Guantánamo military tribunals exposed by military officer

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In an affidavit submitted to the US Supreme Court last Friday, Army reserve officer Stephen Abraham sharply criticized the military tribunals held in Guantánamo. Abraham is a 26-year veteran of military intelligence and the first member of a Guantánamo tribunal panel to be identified and speak critically of the tribunal process.

Abraham served on active duty from September 2004 to March 2005 with the Office for the Administrative Review of the Detention of Enemy Combatants (OARDEC), a Department of Defense agency in charge of the tribunal process. He worked there as agency liaison and served as a panel member of a Combat Status Review Tribunal (CSRT).

The CSRTs were established in July 2004 by an order of Donald Rumsfeld, then secretary of defense, to determine detainees' "enemy combatant" status. This followed a Supreme Court ruling in June 2004 in *Hamdi v Rumsfeld*, which provided a limited rebuff to the Bush administration's indefinite detention of detainees.

Stephen Abraham's affidavit provides a first-hand account of the CSRT process, and confirms earlier reports that the tribunals held in Guantánamo have nothing to do with providing a democratic review of detainees' status and are in every sense a travesty of justice. Abraham describes a process in which personnel are poorly trained, information is withheld, and weak cases are made that detainees are "enemy combatants" based on generic and misused evidence. Panel members are pressured to make an "enemy combatant" determination for detainees.

Abraham explains that all CSRT panel members were assigned to the OARDEC and that a vast majority of OARDEC personnel are "reserve officers from different branches of service" and few have "had any experience or training in the legal or intelligence fields." Based on his observations, the assignments to CSRT panels were "largely the product of ad hoc decisions by a relatively small group of individuals."

Abraham describes the tribunal Recorders as "relatively junior officers with little training or experience in matters relating to the collection, processing, analyzing, and/or dissemination of intelligence material." While Recorders are responsible for presenting factual evidence in the tribunals, Abraham says that they "exercised little control over the process of accumulating information to be presented to the CSRT board members." Instead, this job is given to "individuals identified as case writers who, in most instances, had the same limited degree of knowledge and experience relating to the intelligence community and intelligence products."

According to Abraham, "The information used to prepare the file to be used by the Recorders frequently consisted of finished intelligence products of a generalized nature—often 'generic,' rarely specifically relating to the individual subjects of the CSRTs or the circumstances related to those individuals' status." Abraham also notes the information made available to case writers, Recorders and liaison officers "was often left entirely to the discretion of the organizations providing information," most often with the exclusion of information deemed "highly sensitive" or "highly classified."

As a liaison for the OARDEC, Abraham was responsible for gathering and validating information from various intelligence organizations related to a detainee. He was asked to make a statement to be used by the CSRT panel that the organizations possessed no "exculpatory information" on a detainee, information that would excuse the detainee from guilt in a tribunal.

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Abraham explains that different intelligence organizations deliberately withheld information, that he was "allowed only limited access to information, typically prescreened and filtered." He was told on a number of occasions that the information provided to him was all that would be shown. Abraham's requests for a written statement that no exculpatory evidence existed were summarily denied.

One time, Abraham was asked to serve on a CSRT panel along with an Air Force colonel and an Air Force major. All of them found the information presented lacked 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 statements in indirect and passive forms without stating the source of the information or providing a basis for establishing the reliability or credibility of the source."

Upon determining that the detainee should not be classified as an "enemy combatant," Rear Admiral McGarrah, director of the OARDEC, and the deputy director immediately questioned the validity of the panel's findings. They were directed to write out specific questions concerning the evidence to allow the Recorder an opportunity to respond. Another hearing was ordered, and the panel came back with the same determination. Since then, Abraham was not assigned to another CSRT panel.

Abraham's affidavit was submitted on behalf of a Kuwaiti detainee, Fawzi al-Odah, who is challenging his classification as an "enemy combatant." Al-Odah's lawyer, David Cynamon, said Abraham's affidavit "proves what we all suspected, which is that the CSRTs were a complete sham."

Matthew J. MacLean, another attorney for al-Odah, commented on Abraham's affidavit: "It wouldn't be quite right to say this is the most important piece of evidence that has come out of the CSRT process, because this is the only piece of evidence ever to come out of the CSRT process; it's our only view into the CSRT."

The military has held 558 CSRTs for detainees in 2004 and 2005 at the US Naval Base at Guantánamo. All but 38 were determined to be "enemy combatants." On January 31, 2005, the CSRTs were ruled to be unconstitutional by US District Judge Joyce Hens Green. The CSRTs are a flagrant violation of the Fifth Amendment, which guarantees those under control of the US the right to due process. Green also found the CSRTs to violate Article 5 of the Third Geneva Convention, which forbids the mistreatment of prisoners. Abraham's affidavit provides further evidence of the flagrant violation of US and international law by the Bush administration.

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