

**STATEMENT OF**

**STEPHEN E. ABRAHAM  
LIEUTENANT COLONEL, U.S. ARMY RESERVE**

**BEFORE THE**

**ARMED SERVICES COMMITTEE  
UNITED STATES HOUSE OF REPRESENTATIVES**

**CONCERNING**

**UPHOLDING THE PRINCIPLE OF HABEAS CORPUS FOR DETAINEES**

**PRESENTED**

**THURSDAY, JULY 26, 2007**

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Mr. Chairman and Members of the Committee, it is my privilege to have the opportunity to testify today concerning my experiences as a participant in the Combatant Status Review Tribunal (“CSRT”) process. I was assigned to the Office for the Administrative Review of the Detention of Enemy Combatants (“OARDEC”) from September 11, 2004 to March 9, 2005, the period of time in which nearly all of the CSRTs for detainees in Guantanamo were performed. (Only a few detainees have been transferred to Guantanamo since). OARDEC is the organization within the Defense Department responsible for conducting CSRTs and other administrative reviews of detainees in Guantanamo. While at OARDEC, in addition to other duties, I worked as an agency liaison, responsible for coordinating with government agencies, including certain Department of Defense (“DoD”) and non-DoD organizations, to gather or validate information relating to detainees for use in CSRTs. I also served as a member of a CSRT panel, and had the opportunity to observe and participate in all aspects of the CSRT process.

I came to OARDEC as an Army Reserve lieutenant colonel with twenty-two years of experience as a military intelligence officer in the U.S. Army Reserve, both on and off active duty. I was mobilized for service in support of Operation Desert Storm, and twice served on active duty following the September 11<sup>th</sup> attack on this Nation. My latest mobilization before my assignment to OARDEC was as Lead Counterterrorism Analyst for the Joint Intelligence Center, Pacific Command, from November 13, 2001 through November 12, 2002, for which I received

the Defense Meritorious Service Medal. In that capacity, I became highly familiar with the wide variety of intelligence techniques and resources used in the fight against terrorism. My military resume is attached to my written testimony. I also came to OARDEC with more than ten years of experience as an attorney in private practice. I am a founding member of the law firm Fink & Abraham LLP in Newport Beach, California.

Firstly, Mr. Chairman, let me say that it is fitting that the Committee is considering the issues raised by the denial of habeas corpus rights of individuals held by the United States as enemy combatants. There is no question that individuals who have attacked the United States should be punished, and that those who are preparing to attack the United States must be stopped. I have devoted my military career to identifying such individuals and their organizations, and to helping our country counter such threats.

We cannot protect our security unless we identify those individuals who have harmed or are preparing to harm us. Just as importantly, incorrectly concluding that an individual fits one of these categories does nothing to help keep us secure. Detaining such an individual only misdirects our resources and causes damage to our reputation as a nation that may take decades to repair. Imprisoning the wrong man is also antithetical to the Constitutional values that commissioned officers swear to support and defend.

As I will explain, the process put in place by the Executive Branch to review its detention of the prisoners at Guantanamo was designed not to ascertain the truth, but to legitimize the detentions while appearing to satisfy the Supreme Court's mandate in *Rasul v. Bush* that the government be required to justify the detentions. The process was nothing more than an effort by the Executive to ratify its exercise of power to detain anyone it pleases in the war against terror.

The CSRT process was designed to rubber-stamp detentions that the Executive Branch either believed it should not have to justify, could not be bothered to justify, or could not justify.

The CSRT process was initially created in haste immediately following the Supreme Court's decision in *Rasul v. Bush* that federal courts had jurisdiction to hear habeas corpus actions brought by Guantanamo detainees requiring the government to justify the detentions. The Supreme Court decided *Rasul* on June 30, 2004, and the order establishing the CSRT process was issued eight days later on July 8, 2004.

Contemporaneous with the consideration of several cases relating to the Guantanamo detainees in the U.S. District Court for the District of Columbia, OARDEC established a goal of completing CSRTs for all of the more than 500 detainees then in Guantanamo by December, 2004. Although a small number of CSRTs were being conducted at about the time of my arrival at OARDEC in mid-September, 2004, almost all of the remaining tribunals were conducted during my assignment there.

In my observation, the system was designed to fail. This Committee should place no reliance on the procedures or the outcomes of those tribunals. The CSRT panels were an effort to lend a veneer of legitimacy to the detentions, to “launder” decisions already made. The CSRTs were not provided with the information necessary to make any sound, fact-based determinations as to whether detainees were enemy combatants. Instead, the OARDEC leadership exerted considerable pressure, and was under considerable pressure itself, to confirm prior determinations that the detainees in Guantanamo were enemy combatants and should not be released.

The CSRT process had two essential components: an information-gathering component, conducted almost entirely in Washington, and the panel proceedings, which took place either in

Guantanamo or in Washington, depending on whether the detainee decided to appear. The Recorders (military officers who presented the cases to the CSRT panels), personal representatives (who met with detainees briefly prior to the panel proceedings), and panel members had no role in the gathering of information to support an “enemy combatant” determination. Although the Recorders were required by DoD procedures to gather relevant information and present all exculpatory information to the CSRT panels, in practice they did not do so. Rather, the information was typically aggregated by individuals in Washington identified as “case writers.” These case writers, in most instances, had only a limited degree of knowledge and experience relating to the intelligence community and evaluation of intelligence products. The case writers, and not the Recorders, were primarily responsible for accumulating documents, including assembling documents to be used in the drafting of an unclassified summary of the factual basis for a detainee’s designation as an enemy combatant.

These case writers depended entirely on government agencies to supply the information they used. The case writers and Recorders did not have access to the vast majority of information sources generally available within the intelligence community, all of which had been made available to me in my prior assignments.

The information used to prepare the files to be used by the Recorders frequently consisted of finished intelligence products of a generalized nature - often outdated, often “generic,” rarely specifically relating to the individual subjects of the CSRTs or to the circumstances related to those individuals’ status. Beyond “generic” information, the case writers would frequently rely on information contained within the Joint Detainee Information Management System (“JDIMS”). The subset of that system available to the case writers was limited in terms of the scope of information, typically excluding information that was characterized as highly sensitive

law enforcement information, highly classified information, or information not voluntarily released by the originating agency. Like the information provided by intelligence agencies, the information in JDIMS to which OARDEC case writers had access lacked information relating to the reliability of the source. In that regard, JDIMS did not constitute a complete repository, although this limitation was frequently not understood by individuals with access to or who relied upon the system as a source of information. Other databases available to the case writers were similarly deficient.

Beyond the physical and technological limitations that constrained the research teams, the content of intelligence products, including databases, made available to case writers, Recorders, or liaison officers, was often left entirely to the discretion of the organizations providing the information. The scope of information *not* included in the bodies of intelligence products was typically unknown to the case writers and Recorders, as was the basis for limiting the information. In other words, the persons preparing materials for use by the CSRT panel members did not know whether they had examined all available information or why they possessed some pieces of information but not others.

The limited information provided by intelligence agencies ordinarily consisted only of distilled summaries and conclusory statements. Team members were rarely provided any information about the source of the information. Often, the source was not identified at all. Other times, the source was identified, but with no information allowing us to assess the source's reliability. For example, a summarized document might say that a detainee "is a member of Al Qaeda," but would not include any information about who determined that the detainee is a member of Al Qaeda, the nationality or allegiance of the source, whether the source was paid for the information, whether the source was detained or subjected to coercive interrogation

techniques, or whether the source had given reliable information on other occasions. The only exception to the rule of withholding source material, in my experience, was that information was sometimes identified as having been provided by the detainee himself. In such cases, OARDEC would not be advised as to whether information had been provided under duress.

The importance of source information cannot be overemphasized. An integral part of the duties of intelligence officers is to assess the reliability of sources and the validity of information received. To be effective, the intelligence professional must be capable of distinguishing between instances where a source provides valid, reliable information and instances where the source intends to influence or even to deceive. Without such information about the reliability of the source or the information provided, it is impossible to evaluate the weight to be given the information. It was impossible to know whether the information to which I was permitted access was trustworthy. Yet the CSRT regulations required the panel members to presume that it was all “genuine and accurate.”

Following “quality assurance review,” a process that focused more on format and grammar than on substance, the unclassified summary and the information assembled by the case writer in support of the summary would then be forwarded to the Recorder. It was very rare that a Recorder or a personal representative would seek additional information beyond that information provided by the case writer.

As one of only a few intelligence-trained and suitably cleared officers, I served as a liaison while assigned to OARDEC, acting as a go-between for OARDEC and various intelligence organizations. In that capacity, I was tasked to review or obtain information relating to individual subjects of the CSRTs. More specifically, I was asked to confirm and represent in a

statement to be relied upon by the CSRT board members that the organizations did not possess “exculpatory information” relating to the subject of the CSRT.

During my trips to the participating organizations, I was allowed only limited access to information, typically prescreened and filtered. I was not permitted to see any information other than that specifically prepared in advance of my visit to the intelligence agencies. I was not permitted to request that further searches be performed. I was given no assurances that the information provided for my examination represented a complete compilation of information or that any summary of information constituted an accurate distillation of the body of available information relating to the subject. I was specifically told on a number of occasions that the information provided to me was all that I would be shown, but I was never told that the information that was provided constituted all available information. Each time that I asked that a representative of the organization provide a written statement that there was no exculpatory evidence, the request was summarily denied.

For example, at one point, following a review of information, I asked the Office of General Counsel of the intelligence organization that I was visiting for a statement that no exculpatory information had been withheld. I explained that I was tasked to review all available materials and to reach a conclusion regarding the non-existence of exculpatory information, and that I could not do so without knowing that I had seen all information. The General Counsel’s Office denied my request and refused even to confirm or deny the existence of information that I was not permitted to review. In short, based upon the selective review that I was permitted, I was left to infer, from the absence of exculpatory information in the materials I was allowed to review, that no such information existed in materials I was not allowed to review.



Following that particular exchange, I communicated to the Director of OARDEC, Rear Admiral James McGarrah, and the Deputy Director of OARDEC, Captain Frank Sweigart, the fundamental limitations imposed upon my review of the organization's files and my inability to state conclusively that no exculpatory information existed relating to the CSRT subjects. It was not possible for me to certify or validate the non-existence of exculpatory evidence as related to any individual undergoing the CSRT process. The responses by Captain Sweigart and Admiral McGarrah were dismissive and did nothing to address my concerns.

All CSRT panel members were assigned to OARDEC and reported ultimately to Rear Admiral McGarrah. Any time a CSRT panel determined that a detainee was not properly classified as an enemy combatant, the panel members would have to justify their finding to the senior leadership, including Captain Sweigart and Admiral McGarrah. There would be intensive scrutiny of the finding that Rear Admiral McGarrah would, in turn, have to explain to his superiors, including the Under Secretary of the Navy. Similar scrutiny was not applied to a finding that a detainee was "properly" classified as an Enemy Combatant. In each of the meetings that I attended with OARDEC leadership following a NEC finding, the question asked by the leadership was, "What went wrong?"

There was a constant push by Rear Admiral McGarrah and Captain Sweigart to complete CSRT hearings quickly. Captain Sweigart routinely issued reports showing how many hearings had been completed, and he continually demanded that the hearings be conducted at a faster pace. The only thing that would slow down the process was a finding that a detainee was not an enemy combatant. Therefore, there was a strong incentive on the part of the panel members and other participants in the process to find the detainees to be enemy combatants.

On one occasion, I was assigned to a CSRT panel, Panel 23, with two other officers, an Air Force Colonel and an Air Force Reserve Major in the Judge Advocate General's Corps. We reviewed evidence presented to us regarding the recommended status of detainee ISN #654, Abdullah Al-Ghazawy, who was accused in the unclassified summary of being a member of the Libyan Islamic Fighting Group.

There was no credible evidence supporting the allegation. All of us found the information presented to lack substance. What were purported to be specific statements of fact lacked even the most fundamental earmarks of objectively credible evidence. Statements allegedly made by percipient witnesses lacked detail. Reports presented generalized, indirect statements in the passive voice without stating the source of the information or providing a basis for establishing the reliability or the credibility of the source. Statements of interrogators presented to the panel offered surmises from which we were expected to draw conclusions favoring a finding of "enemy combatant." When we asked the Recorder the most limited questions about these statements, the only response the Recorder could give was, "We'll have to get back to you." He never did. The personal representative, the non-attorney assigned to assist the detainee through the process, did not participate in any meaningful way.

On the basis of the paucity and weakness of the information provided both during and after the CSRT hearing, we determined that there was no factual basis for concluding that the individual should be classified as an enemy combatant. OARDEC leadership, including Captain Sweigart, immediately questioned the validity of our findings and directed us to write out the specific questions that we had raised concerning the evidence to allow the Recorder an opportunity to provide further responses. We were then ordered to leave the hearing open to allow the Recorder to present further argument as to why the detainee should be classified as an

enemy combatant. Ultimately, in the absence of any substantive response to the questions and no basis for concluding that additional information would be forthcoming, we did not change our determination that the detainee was not properly classified as an enemy combatant.

OARDEC's response to the outcome of our case was consistent with the few other instances in which a finding of "Not an Enemy Combatant" (NEC) had been reached by CSRT boards. I was not assigned to another CSRT panel.

I subsequently learned, based on the government's factual return in Mr. Al-Ghazawy's habeas corpus case, that he was subjected, without his knowledge or participation, to a second CSRT panel two months later that reversed my panel's unanimous determination that he was not an enemy combatant. I also learned that this particular panel, Panel 32, also reconsidered and reversed the finding of Panel 18 that detainee ISN #250, Anwar Hassan, also known as "Ali" in his court filings, was not properly designated as an enemy combatant. So it appears that Panel 32 was convened precisely for the purpose of overturning prior findings that were favorable to the detainees.

In short, the CSRT process was not structured to yield reliable determinations as to whether the detainees held in Guantanamo were properly detained as enemy combatants. Rather, the Executive put in place a process to legitimize, without substantial corroborated evidence or any meaningful independent review, earlier determinations that were not the product of a thoughtful, deliberative process directed to the ascertainment of truth. The process ensured that panels would rubber-stamp decisions already made rather than applying independent judgment as to whether those decisions were correct. Under the guise of implementing the Supreme Court's decision in *Rasul*, the CSRT process completely frustrated it. In my opinion, it is time

for Congress to restore the judicial mechanism – habeas corpus – that will both honor our commitment to justice and keep America secure.

Mr. Chairman, thank you for the opportunity to testify today. I would be pleased to answer any questions the Committee may have.

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LIEUTENANT COLONEL, U.S. ARMY RESERVE**

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**ENCLOSURES**

**Military Resume**

**Citation Accompanying the Award of the  
Defense Meritorious Service Medal**

## **RESUME OF SERVICE CAREER**

**for**

**STEPHEN EDWARD ABRAHAM, Lieutenant Colonel  
Military Intelligence (USAR)**

**DATE AND PLACE OF BIRTH:** 01 December 1960, Urbana, Illinois

**YEARS OF COMMISSIONED SERVICE:** 25 years

**TOTAL YEARS OF SERVICE:** 25 years

**PRESENT ASSIGNMENT:** Operations Officer, 3300 Det 1, Strategic Intelligence Group

**CURRENT OCCUPATION:** Attorney, Fink & Abraham LLP, Newport Beach, California

### **MILITARY SCHOOLS ATTENDED:**

Airborne School

Air Assault School

NBC Defense Course (USAREUR)

Military Intelligence School - Basic and Advanced Courses

Military Intelligence School – Counterintelligence/HUMINT Course

United States Army Command and General Staff College

DAME-1

### **EDUCATIONAL DEGREES:**

University of California at Davis – BA Degree – Anthropology

University of the Pacific, McGeorge School of Law – JD Degree with honors – Law

### **FOREIGN LANGUAGE:**

None recorded

STEPHEN EDWARD ABRAHAM, Lieutenant Colonel,  
Military Intelligence (USAR)

## **MAJOR DUTY ASSIGNMENTS**

<b>FROM</b>	<b>TO</b>	<b>ASSIGNMENT</b>
<b><u>Active Duty</u></b>		
Jan 82	Nov 82	Student, Intelligence Center and School, Fort Huachuca, Arizona (Basic, SOTIOC, CI/HUMINT Courses)
Dec 82	Dec 83	Assistant S-3, Plans and Training, 527 <sup>th</sup> Military Intelligence Battalion, Kaiserslautern, Germany
Jan 84	May 85	Chief, Intelligence Coordination Center, 66 <sup>th</sup> Military Intelligence Group, Munich Germany
May 85	Dec 85	Case Control Officer, Defense Counterespionage Branch, 66 <sup>th</sup> Military Intelligence Group, Munich Germany
Jan 86	Jul 86	Student, Intelligence Center and School, Fort Huachuca, Arizona (Advanced Course)
Aug 86		Student, Infantry School, Fort Benning, Georgia (Airborne Course)
Aug 86	Feb 87	S-4, 107 <sup>th</sup> Military Intelligence Battalion (CEWI), Fort Ord, California

### **USAR – Not on Active Duty (Individual Ready Reserve)**

Feb 89		Counterintelligence Officer, G-2, 10 <sup>th</sup> Infantry Division (Mountain), Fort Drum, New York
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### **USAR – Not on Active Duty (Individual Mobilization Augmentee Tours)**

Jul 90		Intelligence Officer, APG Detachment, 902d Military Intelligence Group, Aberdeen Proving Grounds, Maryland
Jan 91		Defense Counterespionage Office, 902d Military Intelligence Group, Fort Meade, Maryland

### **USAR – Mobilization (Desert Storm)**

Apr 91	Aug 91	Executive Officer, OPSEC Support Detachment, 902d Military Intelligence Group, Fort Meade, Maryland
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### **USAR – Not on Active Duty (Individual Mobilization Augmentee Tours)**

Jul 92		Counterintelligence Officer, OPSEC Support Detachment, 902d Military Intelligence Group, Fort Meade, Maryland
Jul 93		Intelligence Officer, J-2, Alaska Command, Elmendorf Airbase, Alaska

STEPHEN EDWARD ABRAHAM, Lieutenant Colonel,  
Military Intelligence (USAR)

**USAR – Not on Active Duty (Troop Program Unit / Drilling IMA)**

Aug 93	Mar 96	S-2, 7 <sup>th</sup> Psychological Operations Group, Moffett Federal Air Field, California
Apr 96	Feb 98	Intelligence Officer, 478 <sup>th</sup> Military Intelligence Detachment (Strategic), Camp Parks, California
Mar 98	Apr 99	Division Head, Detachment 2, Reserve Production Center Camp Parks, Joint Intelligence Center, Pacific Command, Camp Parks, California
May 99	Sep 00	Army Element Director and Production Team Chief, Reserve Production Center San Diego, Joint Intelligence Center, Pacific Command, San Diego, California
Sep 00	Oct 01	Army Element Director and Production Manager, Reserve Production Center San Diego, Joint Intelligence Center, Pacific Command, San Diego, California

**USAR – Mobilization (Operation Enduring Freedom)**

Nov 01	Oct 02	Senior Counterterrorism Analyst, Counterterrorism Branch, Joint Intelligence Center, Pacific Command, Pearl Harbor, Hawaii
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**USAR – Not on Active Duty (Troop Program Unit / Drilling IMA)**

Nov 02	Aug 03	Army Element Director, Reserve Production Center San Diego, Joint Intelligence Center, Pacific Command, San Diego, California
Sep 03	Sep 04	Joint Service Director, Joint Detachment San Diego, Joint Intelligence Center, Pacific Command, San Diego, California

**USAR – Mobilization (Operation Enduring Freedom)**

Sep 04	Mar 05	OARDEC, Washington D.C.
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**USAR – Not on Active Duty (Troop Program Unit / Drilling IMA)**

Jun 05	Present	Operations Officer, redesignated Sep 2006 as 3300 Det 1, Strategic Intelligence Group
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STEPHEN EDWARD ABRAHAM, Lieutenant Colonel,  
Military Intelligence (USAR)

**PROMOTIONS**

<u>Rank</u>	<u>Component</u>	<u>Date</u>
2LT	USAR	18 Dec 81
1LT	USAR	27 Jul 93
CPT	USAR	1 Sep 85
MAJ	USAR	17 Dec 93
LTC	USAR	2 Sep 00

**US DECORATIONS AND BADGES:**

**Individual Decorations and Citations**

Defense Meritorious Service Medal  
Joint Services Commendation Medal  
Army Commendation Medal (with 2 Oak Leaf Clusters)  
Joint Services Achievement Medal  
Army Achievement Medal  
Army Reserve Components Achievement Medal (with 3 Bronze Oak Leaf Clusters)  
Armed Forces Reserve Medal (with Silver Hourglass, "M" and "2" Devices)  
Global War on Terrorism Service Medal  
National Defense Service Medal (with 1 Bronze Service Star)  
Overseas Ribbon  
Army Service Ribbon

**Unit Citations**

Joint Meritorious Unit Award

**Badges**

Basic Parachutist Badge  
Air Assault Badge  
German Military Proficiency Badge

**SOURCE OF COMMISSION:** ROTC (December 1981)

**ADDENDUM A TO RESUME OF SERVICE CAREER**

**STEPHEN EDWARD ABRAHAM, Lieutenant Colonel  
Military Intelligence (USAR)**

**CURRENT OCCUPATION:** Attorney, Fink & Abraham LLP, Newport Beach, California

**NATURE, SCOPE AND EXTENT OF RESPONSIBILITIES:**

Founding partner and Attorney in firm specializing in real estate and general business law. Has direct responsibility for litigating cases involving real estate, general business, and environmental law in trial courts as well as the courts of appeal up to and including the United States Supreme Court. Position requires frequent contact with clients and opposing counsel in matters involving, collectively, in excess of \$1 billion annually.



# THE UNITED STATES OF AMERICA

TO ALL WHO SHALL SEE THESE PRESENTS, GREETING:

THIS IS TO CERTIFY THAT  
THE SECRETARY OF DEFENSE  
HAS AUTHORIZED THE AWARD OF THE

## DEFENSE MERITORIOUS SERVICE MEDAL

TO

LIEUTENANT COLONEL STEPHEN E. ABRAHAM  
UNITED STATES ARMY RESERVE

FOR

EXCEPTIONALLY MERITORIOUS SERVICE  
FOR THE ARMED FORCES OF THE UNITED STATES  
13 NOVEMBER 2001 TO 12 NOVEMBER 2002

GIVEN UNDER MY HAND THIS 23RD DAY OF OCTOBER, 20 02

**DIRECTOR FOR INTELLIGENCE**  
COMMAND OR OFFICE

**Permanent Order 189-02**



SECRETARY OF DEFENSE

**R. M. LEVITRE**  
Rear Admiral, U.S. Navy

CITATION TO ACCOMPANY THE AWARD OF  
THE DEFENSE MERITORIOUS SERVICE MEDAL

TO

STEPHEN E. ABRAHAM

Lieutenant Colonel Stephen E. Abraham, United States Army Reserve, distinguished himself by exceptionally meritorious service while serving as Lead Counterterrorism Analyst, Directorate of Operations, Joint Intelligence Center Pacific, Pearl Harbor, Hawaii, from 13 November 2001 to 12 November 2002. As Lead Counterterrorism Analyst, Colonel Abraham developed an Actionable Intelligence program focused on identifying significant terrorism activities in the Pacific theater and potential counterterrorism strategies and operations to defeat those activities. This program resulted in a weekly briefing to the Commander in Chief and Director for Operations, United States Pacific Command, which was pivotal in defining the intelligence support required to prosecute the war on terrorism. He also developed and implemented the Joint Intelligence Center Pacific Counterterrorism and Actionable Intelligence database, which was instrumental in shaping the Department of Defense terrorism database being implemented by the Defense Intelligence Agency. Colonel Abraham was personally selected to develop and lead the Joint Intelligence Center Pacific Special Studies Team for counterterrorism. His exceptional efforts and commitment to mission accomplishment significantly enhanced current intelligence operations and support to the United States Pacific Command. Through his distinctive accomplishments, Colonel Abraham reflected great credit upon himself, the United States Army Reserve, and the Department of Defense.

