

Statement of Stephen Abraham
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Opposing the Use of Military Commissions to Try Suspected Terrorists
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“Despotism can only exist in darkness.” James Madison, the author of these words, understood the risk our young nation would face were it to turn its back against the principles upon which it was created.

Those who clamor to revive the military commissions as a means of trying those accused of crimes place at risk our very institutions as surely as those whom they would try. Theirs is the expression of a statement so clear it requires no elucidation, that this Nation’s courts cannot be trusted to try a man for the crime of which he is accused.

I have witnessed firsthand military proceedings purporting to satisfy fundamental rights embodied in our Constitution. Those proceedings were a poor substitute for any system of justice that we would recognize. More than sixty years ago, Justice Jackson warned that “the world yields no respect to courts that are merely organized to convict.”

The military commissions, unlike our federal courts, answer not to the people but to the branch of our government that has proffered the charges. As such, they are not independent and never can be. They do not preserve fundamental human rights but offer weakly fashioned substitutes. However, a substitute for a right is no more than an indulgence, a contrivance that the government may withdraw as easily as it bestows. As Thomas Jefferson wrote, “A Bill of Rights is what the people are entitled to against every government, and what no just government should refuse, or rest on inference.”

Military commissions are an unacceptable substitute for our federal courts that have demonstrated time and again that they can handle such cases as these without diminishing our national security or shared values. Are we so weary – or fearful – of the institutions upon which our Nation’s heritage has been established that we would so easily discard them? If so, let it be by the word of all from whom this Nation’s power originates than by the hands of those few who presume to act in our place.

Mr. Abraham is a member of the Constitution Project’s Liberty and Security Committee.