

RESTORING THE RULE OF LAW:

STOP RISKING SOLDIER SAFETY IN GUANTANAMO BAY

BY

KYNDRA ROTUNDA

On Tuesday, September 16, 2008, I was honored to testify before Congress (Senate Judiciary Committee) in Washington D.C. The topic was *Restoring the Rule of Law*. Many critics claim that Guantanamo Bay is a legal black hole, and they seek to close the detention camp. I've served in Guantanamo Bay, and I disagree.

In reality, the military affords detainees held in Guantanamo Bay *more* rights than *POWs* would receive under the Geneva Conventions; while adopting rules that tie the hands of soldiers running the detention camp and put them at risk for serious harm. I think – and I told Congress – that the U.S. should restore the rule of law, to protect the troops, by doing several things – including allowing U.S. prison guards to search detainees' qu'rans for weapons. Below is an excerpt of my testimony:

As we discuss the Rule of Law, it is important to remember our military troops and our obligation to preserve and protect their rights, too. The United States should interpret the law to help, not hurt, our men and women in uniform who serve and sacrifice every day for this great nation. Unfortunately, that is not happening.

For instance, in Guantanamo Bay, the U.S. Military requires religious accommodation in a way that risks the safety of soldiers. It issues various religious items to each detainee, including a copy of the Qu'ran. But, incredibly, it forbids military prison guards in charge of the facility from even touching the Qu'rans under any circumstances.¹ Not surprisingly, detainees have figured this out and use the Qu'ran to hide weapons, which they use to viciously attack military prison guards. Attacks against prison guards have risen to eight a day. In one year,

¹ Army Command Sergeant Major confirmed this fact in June 2005, when he testified before Congress. He stated that certain items remain "off-limits" to guards in Guantanamo Bay. He stated, "The rule of thumb for the guards is that you will not touch the Qu'ran. . . that's the bottom line." Kyndra Rotunda, *HONOR BOUND INSIDE THE GUANTANAMO TRIALS* (Carolina Academic Press, 2008), citing Donna Miles, *Joint Task Force Respects Detainees Religious Practices*, DEPARTMENT OF DEFENSE, AMERICAN FORCES PRESS SERVICE, June 29, 2005.

*detainees stabbed military troops with homemade knives 90 times, including cutting a doctor administering aid. (Incidentally, now doctors wear body armor when they treat detainees.)*²

According to one military police officer who served in Guantanamo Bay, detainees brandish their home-made shanks to threaten U.S. troops, and then quickly shove them back into the Qu'ran, where they know are "off limits" to guards. Even in this situation, the guard may not touch the Qu'ran to confiscate the weapon.

*When the military places certain items off-limits to soldiers running the detention camp, it puts soldiers at risk for serious harm, and it compromises security. An incident at Camp Bucca, Iraq (a U.S. operated detention camp in Southern Iraq, a few miles from the Kuwait border), is just one example. At Camp Bucca, the military erected a tent as a mosque for the detainees, and designated it off-limits to U.S. prison guards running Camp Bucca. The detainees used their makeshift mosque as a weapons cache, where they stashed concrete-shards that they had dug from the concrete around tent poles, and home-made bombs that they had made using human feces, hand-sanitizer and socks. The prisoners attacked Camp Bucca from the inside out. For four days they rioted and seriously injured several U.S. troops. One officer was hit in the eye with a chunk of cinderblock, which fractured his cheek in three places and broke his teeth. One soldier called the violence "absolutely incredible" due to the number of rocks and sheer accuracy.*³

The attack from inside Camp Bucca continued for several days. The U.S. was forced to call for backup to restore order at its own prison camp. The U.S. foolishly excludes guards from certain areas of the prison camps, and designates items off-limits to U.S. prison guards.

*What does the law say about religious accommodation in prisons? The Geneva Conventions say that POWs must follow the military disciplinary routine of their captors in order to preserve their right to religious latitude.*⁴ *This is similar to the standard applied In U.S. prisons. In O'Lone v. Estate of Shabazz,*⁵ *the Supreme Court said that prison officials could impinge on prisoners' right to exercise their religion for reasons related to legitimate prison*

² Kyndra Rotunda, HONOR BOUND: INSIDE THE GUANTANAMO TRIALS (Carolina Academic Press, June 2008), *discussing and citing* Richard Miniter, *Deadly Kindness*, NEW YORK POST, September 15, 2006.

³ Kyndra Rotunda, HONOR BOUND: INSIDE THE GUANTANAMO TRIALS (Carolina Academic Press, June 2008), *discussing* Steve Fairnau and Anthony Shadod, *In Iraq Jail, Resistance Goes Underground*, WASHINGTON POST FOREIGN SERVICE, WASHINGTON POST, August 24, 2005 at A 01.

⁴ Third Geneva Convention, Relative to the Treatment of Prisoners of War Chapter V, Article 34, August 12, 1949, *stating*, "Prisoners of war shall enjoy complete latitude in the exercise of their religious duties, including attendance at the service of their faith, on condition that they comply with the disciplinary routine prescribed by the military authorities. Adequate premises shall be provided where religious services may be held."

⁵ *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 107 S.Ct. 2400, 96 L.Ed.2d 282 (1987), on remand 829 F.2d 32 (3d Cir. 1987).

management. The court upheld a regulation regarding prisoner work duties that precluded Muslim prisoners from attending religious services on Friday afternoons, as their faith required.⁶

The U.S. should restore the rule of law in Guantanamo Bay, and other U.S. operated detention camps by following the Geneva Conventions and allowing U.S. prison guards to search all items in detainee cells, including the Qu'ran. No place, or item, within our own prison camps should be off-limits to our guards. Doing so is extremely dangerous; neither International nor U.S. law require or authorize this unusual accommodation.

⁶ Kyndra Rotunda, HONOR BOUND: INSIDE THE GUANTANAMO TRIALS (Carolina Academic Press, June 2008), *citing* ROTUNDA AND NOWAK, TREATISE ON CONSTITUTIONAL LAW, Vol. 5 sec. 21.6, fn. 25 (Thompson West, 3d ed. 1999).