

## **Murat Kurnaz Lawyer Narrative**

### **Baher Azmy**

I first saw him on a TV screen. Before my initial meeting with Murat Kurnaz in October 2004, the U.S. military police escorted me – the third civilian lawyer to enter the inner sanctum of Guantánamo’s Camp Echo – through several 15 foot high locked gates, and into the guard booth of the world’s most notorious military prison. On my way to the booth, walking across gravel made bright white by the blazing Caribbean sun, my status as a civilian – clean shaven, dressed in a tie and formal shoes – was punctuated by the loud sounds of practice machine gun fire in the distance.

The military showed me the surveillance they would employ during my otherwise private meeting with my client: he was on a video screen, waiting for me. The image was blurry, like the grainy picture on a store security camera or a late night news broadcast’s depiction of a wanted menace, and it was unsettling: here was a man with a beard and hair seemingly befitting a prehistoric warrior. Prior to the Supreme Court’s decision in *Rasul v. Bush*, which opened up the camp to law, lawyers and therefore minimal scrutiny, Bush Administration officials had claimed that all the detainees in Guantánamo were a sort of maniacally diabolical lot – not only were they “trained killers,” but they had nearly superhuman ability to, for example, “gnaw the hydraulic wires of a C-17 transport plane.” I was naturally distrustful of these claims, but this first image obviously did not advance my skepticism. Another military guard carried out what he appeared to be his somber duty, instructing me to push away from the table in case the man lunged for my throat.

Leaving the guard booth, we walked toward the hut-like structure in Camp Echo that housed the detainee’s cells, mindful to stay within the gravel walking lanes manicured by the lowest level military personnel. An impossibly young soldier who had been “preparing” my client for the visit told me, “He says he don’t want a translator.” I exchanged concerned looks with Belinda, the German translator I brought all this way to translate our interviews. “You sure you’re talking about Murat Kurnaz?” I asked. “He doesn’t speak English.” The guard replied, “No he speaks it good enough. And, he’s pretty adamant – he doesn’t want a translator.” “Since when does he speak English?” I persisted. The guard didn’t know and obviously neither did his family who hadn’t communicated with him in the three years since his U.S. detention began.

I regretfully sent the translator back to the civilian side of Guantánamo and prepared to meet him alone. When the door to our meeting room opened, he was seated, squinting at the incoming sunlight. He was dressed in a short, tan shirt and cotton pants – the color designating him neither cooperative nor uncooperative. With a flowing beard and red-brown mane of hair, he looked like someone who had been shipwrecked on a desert island, which, in a sense, he was. He shook my hand and motioned for me to sit across from him on the flimsy plastic chair, as if he were welcoming me to tea in his home. I tried to sound confident. “Murat, my name is Baher Azmy. I am a lawyer. I do not work for the U.S. government. Your family in Germany asked me to help you.” I handed him a hand-written note from his worried mother to help convince him I was on his side. The simple honesty and loving reassurance of her message still moves me: “My dear son Murat, You will be visited by an American lawyer whom you can trust. Murat, your brothers go to school and we have been for vacation in Turkey. We were shopping with [your wife] and she is loving you.” As I watched his pained expression while reading his first message

from home – his first taste of humanity in three years – I felt as though I was delivering a crumb of bread to Robinson Crusoe.

I explained that his mother and German lawyer had been fighting for years for him, that Guantánamo had become an international embarrassment and that millions of people in the U.S. were opposed to it. Because he had been held incommunicado for almost three years, he had no idea anyone even knew of Guantánamo's existence, or his existence. I also told him I was born in Egypt, a Muslim, and a law professor with great faith in the American legal system. "You have sued President Bush?" he asked. "Yes, you and I have sued him. And, I will do everything I can to help you," I answered. To my relief, he said with a heavy German accent, "This is goot."

The second day of my visit, I brought him McDonald's coffee and a half dozen of packets of sugar to satisfy what I knew about the Turkish coffee culture, as well as an apple pie; he ate with wondrous nostalgia for his mother's version. On subsequent visits, I became more adventurous in what I would bring to our meetings: dolmas, baklava, cheese, pita bread, Turkish figs, fresh garlic (his request), subs, pizza, filet o'fish sandwiches, fries, hot peppers (also his request), jolly ranchers, cookies, fresh fruit, canned fruit, dried fruit, melting McFlurries and even a packaged shrimp cocktail. I was shopping for a starving man. I also brought him Starbucks but, to my surprise, he preferred McDonald's coffee. It's an interesting bit of consumerist trivia, an absurdly dark one really, when one considers that just about a mile from the strip mall housing those and other fronts of innocent Americana, there existed a camp housing a fully constructed project of dehumanization.

We spent eight hours a day for the next four days talking – about everything – and I spent a total of over sixty hours with him on four subsequent visits. My first distorted picture of Murat has since come into focus, as has the collage of lies that is our national disgrace in Guantánamo. Murat is the farthest thing from a hardened terrorist. I lived in downtown New York during September 11 and remember the haunting smell of the smouldering rubble twenty blocks south, so in the course of conversations, I was curious to hear what Murat thought of this monstrous act. Murat repeatedly rejected the logic of terrorism. "My mother and father go to malls and airports in Germany. Why would I want terrorists to kill them?" he stressed. Also, the Koran commands never to kill women, children or men not in battle and also condemns suicide killings – only God chooses when we die. But, Osama bin Laden and Hamas believe that such suicide killings are a necessary response to oppression, I pushed, playing devil's advocate. Murat had never heard of Hamas. And, Osama bin Laden?

In his military hearing in which he was given an opportunity to speak, he said: *"I hate terrorists. I am here having lost a few years of my life because of Osama bin Laden. His beliefs show Islam in the wrong way. I am not angry with Americans. Many Americans died in the September 11 terrorist attacks. I realize the Americans are right to stop terrorism. All countries should do the same thing. ... If any Muslim talked to me about terrorism, I would tell them to their face it was wrong. I would do everything I could to stop them. I don't have any proof to show you, but I didn't harm or kill anyone."*

The U.S. knows he has no connection to terrorism and logged this fact no less than five times in his classified "file." According to his file the U.S. military itself concluded that "Kurnaz

has no connection to al Qaeda, the Taliban or any terrorist threat,” and “the Germans have confirmed he has no connection to al Qaeda.” The government resisted permitting disclosure of this information for years making, but as a result of a Freedom of Information Act litigation we brought on his behalf, it is now public and indisputable that as early as 2002, the United States recognized he had nothing to do with terrorism. Secrecy shrouds every part of Guantánamo, from the sublime (secreting evidence of innocence) to the absurd.

In the early days of habeas visits to Guantánamo, the DOD assigned a civilian lawyer to accompany habeas counsel, presumably in case disputes arose about protocol or “law.” I managed to get along perfectly well with the thirtyish woman – Katherine – who was on the island during our visit. One evening, taking the ferry ride home across the Bay to the Bachelor’s Quarters, I fell into a glorious nap, fueled by soft, steely beats of some reggae music from my iPod. As we approached the ferry station, I woke up to find Katherine standing over me, holding a document and smiling awkwardly. I smiled back, expecting that she would want to pick up our repeated thread of conversation about the clear superiority of ferry boat travel over our respective commuting regimes. Instead, she pointed to my iPod and asked, “Did you have that in the meeting with your client today?” I was still a bit groggy from the nap, but apologetically answered, “Well, I guess so. It was in my backpack that I took into the meeting and the guards didn’t tell me to take it out.” She then showed me the document in her hand – it was the court-imposed “protective order” which set the guidelines for our client visits. She pointed to a paragraph, which listed items prohibited in client meetings. One subsection prohibited “Recording Devices,” “such as” tape recorders, digital recorders, video cameras, digital cameras. “Actually,” I explained, I don’t know how much you know about iPods, but they don’t actually record.”

As we walked off the boat onto the dock, I nervously explained that they really only record from a computer, and do not record what I think I ridiculously referred to as “ambient sound.” So clearly, I reasoned with her, this wasn’t prohibited. She resisted; our words got heated, not least because I wasn’t sure what the end game would be – was I going to lose my clearance? Spend the night in the brig? Be designated an enemy combatant? She said she’d have to call Colonel Keys. “But you can’t,” I protested, “because as a threshold matter, I haven’t violated the protective order.” Some of the Filipino and Jamaican guest workers who inhabit Guantánamo, passed us with confused stares.

She did call the Colonel and he insisted that the “recording device” would have to be confiscated to be “scanned by intel.” Relieved that I wasn’t going to be taken into custody, and confident that nothing there could be construed, even under the most liberal interpretation, as a message of jihad, I mentioned that “the only offensive thing on it is some disco.” Katherine wasn’t amused. “I’m an officer of the United States and I have a responsibility to protect national security,” she exclaimed without a trace of self-awareness or irony. I was too stunned by her categorical self-righteousness to respond and acceded to her worldview.

During my next visit to Guantánamo I was pleased to observe a large sign posted on the outside gates of Camp Echo listing prohibited items in large type; it *expressly* listed iPods. I joked to Tom Wilner, one of the first habeas counsel, that we were each equally responsible for making fundamental law in Guantánamo – he helped bring the Great Writ and I forced the military to put lawyers on notice about prohibited electronic devices.

Murat appreciated the comic absurdity of the story. He dealt with his tortuous ordeal through a rooted spiritual faith; he believed his time in this life is short, so his suffering was insignificant compared to the salvation that might come after death, having lived a peaceful, spiritual life in Islam. But to be sure, his dark, sarcastic sense of humor was a great relief to us both. As afternoons wore on, on this first trip and subsequent ones, we laughed hilariously about his depiction of incompetence of Pakistani police, the absurd redundancy of his interrogations (incompetently obsessed as they seemed to be with confirming his birth date or the correct spelling of his name) and the depressing state of the GTMO detainee menu. Once, after Murat wounded a fly hovering around our table with a coffee stirrer, we joked that this act of hostility sure to get him designated again as an enemy combatant. We played for a while with the rich imagery of him answering to another military tribunal or interrogator for either “associating with” such a known and sometimes mortal enemy of the United States or for otherwise revealing an obvious propensity for violence and terrorism.

The example was rich because one of the actual charges against him was equally attenuated. He was an enemy combatant, the military said, because a friend of his allegedly “engaged” in a suicide bombing eighteen months *after* Murat was shipped to Guantánamo. Setting aside the astonishing legal proposition that one could spend the rest of his life in detention for the unknown acts of a former friend, it was factually preposterous. This friend was alive and well in Bremen, Germany and under no suspicion of any such act.

Why did he spend an additional three years in Guantanamo, despite the recognition of U.S. and German officials of his innocence? First and foremost, the absence of law or legal remedy in Guantanamo permitted the U.S. government to avoid defending their actions before a judge or other neutral authority with power to hold them accountable. But, as my German co-counsel, Bernhard Docke explains, the Germans are also culpable for his extended suffering. They could have gotten him out but instead, repeatedly asserted in public that his well-being was beyond their jurisdiction while in private, declined U.S. entreaties for his return to Germany. It is a shameful episode, one for which German officials may still yet be held accountable. More fundamentally, it highlights that Guantánamo is a geopolitical cancer; its deceit, secrecy, and brazen hypocrisy is malignant; it also distorts reality and corrupts institutions, without regard for the punishment it inflicts on real human beings.

During my last visit with him in Guantánamo, when his release seemed inevitable, I warned him that Germans might be scared to see him emerge from Guantánamo with his enormous beard, looking like some kind of mullah. He first reaction was to explain, “I don’t care. There are good and bad people everywhere. I do this for my religion. They will understand.” Then, with a quick smile he asked, “if they are so afraid of men with beards, why don’t they call Santa Claus a terrorist?”

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German officials told both me and Bernhard the date that he would likely be released, which gave me enough time to fly to Germany for the occasion. On August 24, 2006, Bernhard and I met the whole Kurnaz family at a gas station outside of Bremen for the six-hour drive south

towards Ramstein Air Force base, where we were told he would be arriving in the early evening. The day was full of intrigue – secret meetings with German officials to tell us the location of the meeting place for the Kurnaz family reunion – constant, intrusive calls from German and American reporters demanding confirmation of a spreading rumor of his release, and almost overwhelming anxiety. While we awaited his delivery in a Red Cross old people’s home, we saw through the window a huge C-17 military plane descending from the sky. It was Murat.

From the window Bernhard saw Murat enter the building along with the affable German foreign ministry officials who earlier told us where the reunion drop off would be. Rabiye, Murat’s father, Ali, Alper, Bernhard and I all assembled in the hallway on the fourth floor to greet Murat. Despite all my prior descriptions, Bernhard seem still stunned by his quick glimpse of Murat’s beard through the window. Rabiye stood in front of the creaky elevator doors; her anticipation built to almost unbearable state as the elevator repeatedly started and stopped, huffed and creaked. Finally when the doors opened, Rabiye latched onto her son as if he might be taken away from her again at any moment; with Murat in her arms, she wept helplessly for a long time.

In the incredible excitement of that very long day, including a 3 a.m. rush into the Kurnaz home past a swarm of waiting journalists, I remember one thing more clearly than any other. In the many hours Murat and I had spent together in Guantánamo , his ankle had always been chained to the floor. That day, for the first time, I saw Murat walk.