Redacted], at 2 ¶ 7, Kurnaz v. Bush, No. 04-01135, 2005 WL 839542 (D.D.C. Apr. 12, 2005).

2 Combatant Status Review Tribunal (CSRT) Decision Report, encl. 2, at 4 (Sept. 30, 2004) (Summarized Sworn Detainee Statement) ("I went to study in Pakistan at the wrong time. I wasn't aware there was a war going on in Afghanistan.").

3 *Id.* ("My reason for going to Pakistan . . . was to study Islam.") (quoting Murat Kurnaz); see also Mark Landler & Souad Mekhennet, *Freed German Detainee Questions His Country's Role*, N.Y. TIMES, Nov. 4, 2006, at A8.

on the Afghani side of the border.⁴ However, it was not until late 2001 that Kurnaz's family in Germany finally learned he was being detained by the United States.⁵

Representing Kurnaz was a strange, Orwellian experience. It was "like defending a phantom. It has the taste of the Middle Ages, in modern times."⁶ The skills and knowledge I acquired during my career as a criminal defense lawyer in Germany were useless as I continually collided with Guantánamo's wall of legal restrictions. My co-counsel and I had no access to Kurnaz and no file to review; there was no arrest warrant, no official charge, no prosecutor, and no court. We dealt with a country that extolled the "rule of law," yet all of the legal procedures and standards erected in the United States to protect its accused were systematically denied. We did not know when, where, or why our client had been detained. Nor did we have any idea how long he would be detained, or if he would face trial for the allegations against him. But we would later learn one thing—he was tortured.⁷

Even though I had the assistance of co-counsel, I felt powerless. I was just one German lawyer, a mere David, facing off against the most powerful nation in the world, modern-time's Goliath. President Bush claimed this fight was not governed by any of the traditional rules, domestic or international. Unlike David, we did not even have a slingshot with which to slay Goliath—at least not until *Rasul v. Bush*.⁸

Kurnaz's immigration status added another layer of complexity to his case. He was born and raised in Germany, yet remained a Turkish citizen because his parents entered Germany on a foreign worker's visa and never obtained German citizenship.⁹ In her attempts to secure his

4 Landler, *supra* note 3; see also CBS NEWS, *Ex-Terror Detainee Says U.S. Tortured Him*, <http://www.cbsnews.com/stories/2008/03/28/60minutes/main3976928.shtml> (last visited July 15, 2008).

5 Neil A. Lewis, *Relatives of Prisoners at Guantánamo Bay Tell of Anger and Sadness at Detentions*, N.Y. TIMES, Mar. 8, 2004, at A13.

6 Marie Cocco, *Her Son Has Been Swallowed by U.S.*, CAGEPRISONERS.COM, Mar. 11, 2004, available at <http://www.cageprisoners.com/articles.php?id=884> (last visited Dec. 18, 2008) (quoting Bernhard Docke).

7 Resolution on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners, EUR. PARL. DOC. P6 TA-PROV (2007) 0032, 13.

8 542 U.S. 466 (2004).

9 Richard Bernstein, *One Muslim's Odyssey to Guantánamo*, N.Y. TIMES, June 5,

release, Kurnaz's mother wrote letters to the U.S. embassy, the Turkish embassy and the German government. Each of these three sovereign nations gave her the runaround: the U.S. embassy told her she needed to contact the Turkish government; the Turkish embassy claimed it could offer no assistance; and the German Foreign Office said it could be of little aid in procuring the release of a Turkish citizen.¹⁰

I soon realized I needed to reevaluate what I considered the traditional roles and duties of an attorney within the framework of Guantánamo. My representation of Kurnaz was a battle fought in the court of public opinion rather than in the halls of justice. More often than not, I pled my case to the media and lobbied the German and Turkish governments to apply diplomatic pressure. While I had previously spent my career making arguments before a judge or jury, I soon found myself appealing to the European Parliament and the Council of Europe to put Guantánamo on their agenda.

II.

Fortunately, this story took a positive turn when human rights organizations and attorneys in the United States challenged the Bush administration's practices in Guantánamo. In *Rasul v. Bush*, the Supreme Court held that federal courts had jurisdiction under the then-current

2005, at A12. For more information on Germany's former *Gastarbeiter* system and how it affected Turkish immigrants to Germany, see Nicole Jacoby, Note, *America's de Facto Guest Workers: Lessons from Germany's Gastarbeiter for U.S. Immigration Reform*, 27 FORDHAM INT'L L.J. 1569, 1579-1607 (2004).

- 10 *Bremen Taliban: Guantánamo Prisoner Vexing German Authorities*, SPIEGEL ONLINE INTERNATIONAL, Jan. 10, 2006, <http://www.spiegel.de/international/0,1518,394415,00.html> (last visited Nov. 1, 2008); Bahar Azmy, *No Prison Beyond the Law: Seton Hall Gets Involved*, SETON HALL LAW Vol. 7, Issue 1 (Fall 2005) at 9, available at http://law.shu.edu/administration/alumni_relations/magazine/vol7_issue1.pdf (recounting Professor Bahar Azmy's experience representing Murat Kurnaz: "The Turkish officials recognize they have a formal obligation to receive Murat if the U.S. releases him, but seemed remarkably uninterested in arguments about international law and human rights violations committed against one of its citizens." "I also traveled to Germany to conduct a series of very well-attended press conferences there and meet with high-ranking government officials in the parliament and foreign ministry. I left with some lukewarm promises to approach the United States directly or in cooperation with Turkey to inquire about Murat.").

federal habeas statute to consider challenges to the legality of the detention of foreign nationals at Guantánamo.¹¹ Yet, battles over jurisdiction and the rights of detainees continue to rage in the U.S. federal court system. These battles have been prolonged by appeals, and derailed by new laws attempting to strip the courts of jurisdiction.¹² Even though the adage "justice delayed is justice denied" is generally true, some of these proceedings yielded useful results in Kurnaz's case. For example, my colleague and co-counsel, Baher Azmy, gained access to our "ghost-client" only as a result of these proceedings. Once we were able to inspect the Combatant Status Review Tribunal (CSRT) file, we learned about, and informed the public of, the basis of the allegations against our client.¹³ Azmy documented Kurnaz's story, provided him with contact to the outside world, and, together, we continued our efforts to release him.

Both *Rasul* and *In re Guantánamo Detainee Cases*¹⁴ were incredibly important from a legal standpoint, but these cases were also vital to our public relations battle. When the German press first learned of Kurnaz in early 2002, several publications branded him the "Bremen Taliban."¹⁵ The pseudonym vilified Kurnaz by referring to allegations that he left Bremen in 2001 specifically to join forces with the Taliban. These allegations, along with others, were unsubstantiated. A German investigation into Kurnaz's purported Taliban ties came to a close, determining the allegations to be

11 542 U.S. at 484 (interpreting 28 U.S.C. § 2241 (2000), *amended by* Detainee Treatment Act of 2005 § 1005(e)(1) (2005), *further amended by* Military Commissions Act of 2006 § 7(a) (2006), *invalidated as amended by* Boumediene v. Bush, 128 S. Ct. 2229 (2008)); *see also* Kurnaz v. Bush, No. 04-1135, 2005 WL 839542, *2 (D.D.C. Apr. 12, 2005).

12 *See, e.g.*, Detainee Treatment Act of 2005 (DTA), Pub. L. No. 109-148, Div. A, Tit. X, §§ 1001-1006 (2005) (codified in various sections of 10, 28 and 42 U.S.C.); Military Commissions Act of 2006 (MCA), Pub. L. No. 109-366, 120 Stat. 2600 (2006) (codified in scattered sections 10, 18, 28 and 42 U.S.C.).

13 Combatant Status Review Tribunal (CSRT) Decision Report, Cover Sheet, ¶ 2 (Oct. 6, 2004) ("[D]etainee is a member of al-Qaida"); *see also* Combatant Status Review Tribunal (CSRT) Decision Report, encl. 1, at 2 (Sept. 30, 2004) ("Detainee requested no witnesses," "Detainee requested no additional evidence be provided.").

14 55 F. Supp. 2d 443 (D.D.C. 2005).

15 *See, e.g.*, *Bremen Taliban*, *supra* note 10; *Germany Negotiates with US to Free Guantánamo Detainee*, DEUTSCHE WELLE, Feb. 12, 2006, <http://www.dw-world.de/dw/article/0,2144,1900697,00.html> (last visited Dec. 18, 2008).

false.¹⁶ Regardless, the nickname stuck; Guantánamo remained on the periphery of the German media radar.

The attitude toward Kurnaz changed for several reasons. First, once federal courts began to challenge the legal foundation of Guantánamo, it became more acceptable in Germany to criticize the Guantánamo detainee system. Second, by 2005 we collected enough information to notify the media of the systematic torture of Guantánamo detainees. Third, new information enabled us to refute unfounded accusations from the CSRT hearing that labeled Kurnaz an enemy combatant, yet ignored exculpatory evidence. As a result, we effectively swayed the court of public opinion in our favor. By the end of 2005, a substantial number of papers, radio, and television documentaries—in Germany, the United States, and throughout the world—focused attention on the fundamental deprivations of human rights and due process at Guantánamo.

Around this time I wrote a letter to Germany's new chancellor, Angela Merkel, requesting assistance in securing Kurnaz's release. The former government had rebuffed our requests, claiming the United States was unwilling to help; Chancellor Merkel replied within three days of my letter and offered her assistance. In January 2006, she put Kurnaz's case on President Bush's desk and requested his release.¹⁷ Long negotiations between the United States and Germany concluded in an agreement to release Kurnaz. He was flown back to Germany and freed on August 24, 2006.¹⁸

It is ironic that it took a conservative chancellor to finally unlock Kurnaz's cell while former Chancellor Gerhard Schröder—the head of the more liberal Red-Green coalition—had allowed him to languish in

16 Carol Leonnig, *Panel Ignored Evidence on Detainee: U.S. Military Intelligence, Germany Authorities Found No Ties to Terrorists*, WASH. POST, Mar. 27, 2005, at A01.

17 *Germany Negotiates with US to Free Guantánamo Detainee*, supra note 15.

18 Ralf Beste et al., *German Foreign Minister Under Fire: When in Doubt, Choose Security*, SPIEGEL ONLINE INTERNATIONAL, Jan. 29, 2007, available at <http://www.spiegel.de/international/spiegel/0,1518,462792,00.html> (last visited Dec. 18, 2008). *Release of German-Born Guantanamo Prisoner Expected Soon*, DEUTSCHE WELLE, Aug. 21, 2006, <http://www.dw-world.de/dw/article/0,,2142159,00.html> (last visited Jan. 18, 2009). *German-Born Guantanamo Inmate Back in Germany*, DEUTSCHE WELLE, Aug. 25, 2006, <http://www.dw-world.de/dw/article/0,,2145820,00.html> (last visited Jan. 18, 2009).

Guantánamo for years. It is an unfortunate and bitter truth that Germany was complicit in Kurnaz's detention from the beginning.

III.

Kurnaz's release generated incredible media attention in Germany. Azmy and I fought to protect his privacy and manage the pressures of the media upon his return. It took quite a while before Kurnaz was willing and able to speak to the public on his own.

As the media took greater interest in his story, many journalists began to focus on Germany's role in the events. Bowing to the growing public pressure, Germany's national parliament, the Bundestag, set up two investigative committees to explore the German government's involvement in the Kurnaz case.¹⁹ The objective of the first investigative committee was to determine whether the former government missed an opportunity to have Kurnaz released years earlier. The objective of the second investigative committee was to explore whether German soldiers physically abused Kurnaz while he was being detained by the United States in Afghanistan prior to his transfer to Guantánamo.²⁰ While the report of the first investigation is still unpublished, the committee report on the alleged abuse by German soldiers in Kandahar has been published. The result: Kurnaz's statements seem to be credible, and the beatings could have happened, but due to a lack of evidence the case was closed.

A.

By January 2002, the German army and intelligence agencies informed the German government that American forces were holding Kurnaz in Kandahar. Thereafter, the Bundeskriminalamt, our Federal Criminal Investigation Agency, supplied the FBI with a file on Kurnaz, compiled by the Bremen police, which suggested he might have intended

19 Temporary Committee on the Alleged Use of European Countries by the CIA for the Transport and Illegal Detention of Prisoners, *EUR. PARL. DOC. PE* 382.420, at 15 (2007).

20 *Guantánamo Victim: German Special Forces Admit Encounter with Kurnaz*, *SPIEGEL ONLINE INTERNATIONAL*, Oct. 19, 2006, <http://www.spiegel.de/international/0,1518,443493,00.html> (last visited Dec. 18, 2008).

to join the Taliban forces upon arriving in Pakistan.²¹ Under German federal law,²² these transfers of information may be made, in response to a formal request by a foreign government. These informational transfers typically require the requesting government to provide assurances to German prosecutors that the accused will receive a fair trial, and that the death penalty will not be imposed. In this case, Germany seemed to obediently comply with the United States' request for information, and supplied the information in question without the traditional assurances. We believe it likely that this information was the catalyst for Kurnaz's transfer to Guantánamo.

American forces captured only five percent of the detainees eventually sent to Guantánamo.²³ Pakistani armed forces, the Northern Alliance, and others captured the rest and handed them over to the United States.²⁴ While on the ground in Afghanistan, the American armed forces made the decision, with regard to each individual prisoner, whether the prisoner was to be transferred to Cuba or not. Some of the individuals detained in Afghanistan, captured under circumstances similar to Kurnaz, were released rather than transferred to Guantánamo.

Because Kurnaz was originally arrested by Pakistani police, we are now fairly certain the United States had no information regarding who he was, why he was arrested, or whether he fit the criteria for transfer to Guantánamo. Hopefully the day will come when the United States is willing to disclose its files outlining the reasons for Kurnaz's transfer

21 Report of the German government to the Parliamentary Control Committee of Feb. 23, 2006. *Retracing the Murat Kurnaz Case*, DEUTSCHE WELLE, Jan. 25, 2007, <http://www.dw-world.de/dw/article/0,,2326853,00.html> (last visited Jan. 19, 2009). Combatant Status Review Tribunal (CSRT) Decision Report, encl. 1, at 1 ¶ 2.1 (Sept. 30, 2004) (Kurnaz traveled to Lahore, Pakistan, and to an unnamed village in the vicinity of Peshawar, Pakistan); *see also id.* encl. 1, at 1 ¶ 2.4 (while traveling in Pakistan, Kurnaz received free food, lodging and schooling from a NGO known to support terrorist acts against the United States).

22 Gesetz über die internationale Rechtshilfe in Strafsachen (Law of International Cooperation in Criminal Matters), Dec. 23, 1982, BGBl. I, § 59.

23 Mark Denbeaux & Joshua W. Denbeaux, Report on Guantanamo Detainees: A Profile of 517 Detainees Through Analysis of Department of Defense Data 2 (Seton Hall Pub. Law, Research Paper No. 46, 2006), <http://law.shu.edu/aaafinal.pdf>.

24 Denbeaux, *supra* note 22.

to Guantánamo. Ultimately, it is even possible that the decision to transfer Kurnaz was based on information provided by Germany. If the information provided by Germany indeed played a part in Kurnaz's transfer, there is a strong argument Germany was responsible for Kurnaz's prolonged detention from the beginning, not just from the time Germany squandered the opportunity to have him released.

B.

In September 2002, three German agents came to Guantánamo and interrogated Kurnaz.²⁵ After finding no links to terrorism or involvement in criminal or terrorist plots, the agents determined Kurnaz was not a security threat.²⁶ Furthermore, the German agents sent a message to Berlin stating the United States "considers Kurnaz's [sic] innocence to be proven. He is to be released in approximately six to eight weeks."²⁷

In October 2002, the prosecutor in Bremen suspended the local investigation into Kurnaz and his fellow suspects due to a lack of evidence.

Finally, on October 29, 2002, officials from the Foreign Office, the Interior and Justice Ministries, and various German intelligence agencies

25 Murat Kurnaz, Testimony before Committee on Foreign Affairs, Subcommittee on International Organizations, Human Rights, and Oversight, 3 (May 20, 2008) (transcript available at <http://foreignaffairs.house.gov/110/kur052008.pdf>) (testifying to the fact that German interrogators came on two separate occasions); see also *Press Release, Former Guantanamo detainee meets MEPs investigating CIA renditions*, European Parliament (Nov. 22, 2006), available at <http://www.statewatch.org/cia/documents/prel-kurnaz-22-11-2006.pdf> (indicating only two German agents visited Guantánamo to interrogate Kurnaz).

26 Carol D. Leonnig, *Evidence of Innocence Rejected at Guantánamo*, WASH. POST, Dec. 5, 2007, at A01; see also Declassified Memorandum from a Commanding General of the Criminal Investigation Task Force (CITF) 458 (May 19, 2003) available at http://media.washingtonpost.com/wp-srv/nation/pdf/CITF_findings_120407.pdf?sid=ST2007120402 (a heavily redacted memorandum from the CITF stating, "THIS SOURCE MAY ACTUALLY HAVE NO AL-QAIDA OR TALIBAN ASSOCIATION") (emphasis in the original).

27 Memorandum from Anton Dankert to Tanja Fabel, Michael Hildebrandt & Hans-Josef Beth (Sept. 26, 2002), available at http://www.washingtonpost.com/wp-srv/nation/pdf/german_memos_120407.pdf?sid=ST2007120402458.

met to discuss Kurnaz.²⁸ Regardless of the consensus reached between Germany and the United States as to Kurnaz's innocence, and despite Germany's ability to request Kurnaz's freedom, the German government instead decided to turn its back on Kurnaz, preventing him from coming home.²⁹

According to disclosed documents, the United States was irritated by this decision because the release had been planned as a diplomatic favor to Germany.³⁰ Instead of releasing Kurnaz to Turkey, as an alternative, the United States kept him in Guantánamo for four more years.³¹ On September 30, 2004, Combatant Status Review Tribunal #5 determined Kurnaz was properly designated as an enemy combatant, a designation that was justified with fabricated allegations.³²

C.

The German government tried to rid itself of any responsibility toward Kurnaz simply by annulling his right to return and remain in Germany. A joint action by the cities of Berlin and Bremen revoked Kurnaz's residency permit.³³ According to German federal law (*Auslaendergesetz*), residency permits expire once a foreigner stays abroad for more than

28 Beste, *supra* note 18.

29 *Id.*; see also European Parliament, *Former Guantanamo detainee meets MEPs investigating CIA renditions* (Nov. 22, 2006), available at <http://www.statewatch.org/cia/documents/prel-kurnaz-22-11-2006.pdf> (Germany allegedly refused early release because surveillance conditions required by the United States were too costly).

30 Mark Landler & Souad Mekhennet, *German Detainee Questions His Country's Role*, N.Y. TIMES, Nov. 4, 2006, at A8; see also Beste, *supra* note 27. Mariah Blake, *Guantanamo ex-detainee tells Congress of abuse*, THE CHRISTIAN SCIENCE MONITOR, May 22, 2008. Mariah Blake, *Exclusive: Inside Gitmo with Detainee 061*, MOTHER JONES, Mar. 10, 2008.

31 Craig Whitlock, *U.S. Frees Longtime Detainee; Court Had Ruled in Favor of Turk*, WASH. POST, Aug. 25, 2006, at A09.

32 Combatant Status Review Tribunal (CSRT) Decision Cover Sheet, at 2 (Oct. 6, 2004) (forwarding Combatant Status Review Tribunal Report for Detainee, ISN #061, to the CSRT Director); see also *In re Guantanamo Detainee Cases*, 355 F.2d 443 (D.D.C., 2005), *vacated*, *Boumediene v. Bush*, 476 F.3d 981, (D.C. Cir. 2007) and *opinion rev'd by Boumediene v. Bush*, 128 S.Ct. 2229 (2008).

33 Beste, *supra*, note 27.

six months.³⁴ While Kurnaz originally intended to reenter Germany with a return ticket from Pakistan within the requisite time period, the longstanding detention at Guantánamo obviously kept Kurnaz abroad for a period of time significantly longer than six months. Fortunately, we were able to appeal this decision successfully; in November 2005, an administrative court decided Kurnaz's stay in Guantánamo—not surprisingly—was not of his free will.³⁵ The administrative court decision coincided with Merkel's ascension to the chancellery and may have helped sway her to our cause.

D.

After his release, Kurnaz claimed he was physically beaten by troops from Germany's Special Forces Command (KSK) while he was held in Afghanistan by the United States. While the German Defense Ministry initially denied these claims outright, it subsequently made a series of statements suggesting the answer was all but clear. First, it claimed Kurnaz was lying and that there were no German troops in Afghanistan in January of 2002. Next, it conceded German troops were in the region at the time, but denied having contact with Kurnaz while he was in U.S. custody. A few weeks after this concession, the Defense Ministry admitted it knew he was being held, but denied having contact with him. Finally 2 soldiers admitted to both meeting and speaking with Kurnaz but maintained that no one beat him. The prosecutor initiated a criminal investigation against these two soldiers, and after questioning approximately twenty German soldiers, the prosecutor expressed his concern regarding the veracity of the responses he was receiving. It was his impression that they had coordinated their responses before speaking with him.³⁶

³⁴ Auslaendergesetz (Act on Aliens) July 9, 1990, BGBI, I, § 44 (F.R.G.).

³⁵ Diana Fong, *Experts: Wrong Passport Kept German-Born Turk in Guantanamo*, DEUTSCH WELLE, June 2, 2007, available at <http://dwelle.de/southasia/germany/1.212735.1.html> (in November 2005, a Bremen court determined Kurnaz's residency permit could not be revoked) (last visited Oct. 31, 2008).

³⁶ John Goetz & Holger Stark, *New Testimony May Back Kurnaz Torture Claims*, SPIEGEL ONLINE INTERNATIONAL, Sept. 3, 2007, <http://www.spiegel.de/international/germany/0,1518,druck-503589,00.html> (last visited Oct. 28, 2008). *Bremen Taliban Tells of Alleged Abuse at German Hands*, DEUTSCHE WELLE, Oct. 5, 2006, <http://www.dw-world.de/dw/article/0,,2195176,00>.

The existence of a truck on the prison compound represents one vital clue verifying Kurnaz's claim. According to Kurnaz, he was beaten behind a vehicle used to move human waste. Most of the soldiers who were questioned denied the existence of such a truck.³⁷ Their strategy was simple—by denying the existence of the truck, the credibility of the claim would be destroyed.

The German newsmagazine *Der Spiegel* verified the existence of the truck by interviewing several American soldiers serving at the camp. Several confirmed that human waste was removed from the camp and incinerated using a two-and-a-half-ton military truck driven through the camp's main gate.³⁸ In response to this report, the German prosecutor asked the United States if it would permit U.S. military personnel to testify regarding the actions of German military personnel. The US-Embassy in Berlin answered:

After careful consideration of all aspects of this matter, the United States has determined it cannot provide the assistance you have requested. The United States appreciates Germany's important contributions to the Afghanistan mission and is confident that any reports of abuses will be appropriately investigated and addressed through existing law enforcement and judicial processes.³⁹

In May 08 the criminal investigation ended in a stay of proceedings based on the principle "in dubio pro reo." According to the prosecutor, Kurnaz' allegations seemed credible, yet there was insufficient evidence to put the soldiers on trial.

E.

A political crisis erupted as all the information regarding Germany's disgraceful actions came to the surface. Germans wanted answers, and they wanted to know, if Germany was indeed complicit, who

html (last visited Jan. 19, 2009).

37 *Id.*

38 *Id.*

39 Letter of Ambassador William R. Timken Jr. to the Prosecutor (Apr. 13, 2007) (on file with author).

was responsible. In addition to the two Parliamentary inquiries that were established, Frank-Walter Steinmeier, Germany's Foreign Minister and the former Chief of the Chancellor's Office, came under fire for his handling of Kurnaz's case.⁴⁰ In his defense, he offered two arguments. First, he claimed the United States never explicitly offered to free Kurnaz in the fall of 2002.⁴¹ While a formal offer may not have been made, the United States sent clear, well-documented signs regarding its intentions. The three German agents who visited and interrogated Kurnaz in September 2002 were told by US-agents that US-investigators considered Kurnaz innocent, and that he was to be released in approximately six to eight weeks. Rather, it was Germany's lack of political will that kept Kurnaz in detention.⁴²

Second, Steinmeier insisted Kurnaz still represented a possible threat to German security interests.⁴³ This is inconsistent with the previous findings of the prosecutor, German secret services, and investigations by the United States. Even if this were not inconsistent, Germany should not be allowed to use a system like Guantánamo as a means of protecting its security interests. Had the allegations against Kurnaz been legitimate, Germany should have brought him home to stand trial in Germany.

In an attempt to alleviate the political pressure, Steinmeier adopted a strategy of simply blaming the victim. While some in the media branded him a heartless technocrat, others took Steinmeier's side and recycled old, disproved allegations that Kurnaz was a security risk with terrorist motivations.⁴⁴ Some painted the debate as a choice between our own Foreign Minister and some foreign Turk. Others exploited the population's fears by focusing on the long beard Kurnaz had grown while being held in detention.

Nonetheless, Kurnaz has received no apology, been shown no remorse, nor received any compensation. Adding insult to injury, Steinmeier refuses to accept any blame, and maintains that, given the

40 See Beste, *supra* note 27.

41 *Id.*

42 *US Official: Germany not Keen on Release of Guantánamo Inmate*, DEUTSCHE WELLE, Mar. 1, 2007, <http://www.dw-world.de/dw/article/0,,2370167,00.html> (last visited Jan. 19, 2009).

43 *Id.*

44 *Id.*

choice, he "wouldn't decide any differently today."⁴⁵

IV.

Even after securing Kurnaz's release, my work on his behalf is still very different from the traditional duties of an attorney. On one hand, I assist with his rehabilitation and help him return to normal life after spending five years living in chains. Upon returning, he had a very warm-hearted reunion with his family. Friends, neighbors and even the mayor of Bremen welcomed him home personally, and the city of Bremen helped him to get a job. I also help Kurnaz with public relations. In particular, I helped arrange several interviews so he could personally tell his story and promote his book, *FIVE YEARS OF MY LIFE: AN INNOCENT MAN IN GUANTÁNAMO*.⁴⁶ Plans for a film are in the making.

I also assisted Kurnaz in a more traditional legal sense. For example, I assisted him in testifying before the two investigative committees at the Bundestag⁴⁷ and at the committee of the European Parliament assessing foreign renditions. In addition, I represented Kurnaz in the criminal investigation of two German soldiers who are suspected of the beatings in Kandahar.

CONCLUSION

All told, Kurnaz lost nearly five years of his life. He did not have to—he could have been released as early as the fall of 2002. Though the United States kept him detained despite its findings of innocence, Germany is also responsible for missing the opportunity to have him released four years earlier.

In Germany, I have begun to review the disclosed documents to determine whether it will be appropriate to file a lawsuit. However, because the legal obligation to assist a citizen differs from the obligation to assist a foreigner, Kurnaz's nationality continues to be a concern. Other key facts remain unclear. In particular, we are still not certain why Kurnaz was selected for transfer to Guantánamo—it may have been because of

45 *Id.*

46 MURAT KURNAZ, *FIVE YEARS OF MY LIFE: AN INNOCENT MAN IN GUANTÁNAMO* (2008).

47 EUR. PARL. DOC. PE 382.420v02, 15 (2007).

the information provided by Germany, or perhaps some other reason. If the decision to transfer were based on the German files, it would be much easier to argue that Germany not only had a moral obligation, but also a legal duty to secure Kurnaz's release from Guantánamo.

Working on Kurnaz's case has been time consuming and at times both frustrating and depressing, particularly when we responded to fake allegations of Kurnaz's release to Turkey in March 2005 and read information about Kurnaz being tortured. Yet, the experience has also been delightful, such as when we learned about the role of U.S. federal judges and heard of favorable court decisions in both the United States and Germany. Beyond Kurnaz's release, the highlight of my experience has been working with and the support of British and US human rights organizations and, especially, with my colleague Baher Azmy, who became a close friend.

Given the choice, I, much like Foreign Minister Steinmeier, "wouldn't decide any differently today."⁴⁸

48 Beste, *supra*, note 27.