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Evidence Of Innocence Rejected at Guantanamo

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By Carol D. Leonnig
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Just months after [U.S. Army](#) troops whisked a German man from [Pakistan](#) to the military prison at [Guantanamo Bay, Cuba](#), in 2002, his American captors concluded that he was not a terrorist.

"USA considers Murat Kurnaz's innocence to be proven," a German intelligence officer wrote that year in a [memo](#) to his colleagues. "He is to be released in approximately six to eight weeks."

But the 19-year-old student was not freed. Instead, over the next four years, two [U.S. military](#) tribunals that were responsible for determining whether Guantanamo Bay detainees were enemy fighters declared him a dangerous [al-Qaeda](#) ally who should remain in prison.

The disparity between the tribunal's judgments and the intelligence community's consensus view that Kurnaz is innocent is detailed in newly released military and court documents that track his fate. His attorneys, who sued [the Pentagon](#) to gain access to the documents, say that they reflect policies that result in mistreatment of the hundreds of foreigners who have been locked up for years at the controversial prison.

The Supreme Court intends to weigh the legitimacy of the military tribunals at a hearing this morning. Lawyers for Kurnaz and other detainees plan to argue that the panels violate the U.S. Constitution and international law. They say that the proceedings have not provided Guantanamo Bay detainees with a fair and impartial hearing.

Lawyers for the Bush administration will argue that the tribunals have afforded suspected enemies all the rights to which they are entitled. The administration maintains that detainees need not know all of the evidence against them. The tribunals were established in 2004 after the Supreme Court ruled that such panels are needed when holding prisoners indefinitely, and Congress endorsed them in 2005.

U.S. District Judge Joyce Hens Green, who was privy to the classified record of the tribunal's decision-making about Kurnaz in 2004, concluded in January 2005 that his treatment provided powerful evidence of bias against prisoners, and she deemed the proceedings illegal under U.S. and international law. But her [ruling](#), which depicted the allegations against Kurnaz as unsubstantiated and as an inappropriate basis for keeping him locked up, was mostly classified at the time.

In newly released passages, however, Green's ruling reveals that the tribunal members relied heavily on a memo written by a U.S. brigadier general who noted that Kurnaz had prayed while the U.S. national anthem was sung in the prison and that he expressed an unusual interest in detainee transfers and the guard schedule. Other documents make clear that U.S. intelligence officials had earlier concluded that Kurnaz, who went to Pakistan shortly after the terrorist attacks of Sept. 11, 2001, to visit religious sites, had simply chosen a bad time to travel.

The process is "fundamentally corrupted," said Baher Azmy, a professor at [Seton Hall Law School](#) who represents Kurnaz. "All of this just reveals that they had the wrong person and they knew it."

He added: "His entire file reveals he has no connection with terrorism. None. Confronted with this uncomfortable fact, the military panel makes up evidence" to justify its claim that only real terrorists are incarcerated at Guantanamo Bay.

Cmdr. Jeffrey D. Gordon, a Pentagon spokesman, declined to comment on whether the military now believes that it erred in imprisoning Kurnaz, or to discuss the release of new records. He stressed that a substantial amount of information about Kurnaz remains classified.

In a written statement, Gordon said that the military's determinations about detainees are "necessarily impacted by a variety of factors which can include the passage of time. Also, such decisions are based on the entirety of the information before [DoD](#), and it is misguided to draw conclusions based on only parts of some documents."

Some of Kurnaz's experience -- including the existence of official documents suggesting that he was detained by mistake -- is well known. In March 2005, [The Washington Post](#) wrote about Green's decision after court officials inadvertently declassified portions of it. Kurnaz was released from Guantanamo Bay in August 2006, a few months after new German Chancellor [Angela Merkel](#) told [President Bush](#) in a private meeting that obtaining the detainee's freedom was one of her top priorities.

But the text of the internal government memos exonerating Kurnaz, the Army general's memo supporting Kurnaz's continued incarceration and key portions of Green were not disclosed earlier because the U.S. military official overseeing Guantanamo Bay argued that their release would compromise national security.

Kurnaz was born in [Turkey](#) and had lived nearly his entire life in [Germany](#). He traveled to Pakistan on Oct. 3, 2001, to visit religious sites, connecting at one point with a missionary group that U.S. military officials have said promotes jihadi ideology and has been used as a cover by members of the [Taliban](#) and al-Qaeda.

In December 2001, Pakistani police pulled Kurnaz and missionaries off a bus and handed him to U.S. troops. Four weeks later, he was flown to Guantanamo Bay -- one of the first detainees to arrive in the newly opened prison.

German and American intelligence officers interviewed Kurnaz in September 2002, records show. They jointly concluded that nothing was linking the man from [Bremen](#) to terrorist cells or enemy fighters and that he should be freed. In a memo dated May 19, 2003, the commanding general of the Criminal Investigation Task Force, a Pentagon intelligence unit that interrogates detainees and collects evidence about them, wrote that "CITF is not aware of evidence that Kurnaz was or is a member of al-Qaeda. CITF is not aware of any evidence that Kurnaz may have aided or abetted, or conspired to commit acts of terrorism."

After the Supreme Court ruled in 2004 that Guantanamo Bay prisoners could not be held indefinitely without fact-finding by an objective tribunal, the Pentagon hastily assembled panels of field-grade officers to serve as Combatant Status Review Tribunals. Since they began, the panels have overwhelmingly supported continued detention of those at Guantanamo Bay, ruling that 534 detainees were "enemy combatants," while only 38 were not.

In September 2004, one such panel cited intelligence on a suicide bombing by someone Kurnaz allegedly knew -- an account later found to be incorrect -- in concluding that Kurnaz was "properly classified as an enemy combatant" and was a member of al-Qaeda.

In a previously classified passage of her ruling, Green said the panel ignored "conflicting exculpatory evidence in at least three separate documents," thereby raising questions about its impartiality. The only solid information in Kurnaz's file showed that the [CIA](#), U.S. military intelligence and German intelligence found nothing linking him to terrorist groups, she said.

Green complained about the panel's reliance on an unsubstantiated [memo](#), dated June 25, 2004, written by Brig. Gen. David B. Lacquement, then head of U.S. Southern Command's intelligence unit, to Defense Secretary [Donald H. Rumsfeld](#).

Much of Lacquement's memo is still redacted. But besides noting Kurnaz's prayers during the U.S. national anthem, the newly declassified portions also state that he "asked how tall the basketball rim was" in the prison yard, which Lacquement said revealed a desire to escape. In addition, Kurnaz "attempted to obtain information concerning detainee transfers" and "to discuss the current work schedule of the guards," the memo notes.

Green expressed doubt that Lacquement had developed compelling new information about terrorist links that tipped the scales. Lacquement, who is now a major general commanding the Army Intelligence and Security Command at [Fort Belvoir](#), did not respond to requests for comment.

At a minimum, Green wrote, the documents raised the question of what specific information could have been discovered between the May 2003, memo stating that there was no evidence that the detainee was a member of al-Qaeda or was in direct contact with any Taliban recruiters, and the June 2004, memo by the general stating that the detainee was a danger.

"However the record in Kurnaz is interpreted, it definitively establishes that the detainee was not provided with a fair opportunity to contest the material allegations against him," Green wrote. Until recently, much of her denunciation was classified, by a court security office relying on Pentagon and [Justice Department](#) officials for advice on what to conceal from the public.

In January 2006, another military review panel decided once again that Kurnaz was still "a danger" and should remain at Guantanamo Bay. Internal Defense Department e-mails show that this administrative review board, roughly comparable to a parole board, did not look at the material that Kurnaz's lawyer had submitted to make its decision.

After a public uproar in Germany over the German government's role in Kurnaz's continuing imprisonment, Merkel pressed Bush at a private meeting that January to release him. In July 2006, an unusual second review board convened.

The [FBI](#)'s counterterrorism division, new records show, wrote in a [memo](#) dated May 31, 2006, for that board that "the FBI has no investigative interest in this detainee" and that "there is no information that Kurnaz received any military training or is associated with the Taliban or al-Qa'ida." The wording of its brief conclusion about whether Kurnaz posed any threat was redacted.

The second review board ruled that Kurnaz was no longer an enemy combatant and that he could be released, but the reasons remain redacted.

Not until August 2006, nearly five years after his imprisonment began, was Kurnaz flown home, goggled, masked and bound, as he had been when he was flown to Guantanamo Bay. As U.S. military officials led him out of Ramstein Air Base, and as he was about to take his first steps onto German soil, the Americans offered to leave plastic wrist cuffs on their former prisoner. German federal police declined.

He was escorted as a free man to the back seat of a [Mercedes-Benz](#) sedan for the short ride to his reunion with his parents and two younger brothers.

Staff researcher Julie Tate contributed to this report.

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