

HONOR BOUND: INSIDE THE GUANTANAMO TRIALS, by Kyndra Miller Rotunda. Durham: Carolina Academic Press, 2008. 264pp. Cloth. \$29.95. ISBN: 978-0-19-531025-2.

Reviewed by Louis Fisher, Specialist in Constitutional Law, Law Library, Library of Congress. lfisher@loc.gov

U.S. Army Captain (now Major) Kyndra Miller Rotunda served several tours as a Judge Advocate General officer, including one as a prosecutor at the Office of Military Commissions and one in Guantanamo Bay. She worked with the Criminal Investigation Task Force (CITF) to assemble evidence against suspected terrorists. Those assignments offered a good opportunity to understand the military commissions underway at “Gitmo” and correct misconceptions about the procedures. Certainly there were many stereotypes advanced by both sides, with the government regularly defending the commissions as “fair” and “open” and critics dismissing them as a “kangaroo court.”

For readers hoping for an even-handed assessment, the initial appearance is not promising. First there is the cover: a hooded Islamic Jihadist holding a Koran in one hand and a grenade in the other. The Foreword by Rear Admiral [Ret.] James J. Carey sets an unfortunate tone. His opening paragraph describes the detainees as “committed to killing all Americans.” *All* of the detainees, including hundreds who the administration concluded had been wrongly apprehended and, over time, set free? His remark is similar to one by Defense Secretary Donald Rumsfeld, who called the detainees at the naval base as “among the most dangerous, best trained, vicious killers on the face of the earth.” To White House spokesman Ari Fleischer they were the “worst of the worst.” Carey ends the Foreword with this observation: “HONOR BOUND makes it clear to me that the words spoken long ago by another American Patriot are as true today as is this book which

echoes them in this, the twenty-first century — ‘We must all hang together, or assuredly we shall all hang separatedly.’ Or be beheaded.”

Rotunda begins the book by arguing that the United States has “over-lawyered this war.” She identifies four mistakes by the government: “paroling known terrorists back to the battlefield; changing the trial rules in the middle of trial; imposing rules that made it difficult for prosecutors to respond to defense counsel claims that deserved a response; and giving detainees more rights than the Geneva Conventions require.”

On the first point, there have been reports that some detainees who were released from the naval base returned to the battlefield and participated in terrorist activities. No one can tell if those individuals were terrorists when they arrived at the naval base or became terrorists as a result of abusive interrogations and treatment. Point two: It is true that trial procedures underwent many changes, to the frustration of both prosecutors and defense counsel. “Evolving rules were confusing, inconsistent, inefficient, and unfair” (p. 211).

Regarding point three, why was it difficult for prosecutors to respond to criticism? Defense lawyers “tried their case in the media” and the government was somehow unable, or unwilling, to “set the record straight” (p. 197). The executive branch is seldom shy about defending its actions and usually quite capable of giving its side of the story. What were the inhibitions at Guantanamo? She writes: “It is unclear why DoD often opted not to respond to criticism brought forth in the media. The DoD acted like a punching bag — receiving punches but putting up no defense” (p. 200). She says the Defense Department had 23 public affairs officers assigned to Guantanamo Bay. The Pentagon is quite skilled in justifying its policies and programs and recruiting people

from the private sector to join in the defense. The book never explains what constraints existed, if any, on the public affairs officers, other than perhaps confusion and uncertainty on the part of the department as to how to respond. She praises Colonel Morris Davis, chief prosecutor in the fall of 2000, for publicly responding to criticism (pp. 201-03).

What prevented other executive officials from doing what Davis did?

Finally, there was a reason why detainees at Gitmo were given more rights than required by Geneva. They needed them. Unlike prisoners of war, who are released after a war and do not face trial, the detainees were subject to prosecution and possibly the death sentence. Rotunda asks: “in a war our enemies call a ‘religious war,’ where radical Islamists use their religion to justify brutally beheading innocent civilians, is it smart to exceed the Geneva Conventions?” (p. 61). She doesn’t provide a precise answer, but detainees who look forward to punishment and possibly execution are not prisoners of war and need rights beyond those listed in Geneva.

Rotunda compares the conditions at Gitmo with a prison in Ohio, where inmates are deprived of environmental or sensory stimuli and most human contact (p. 55). The difference, of course, is that the inmates in Ohio were charged, tried, given counsel, had access to procedural safeguards, were convicted, sentenced, and could appeal. Detainees at Gitmo were held year after year without formal charges or trial. Rotunda concludes: “Nobody objects to the way Ohio holds these U.S. prisoners. But, for some reason, many people demand better prison conditions for suspected terrorists in Gitmo.” Suspected terrorists, whether U.S. citizens or aliens, need to know the basis for the suspicions and have an opportunity to confront evidence against them. Prisoners in Ohio had the full

protection of Sixth Amendment procedural rights. Detainees at Gitmo, not subject to criminal prosecution in civil court, had no such rights.

In the passage just cited, Rotunda refers to the detainees as “suspected terrorists.” Elsewhere she omits the qualifier, as when she speaks of sharing the island “with over 800 detained terrorist enemies” (p. 59). Some detainees were terrorists, some were enemies, and some were innocently swept up on the battlefield or handed over to U.S. authorities in exchange for payment, as part of a bounty system. Lt. Col. Diane Beaver, Staff Judge Advocate at Gitmo, at one point told Rotunda that the detainees were not POWs: “These people are terrorists” (p. 67). They were *suspected* terrorists. Often the suspicions were found to be baseless. The whole purpose of the Combatant Status Review Tribunals (CSRTs) was to determine who was and was not an enemy combatant.

Some sections of the book explore the question of interrogation techniques. An interrogator for the Office of Naval Intelligence told Rotunda that building rapport with a detainee is the best way to obtain information. “If they like you, they’ll talk.” Other interrogators gave similar advice to Rotunda. Sharing tea with detainees, bringing sandwiches from Subway or french fries from McDonalds was effective. “Gentle interrogation approaches were the most effective” (p. 81). A CITF agent and an FBI agent, both of them Muslim, “knew how to coax the truth from detainees’ lips. One word captures their effective, secret ingredient to successful interrogations — patience” (p. 123). These accounts undermine the administration’s case for “harsh” interrogation methods, including waterboarding.

Chaplain James Yee, a Chinese-American West Point graduate who had studied Arabic and Islam, was assigned to Guantanamo. He was arrested, suspected of

espionage, but those charges were dropped. Rotunda says he left the naval base with “sensitive documents” and asks: “Was Yee part of a greater plan to target U.S. interrogators and their families? Was he attempting to aid the enemy — his Muslim brothers? If not, why would Yee leave Guantanamo Bay with this information? And what exactly were the documents? We don’t know because the government hasn’t told us” (pp. 78-79). Why raise those questions about Yee if the facts are not known?

Rotunda reflects on her experience with the Office of Military Commissions. “I believe then, as I do now, that bringing detainees to justice is the right thing to do” (p. 204). But she says “one important question” has been overlooked: “whether the government should proceed with military tribunals during a time of war, *at all*” (emphasis in original). The government “should consider waiting until the war is over. So long as we are at war with terrorists, perhaps the U.S. has more to lose than gain by trying detainees in Guantanamo Bay.” Fighting a war “and prosecuting war criminals simply doesn’t work. Ordinarily we would prosecute war criminals after — not during — a war.” If it is the right thing to bring detainees “to justice,” why wait until the war on terrorism is over, if it ever is? Why are detainees at Gitmo “war criminals”? Rotunda concedes: “We have no idea when the war could end.” “Just like every other war, this one will end. We do not know when, and we cannot predict how, but eventually U.S. troops will come home and active hostilities will end” (p. 208). If military operations in Iraq and Afghanistan were to end and U.S. troops returned home, the war on terrorism would not necessarily end.

Every book suffers from typing errors. This has more than its share. Rotunda recalls that in a training exercise a soldier pointed his gun at her: “I was in his sites”

(sights). She refers to “Charles Garner” (Graner) and “Neil Kaytal” (Neal Katyal). Thousands “headed” (heeded) a warning. A decision was handed down by Justice “Stephens” (Stevens). “Chief Justice Robertson” (Roberts) made a remark about judges calling balls and strikes. A defendant was “Salem Ahmed Salem Hamden” (Salim Ahmed Hamdan).

Writing styles vary, with many authors deciding to include personal details in an effort to make a book more appealing. Here are some examples. “I pulled my Mazda Miata around the corner, and into the parking garage.” “I threw my stick behind a rock, and he picked at a callous on his thumb.” She “popped a lime-flavored Skittle” in her mouth. “The water trickled down my tired face” as she “lathered my palms with the Dial soap bar.” “The air conditioner on our vehicle was on the fritz, yet again.” “I lugged my bags from the cab.” “I lugged my bags out the door.” Soldiers disappeared into “the smoke filled bar.” The sun “peaked through the curtains.” Early one morning “I was brushing my teeth over the sink.” She took “a fistful of M&Ms from the M&M dispenser on our team leader’s desk.” One colleague was “tapping ashes from her cigarette.”

Other passages attempt to create a climate: “The cool air nettled my lungs, but the fall aroma always smelled so good that it was worth the sting.” “For November, it was a warm afternoon in Washington, D.C. I decided not to take my coat.” “I took off my beret and put it in my handbag as I stepped into the elevator, and pressed the button for the floor where my office was located.” “My story ends, as it began five years earlier, on a sunny September day. I parked my car in the faculty parking lot at the George Mason University Law School, and flung my bag over my shoulder as I walked toward the building.”