United States v. Hamdan: A Screenplay

by

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Introduction

My senior thesis is an examination of the trial *United States v. Hamdan*, the first military commission trial of an alleged war criminal to be conducted by the United States since WWII. The question I consider is whether the trial was fair and just. The defendant in that trial, Salim Ahmed Hamdan, was accused of conspiring to commit terrorist acts and providing material support for terrorism. Hamdan is a Yemeni national who was taken prisoner in Afghanistan two months after the 9/11 terrorist attacks and shortly after President Bush proclaimed that the United States had begun “The War on Terror”.¹ My purpose in telling Hamdan’s story is to shed light on the complicated legal and ethical issues that arise when foreign powers invade sovereign territories and capture supposed enemies who are not affiliated with a recognized militia. By choosing to write my thesis as a screenplay, my intention is to provide a critical analysis of the military commissions enacted by the U.S. Congress in 2006 using a medium that is both textual and visual. In doing so, I have been able to combine my academic interests as both a College of Social Studies and Film Studies major.

In the fall of 2001 many nations rallied to support America in condemning the 9/11 attacks, but much of that support has been squandered as a result of the U.S. pursuing a foreign policy in the Middle East that was both bellicose and open-ended. The U.S. and its allies have invaded several countries and deposed of existing leaders, but have failed to install suitable replacements. Terrorists, jihadists, and other rogue fighters have been able to violently exploit the resulting power vacuum. Moreover, in the so-called War on Terror, it can be difficult to correctly determine who is the enemy, as the

tactics used by guerilla fighters frustrate and confuse conventional military operations. Countless civilians have died as a result. In the nation of Iraq, over 66,000 civilians were killed during the Iraq War between the years 2004 and 2009. Additionally, numerous people have been taken into custody, some whose involvement in the War on Terror has been tangential at best.

At such a pivotal point in time, it is of the utmost importance that our nation pursues a foreign policy program that is both steadfast and just. Success in this endeavor can be measured in part by how we treat those who we believe have done us harm. In treating them with respect and providing them a fair process of adjudication, we will set an example that we hope our enemies will follow if our own citizens become their prisoners. I believe that in the case of Salim Hamdan, he was tried in a military tribunal system that did not adequately uphold the national values that guide conventional American jurisprudence. He was subjected to coercion that was at times tortuous, denied rights typically afforded an American citizen, refused privileges guaranteed to prisoners of war under the Geneva Conventions and tried by a specially selected jury of military officials. Nevertheless, I hope to show that, in a system that was not designed to deliver justice, justice was ultimately served.

By telling Hamdan’s story, I hope to provide a pointed critique of the legal system implemented at Guantánamo Bay Detention Camp in accordance with the Military Commissions Act (MCA) passed by the U.S. Congress in 2006. My screenplay also tells the story of the lawyers who worked on Hamdan’s case. I chose this subject because my father, Harry Schneider, is a lawyer who worked on behalf of Salim Hamdan as his civilian legal counsel.

The military commission trial *United States v. Hamdan* has a history that predates its occurrence at Guantánamo Bay in 2008. Salim Hamdan’s legal trial began as a constitutional challenge to the President’s executive power that would end with the Supreme Court’s decision in the case *Hamdan v. Rumsfeld*. The case *Hamdan v. Rumsfeld* is significant because it set concrete restrictions on the limits of executive authority during wartime, but also because it prompted the creation of the Military Commissions Act of 2006, which would be the legal framework for the military commission *United States v. Hamdan*. What follows is a précis of the case prior to the beginning of that military commission in the summer of 2008.

I. *Hamdan v. Rumsfeld*: A Chronicle of the Case

On June 29, 2006, the United States Supreme Court delivered its decision in the case *Hamdan v. Rumsfeld*. The Court’s opinion was issued on the final day of the term, a telling sign of the case’s importance and an indication of the level of contention the decision had engendered among the Justices. The case was brought on behalf of Salim Hamdan against both Secretary of Defense Donald Rumsfeld and President George W. Bush, challenging their legal authority to prosecute Hamdan in the manner they had chosen.

Mr. Hamdan was captured in Taktapol, Afghanistan in late November, 2001 by Afghan forces operating under the supervision of the U.S. military. At the time of his arrest, Hamdan was working as a driver for Osama bin-Laden, the notorious leader of the global terrorist group al-Qaeda. Following extensive interrogations by various military intelligence authorities, Hamdan was transported to the newly constructed detention facility at Guantánamo Bay, Cuba and detained indefinitely as an “unlawful enemy
combatant”: a designation designed to exempt him from the usual rights and protections afforded “lawful” enemy combatants under the Geneva Conventions. The Bush administration’s position was that anyone affiliated with the Taliban or al-Qaeda was not entitled to lawful enemy combatant status because they were not fighting on behalf of a sovereign state recognized by the U.S. government.

More than a year after his arrival at Guantánamo, Hamdan was assigned legal counsel. Lieutenant Commander Charlie Swift of the U.S. Navy Judge Advocate General Corps (JAG) received orders to represent Hamdan in the fall of 2003. Lt. Commander Swift was a 45 year-old career military lawyer whose garrulous disposition and theatrical nature have led more than one writer to use the moniker “maverick” to describe him. In a piece for Vanity Fair, a journalist wrote that Charlie Swift is a person who “frames his own history like a performer, occasionally even describing himself in the third person by announcing his presence with the words, “Here comes Charlie Swift.” Salim Hamdan was fortunate to have his case assigned to Charlie Swift because he is a man whose dramatic tendencies fuel courageous undertakings, and in the course of the next years it would take courage to persevere on behalf of his client.

When Lt. Commander Swift first traveled to Guantánamo to meet Hamdan in January 2004, Hamdan had yet to be charged with a crime despite having been imprisoned for more than two years. Swift immediately pressed the government to inform the prisoner of the charges against him and set a date for his trial. On February 23, 2004, Swift received a response from the Department of Defense appointee in charge of military commission proceedings at Guantánamo, Brigadier General Thomas Hemingway, who told him that there would be no charges filed against Hamdan and no

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Based on the Government's failure to charge his client as required by the Uniform Code of Military Justice (UCMJ), Swift boldly decided that he would file a petition in federal court, challenging the President's authority to try Mr. Hamdan before a military commission without regard to the Geneva Conventions or UCMJ.

In particular, Swift argued that President Bush's Military Order of November 13, 2001, imposed a method of imprisonment and prosecution that in direct conflict with the UCMJ, the federal law that governs military court proceedings in the United States. President Bush’s Executive Order was modeled after a military order issued by President Franklin Roosevelt during World War II that established military tribunals to try suspected Nazis who had infiltrated the United States in an effort to conduct sabotage operations. The terms of the November 13, 2001, Order gave the executive branch of the United States government full power to convene military commissions for the prosecution of enemies captured during the War on Terror, to designate those who would be charged with crimes against the United States, to select the judge, and to appoint the jury. The procedures and rules of evidence in these military commissions markedly departed from the normal rules that would apply in federal court or in a traditional military court martial proceeding. In addition, the Bush administration maintained that those captured during the War on Terror could be held indefinitely, without being charged or prosecuted, and that their conditions of confinement were not subject to the requirements of the Geneva Conventions for the humane treatment of prisoners of war.

For Lt. Cmdr. Swift’s petition, the constitutional right in question was the writ of habeas corpus; a cornerstone of American jurisprudence that requires all prisoners to be

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5 Mahler, p. 38.
brought before a court of law. Swift also argued that the commissions circumvented internationally recognized standards concerning the treatment of prisoners of war specified by the Geneva Conventions, a code of conduct that the United States had signed following the end of World War II in 1949.\(^6\) President Bush’s Military Order had been hastily written by Vice President Dick Cheney and Legal Counsel to the Vice President David Addington, both members of the executive branch, in the months following the September 11 attacks.\(^7\) In November the President signed it into law, an act that Lt. Cmdr. Swift believed was invalid since the UCMJ stipulated that the President lacked the authority to do so without first receiving Congressional approval.

Before filing, the legal team expanded to include three lawyers from the Seattle law firm Perkins Coie, LLP (my father, Harry Schneider, and his colleagues Joe M. McMillan and Charles Sipos), who responded to a request from Lt. Commander Swift to provide *pro bono* representation of Mr. Hamdan. Of all the federal districts, Swift had chosen to file in the Ninth Circuit because he believed it offered the greatest chance for success given its reputation as being the most liberal in the country.\(^8\) In addition to the Seattle lawyers, Lt. Commander Swift also invited Neal Katyal to join the case. At the time, Katyal was a young professor of constitutional law at Georgetown University who had gained notoriety for his cutting insight into a field of law that was notoriously troublesome. Akhil Amar, Katyal’s professor and mentor at Yale Law School, described

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\(^6\) According to the UCMJ: “When any person…is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.” Uniform Code of Military Justice, 10 U.S.C.A. § 810 (2010).


\(^8\) As well, Lt. Cmdr. Swift’s last port of call while on duty happened to be at the military base in Ft. Lewis, WA, so it was logistically convenient for him to file the petition in Washington State.
Katyal as the “Thurgood Marshall of our era”, a reference to the late U.S. Supreme Court Justice who had a profound impact on civil rights litigations in the 1950s and 1960s.$^9$

The petition for writ of habeas corpus in *Hamdan v. Rumsfeld* was filed in early April 2004 in Seattle, just about two and one-half years after Hamdan was first taken into custody. However the case would never be heard in Seattle, since a Supreme Court ruling in another case that was decided within a few months of Hamdan's filing required the judge in Seattle to transfer the case to District Court Washington, D.C. Upon its transfer, the *Hamdan v. Rumsfeld* case was assigned to United States District Judge James Robertson, himself a former JAG officer. In between the hearings in Seattle and the trial in D.C., the government had decided to formally charge Hamdan with two crimes: conspiracy to commit terrorist acts and providing material support to a terrorist organization.$^{10}$ Hamdan’s military commission concerning these charges was scheduled to begin in October, the same month that Judge Robertson was decide in the District Court case.

Judge Robertson issued his ruling in late October of 2004, deciding in favor of Hamdan on all fronts. Judge Robertson found that Hamdan's constitutional challenge to the President's authority was correct, and that the President had exceeded his powers by establishing the military commissions system at Guantánamo without Congressional approval. Judge Robertson also found that the Executive's Military Order of November 13, 2001, deprived Hamdan of rights that were guaranteed by constitutional, statutory (UCMJ), and international (Geneva Conventions) law. Concurrent with his decision,

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Judge Robertson issued an injunction that prohibited the President from proceeding with the prosecution of Hamdan in the manner specified by his Executive order, thereby enjoining any further proceedings before the military commission that had been convened at Guantánamo Bay for Hamdan’s trial. In fact, Judge Robertson issued his decision in Washington, D.C. at the exact moment Hamdan was standing before a panel of officers of the military commission at Guantánamo, a proceeding that was abruptly halted once the presiding officer of the panel was handed a note informing him of Judge Robertson’s timely decision.

Judge Robertson’s injunction remained in place until July, 2005, when a three-judge panel of the United States Court of Appeals for the D.C. Circuit granted the U.S. government’s appeal of Judge Robertson’s ruling on all three grounds (constitutional, statutory, and international law), thereby reversing his decision. The panel ruled that President Bush had not exceeded his constitutional authority in establishing the military commissions at Guantánamo, that the UCMJ did not strictly apply to those military commissions, and that the Geneva Conventions do not provide a judicial remedy for individual claimants that would allow them to bring a lawsuit in our federal courts. The appellate judges also determined that Hamdan’s imprisonment presented a unique exception to the guiding principles of military jurisprudence because he failed to meet the definition of a war criminal codified in both the UCMJ and the Geneva Conventions.

At the crux of their decision was an understanding that the so-called “War on Terror” involved an entirely novel form of warfare that negated military laws written to govern the treatment of prisoners that had participated in conventional battles. Judge A.

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Raymond Randolph wrote the opinion of the court, in which he declared that the Geneva Conventions are inapplicable because, “[Hamdan] does not fit the Article 4 definition of a ‘prisoner of war’ entitled to the protection of the Convention.”\(^\text{12}\) According to Judge Randolph, Hamdan did not “purport to be a member of a group who displayed ‘a fixed distinctive sign recognizable at a distance’ and who conducted their operations in accordance with the laws and customs of war.”\(^\text{13}\) In other words, because Hamdan was not a conventional soldier in uniform, operating under the "command and control" of a sovereign nation's military, he was not permitted to enjoy the rights reserved for lawful combatants in military conflicts undertaken by nations who had agreed to abide the Geneva Conventions.

With regard to the President's constitutional authority to create the military commissions at Guantánamo, the D.C. Circuit Court determined that the U.S. Congress had tacitly approved the commissions by voting in favor of President Bush’s decision to wage war in the Middle East. By doing so, the court reasoned that Congress had summarily approved Bush’s wartime leadership and all the action that such a decision would necessarily entail. According to the court, President Bush had been given carte blanche to create a new legal system to try Hamdan and others captured during the war.

The Circuit Court's reversal of Judge Robertson's ruling reinvigorated the government's prosecution of Hamdan, who remained in prison at Guantánamo Bay. Although he was never water-boarded, Hamdan was subjected to other harsh interrogation techniques including solitary confinement, sexual humiliation, exposure to extreme hot and cold temperatures, threats, and being placed in stress positions for

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extended periods of time.\textsuperscript{14} At Guantánamo, interrogations were conducted in accordance with SERE protocol, which stands for Survival-Evasion-Resistance-Escape.\textsuperscript{15} The SERE program had originally been developed during the Korean War to train U.S. military personnel to resist harsh interrogation and torture methods in the event of being captured. In 2002, Secretary of Defense Donald Rumsfeld approved the so-called “Brunswick Memo” (named after the Navy SERE School in Brunswick, Maine), which advocated a plan to reverse engineer SERE protocol so that U.S. military operatives were trained on how to \textit{conduct} tortuous interrogations instead of learning how to persevere through them.\textsuperscript{16} In accordance with the Brunswick Memo, Hamdan was exposed to a number of harsh interrogation methods, including a program entitled “Operation Sandman”, which was a sleep deprivation scheme that kept him awake for weeks on end by banging on his cell door every fifteen minutes and playing loud music in his cell.\textsuperscript{17} Hamdan’s lawyers only became aware of his harsh treatment following the conclusion of his habeas petition, so it was not a point of contention during the case \textit{Hamdan v. Rumsfeld} as it would later be during the military commission \textit{United States v. Hamdan}. 

In reaction to the three judge D.C. Circuit Court ruling, Hamdan’s lawyers filed an appeal with the Supreme Court that was accepted in late 2005 to be heard the following spring. Four months later, on March 28, 2006, Neal Katyal argued before the Supreme Court on behalf of Hamdan. I was in the gallery that day, having been lucky enough to receive one of the three passes allotted for acquaintances of the defense

\textsuperscript{14} Mizer and Schneider, p. 22.
counsel. Solicitor General Paul Clement gave arguments on behalf of the U.S. government. Only eight members of the Court would decide the case because Chief Justice John Roberts had been a member of the three-judge panel in the D.C. Circuit Court hearing of the case prior to being appointed to the Supreme Court in late 2005. Give his prior involvement, he recused himself from participating at the high court once the case was accepted for review.

Professor Katyal structured his argument around an appeal to the values of the American Constitution and asserted that the President had overstepped his authority by claiming an unwarranted wartime expansion to power. The following is excerpted from his argument:

This case involves a critical question regarding the allocation of power among Congress, the President and the federal courts in the ongoing “war on terror”. The President has claimed the unilateral authority to try suspected terrorists wholly outside the traditional civilian and military judicial systems. Such assertions reach far beyond any war power ever conferred upon the Executive, even during declared wars. …This is the rare case where invalidating the government’s action preserves the status quo, a carefully crafted equilibrium in place for many decades. Our fundamental principles of separation of powers have survived many dire threats to this nation’s security—from capture of the nation’s capital by enemy forces, to Civil War, to the threat of nuclear annihilation during the Cold War—and those principles must not be abandoned now.18

Speaking for the government, Paul Clement expounded on the necessity of the President’s actions, warning that limiting executive authority would jeopardize the safety of the United States. Consistent with the ruling of the D.C. Circuit Court, Clement refuted Katyal’s constitutional argument concerning the separation of powers by asserting that Congress had implicitly consented to the President’s creation of a military commission when it authorized a joint resolution to declare war on Iraq. Clement added that

overruling the Executive Order of November 13, 2001 would endanger national security by hampering military expediency in the war on terror.\textsuperscript{19}

Facing an enemy today characterized by its systematic disregard for the law of war and for the lives of innocent civilians, such as the victims of the September 11 attacks, Congress authorized the President to use his traditional war powers “to prevent any future acts of international terrorism against the United States” by al Qaeda and its supporters.…. Soon after, and in express reliance on that authorization and on provisions of the UCMJ, the President ordered the establishment of military commissions to try violations of the law of war in the ongoing armed conflict with al Qaeda… the fact that the endpoint of the conflict with al Qaeda is not immediately in sight supports holding its combatants accountable for their war crimes in a manner that promotes, rather than compromises, other efforts to prosecute the war and bring the conflict to an end.\textsuperscript{20}

As could be expected, Katyal’s proposal to limit the President’s wartime authority chafed the more conservative Justices of the Court. Justice Scalia questioned Katyal’s argument by asking, “What is the use of [military commissions] if they have to follow all of the procedures required by the UCMJ? I mean, I thought the whole object was to have a different procedure.”\textsuperscript{21} Professor Katyal responded that, while military commissions had been designed to fit the needs of extraordinary wartime circumstances, they were nonetheless required to follow minimum restrictions stipulated by the UCMJ.

On the other end of the spectrum, the liberal-leaning Justices were galled by the President’s impetuous lack of regard for the constitutional structure of power. Justice Breyer hounded Clement on the limits of executive authority: “Is it the President, and not Congress, defining the content of the law, the criminal law, under which a person will be tried? Isn’t there a “separation of powers” problem there?”\textsuperscript{22} Justice Breyer’s consternation was shared by “the normally soft-spoken” Justice Souter, who—during “an

\textsuperscript{19} Office of the Press Secretary. The White House. \textit{Joint Resolution to Authorize the Use of United States Armed Forces Against Iraq}. 2 Oct. 2002.


\textsuperscript{22} Pohlman, p. 284.
outburst of anger”—fumed against Clement’s suggestion that Congress had inadvertently suspended the writ of habeas corpus at Guantánamo Bay:

Isn't there a pretty good argument that suspension of the writ of habeas corpus is just about the most stupendously significant act that the Congress of the United States can take?" he asked, "And therefore we ought to be at least a little slow to accept your argument that it can be done from pure inadvertence?  

Clement appeared flustered as he struggled to find an answer, "I think at least if you're talking about the extension of the writ to enemy combatants held outside the territory of the United States—" But before he could continue Justice Souter raised his hand in dismissal and interrupted Clement’s argument yet again:

... Now wait a minute! The writ is the writ. There are not two writs of habeas corpus, for some cases and for other cases. The rights that may be asserted, the rights that may be vindicated, will vary with the circumstances, but jurisdiction over habeas corpus is jurisdiction over habeas corpus.

... For the purposes of determining the domestic authority to set up a commission, you say, the President is operating under the laws of war recognized by Congress, but for purposes of a claim to status, and, hence, the procedural rights that go with that status, you’re saying the laws of war don’t apply. And I don’t see how you can have it both ways.

In the three months following oral arguments many speculated that the outcome of the case would rest on Hamdan’s ability to win approval from Justice Kennedy. Constitutional law scholar Ilya Shapiro describes Justice Kennedy as “famously frustrating, pleasing some of the people all of the time”. Winning Justice Kennedy’s vote has become so decisive that many in the Supreme Court bar have begun writing their briefs specifically trying to appeal to him alone, calling them “Kennedy Briefs”. What makes Justice Kennedy unpredictable is his tendency to vote on a case-by-case basis

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24 Ibid.
25 Ibid.
26 Ibid.
27 Pohlman, p. 283.
instead of adhering to an overarching method of interpretation such as the ideology of originalism adopted by Justices Scalia and Thomas.\textsuperscript{30} As a result, he is considered to be less predictable in his decisions than any other Justice.

Since his appointment, there has been no demonstrable cohesion in the jurisprudence of Justice Kennedy apart from a broad tendency to vote conservatively in most cases concerning civil liberties.\textsuperscript{31} That being said, Justice Kennedy is nevertheless apt to support the liberal position in cases concerning a smaller subset of civil liberties that includes free speech and criminal procedure.\textsuperscript{32}

For \textit{Hamdan v. Rumsfeld}, court watchers speculated that Justice Kennedy’s conservative inclinations in most cases concerning civil liberties would lead him to vote in favor of the government. However, it was also possible that his tendency to safeguard the due process rights for the accused would cause him to vote with the liberal faction of the court led by Justices Souter, Stevens, Breyer, and Ginsburg.

If Justice Kennedy decided against Hamdan, the likely result would be the 4-4 split decision that Hamdan’s legal team feared, an outcome that would \textit{de facto} uphold the military commissions at Guantánamo because judgment would revert to the decision made in the D.C. Circuit Court. On the other hand, Justice Kennedy’s approval of the petition would give Hamdan a 5-3 margin of victory.

On June 29, 2006 the Court announced its ruling in favor of Hamdan by a 5-3 decision, reversing the D.C. Circuit Court ruling and reinstating the decision of Judge

Robertson. Justice Stevens wrote the opinion for the majority, in which the Court asserted that the President had exceeded his executive powers by issuing the Military Order of November 13, 2001. "The executive is bound to comply with the rule of law that prevails in this jurisdiction," he wrote, noting that the Executive Order was invalid because the President lacked the legal authority to unilaterally create military tribunals.33

Second, the Court held that the military commissions apparatus implemented by the President lacked the elementary protections set forth in the UCMJ, and that the President was not empowered to depart from the UCMJ unless he had a legitimate reason to do so, which the Court found he did not have in this instance. According to Justice Stevens, the threats to our national security following 9/11 may have been a legitimate reason for the President to act, but the circumstances did not permit him to ignore the body of law that Congress had decided many years ago would govern the necessary procedures for establishing military tribunals. "Exigency lent the commission its legitimacy," he wrote, “but did not further justify the wholesale jettisoning of procedural protections.”34 According to the UCMJ, continued Justice Stevens, military tribunals can only be instituted with Congressional approval.35

In his pivotal concurring opinion, Justice Kennedy agreed that the President had impermissibly ignored procedural protocol according to the UCMJ: “Military Commission Order No. 1, which governs the military commission established to try petitioner Salim Hamdan for war crimes, exceeds limits that certain statutes, duly enacted

by Congress, have placed on the President’s authority to convene military courts.”

Justice Kennedy added that “[b]ecause Congress has prescribed these limits, [only] Congress can change them.”

In the minority were Justices Scalia, Thomas and Alito, who argued in separate dissenting opinions that their colleagues in the majority had erroneously concluded that the President lacked the authority to establish a military tribunal. Justice Thomas wrote that “this conclusion [is] fundamentally inconsistent with the cardinal principle of the law of war,” and that the decision had increased the danger facing the United States by hampering “the President’s ability to confront and defeat a new and deadly enemy.” In the view of the dissenters, the President not only has a right to enhanced executive authority during wartime, but an obligation to use it given the evasive nature of the enemy in the war on terror. Justice Scalia was so enraged by the majority’s decision that, in a departure from established tradition, he removed the word “respectfully” before the words “I dissent” in the customary refrain that concludes a dissenting opinion: “For the foregoing reasons, I respectfully dissent.”

When the dust settled, it was clear that Hamdan v. Rumsfeld had been the most contentious case on the Court’s 2006 docket. One political commentator even went so far as to describe it as “the most important decision on presidential power and the role of law ever.” The decision engendered spirited reactions from both sides of the political spectrum, ranging between those who were hearty in their support to those who were

venomous in their disapproval. Harold Koh, a professor of international law at Yale Law School, wrote an article entitled “Setting the World Right” wherein he praised the Court for recognizing that “every new political crisis does not demand a new constitutional paradigm.” Koh believed that the decision protected the sacrosanct influence of the U.S. Constitution in American jurisprudence, an influence that must always remain unhampered—particularly during times of crisis. “A perceived need for executive flexibility in fighting terrorism has triggered exorbitant governmental claims of executive power,” he wrote. “But…the Court issued a landmark ruling…which has finally begun the much-needed process of turning the legal world right-side up again.” Koh also noted that the Bush administration initially sought to evade judicial scrutiny by defining the Executive Military Order so as to negate international legal statutes: “The administration opposes judicial efforts to incorporate international and foreign law into domestic legal review” he wrote, “so as to insulate the U.S. government from charges that it is violating universal human rights norms in favor of double standards.”

Professor Koh’s interpretation of American constitutional law as it applies to Hamdan v. Rumsfeld was corroborated by Martin S. Flaherty, cofounder of the Leitner Center for International Law and Justice at Fordham Law School. Like Koh, Flaherty agreed that the Court’s decision validated the “separation of powers principles” that had been neglected by the executive branch in issuing the Executive Military Order. In an

42 Ibid, p. 2353.
43 Ibid, p 2353
44 Ibid, p. 2355.
editorial he wrote concerning the case, Flaherty characterized the decision as a victory in “the struggle to prevent liberty as well as security from succumbing to terror”.  

Interestingly, those who disapproved of the Court’s decision used the same constitutional logic to develop a robust criticism of the majority opinion. Conservative legal scholars like former Department of Justice official John Yoo argued that, rather than neglecting the Constitution, the executive branch had crafted laws that appropriately applied its principles to modern circumstances. Yoo, (who became famous for writing the so-called “torture memos” of 2001 authorizing the use of extreme coercion tactics by the CIA) proclaimed that “the opinion of the Court not only departed substantially from past judicial precedents supporting the use of military commissions, but it also failed to defer to the executive’s reasonable interpretations of relevant statues, treaties, and customary international law on war.”  

According to Yoo, the court had not only misread the UCMJ, but had also disregarded prior legal history that had established a precedent for the executive’s creation of military tribunals. In an editorial for The New York Times, Yoo asserted that “war shifts power to the branch most responsible for its waging: the executive.”  

According to Yoo, Congress has a responsibility to defer to the executive branch during war: “Congress now must act to guide our counterterror policy,” he wrote, and it “should not try to micromanage the executive branch, particularly in war, where flexibility of action is paramount.”

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48 Ibid.
The Court’s decision also rankled the editorial board of *The Wall Street Journal*—

“In the wake of that bloody attack on U.S. soil, everyone clamored for the executive branch to act with energy and dispatch against our enemies”, its editors wrote. Yet just last week…many of those same voices celebrated a Supreme Court ruling that rebuked the executive in order to guarantee more rights to Osama bin Laden's former driver and bodyguard.” The authors protested the Court’s decision, which they described as “a breathtaking assertion that [the Court] knows better than an elected President how to treat enemies captured on the battlefield.” The authors also believed that the Court had sacrificed exigency in favor of a fabricated constitutional interpretation that misunderstood the intentions of our nation’s forefathers: “there's a reason the Founders gave Presidents the bulk of the constitutional power to wage war,” they wrote. “The executive branch can act with speed and decisiveness that a committee of 535 simply cannot.”

In response to the Supreme Court’s decision in *Hamdan v. Rumsfeld*, the Bush Administration immediately began writing a new act for Congressional approval that would authorize military commissions similar to those established by the discredited Executive Military Order, but with necessary modifications to comply with the Supreme Court’s ruling. The result was the Military Commissions Act of 2006 (MCA), which was approved by both houses of Congress in October of that year. Like the Executive Order of November 13, 2001, the MCA expressly authorized the use of military commissions at Guantánamo Bay, but unlike the Executive Order it complied with the laws of the UCMJ.

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50 Ibid.
51 Ibid.
52 Ibid.
53 Ibid.
to the minimum extent that the Supreme Court had deemed necessary.\textsuperscript{54} Although the MCA guaranteed more rights for Guantánamo detainees than had the previous Executive Order, the MCA “maintained procedural and substantive compromises of the rights that the accused would enjoy in any other type of prosecution, whether it be in federal court, state court, or a court-martial proceeding.”\textsuperscript{55} Such rights included “restrictions on their ability to examine the evidence against them, to challenge their incarceration and to exclude evidence gained through witness coercion.”\textsuperscript{56} The MCA also quashed the applicability of international laws of war at Guantánamo by stipulating that the President “has the authority for the United States to interpret the meaning and application of the Geneva Conventions”.\textsuperscript{57}

Once the MCA had been passed by Congress, Hamdan’s quest for justice began a new chapter. Whereas \textit{Hamdan v. Rumsfeld} concerned the limits of presidential power and the legality of military commissions designed to prosecute prisoner taken captive in the War on Terror, the question of Hamdan's individual guilt had yet to be resolved. While the federal courts wrestled with the weighty issue of executive power, nothing changed for Hamdan. He remained in his cell at Guantánamo, no longer charged with a crime and without an opportunity to appeal his detainment.

In January of 2007, Hamdan’s defense team began to hear rumors that Hamdan would be one of the first Guantánamo detainees indicted under the MCA. That indictment came in April, when the government charged Hamdan again with two counts of criminal

\textsuperscript{55} Mizer and Schneider, p. 50.
\textsuperscript{56} Babington and Weisman.
activity, but this time in accordance with the MCA. Like before, the first count was conspiracy to commit acts of terrorism and the second was for providing material support to a terrorist organization.\textsuperscript{58} According to the MCA, Hamdan could be found guilty of providing material support for terrorists so long as he had done something to help bin Laden in any way. The statute criminalizes anyone who “provided some type of support to another person who has engaged in terrorism, even if the accused was not involved in the terrorist acts.”\textsuperscript{59} It seemed inevitable that Hamdan’s experience as bin-Laden’s personal driver would guarantee a guilty verdict on the count for providing material support. That being the case, his legal team focused their efforts on defending the charge of conspiracy.

Once the charges against Hamdan had been formally declared, his legal team flew to Guantánamo to meet with him. Hamdan had yet to meet any of his lawyers besides Charlie Swift and Neal Katyal, and he was wary of their involvement. Upon their arrival, Hamdan was told "someone wants to talk to you," which he interpreted to mean another interrogation was about to take place.\textsuperscript{60} He declined to meet with his unnamed visitors, never having been told that the visitors were his own lawyers. When the lawyers returned a month later, Hamdan was upset that they had arrived four weeks later than they had promised.

Upon finally meeting Hamdan, his lawyers were frustrated in their attempt to explain to Hamdan how he could have won his case in the Supreme Court against the President and the Secretary of Defense, yet still be back where he started, about to be

\textsuperscript{58} It remains unclear why the government chose Salim Hamdan as the first detainee to be charged under the newly instituted MCA. It was possibly because the government believed his prior admission to intimate involvement with high-ranking al-Qaeda would lead to an easy conviction.
\textsuperscript{59} Mizer and Schneider, p. 52
\textsuperscript{60} Schneider, Harry H. Interview by author, 28 December 2011, Woodway, WA. Tape recording.
tried as a co-conspirator guilty of committing terrorist acts against the United States. The one person who seemed to build some sort of a relationship with Hamdan was Chuck Schmitz, the team’s translator. Chuck had studied in Yemen for several years following his graduation from college, and his extensive knowledge of Yemeni customs and the Arab language was an enormous asset for building a solid relationship between the lawyers and their client. After their initial meeting the lawyers returned home without any confidence that their client would ever understand or, for that matter, would ever trust that they were looking out for his best interests.

Following the Supreme Court’s ruling in *Hamdan v. Rumsfeld*, the defense team welcomed new members to replace those who had left to pursue other opportunities. Neal Katyal returned to his career as a constitutional law professor at Georgetown. Charles Sipos also left the team prior to the beginning of the 2008 military tribunal to pursue a clerkship in the Ninth Circuit Court of Appeals. Charlie Swift left the Navy and moved to Atlanta, Georgia, where he began work as a professor at Emory University Law School. As is mandatory in the Navy, Charlie had been required to resign from military service after he was passed over for promotion for a second time. Nonetheless, he rejoined the legal team in his new status as a civilian lawyer for the 2008 military tribunal. In Charlie’s absence, Hamdan was assigned a new military lawyer shortly after he was charged. Lieutenant Commander Brian Mizer, a young JAG officer in the Navy who, despite his youth, had argued more appeals before the Court of Appeals for the Armed Forces than any other active service member. Over the course of the trial, Lt.

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61 In 2009, Neal Katyal was appointed Solicitor General by President Barack Obama and served in that position between the years 2009 and 2011.
62 Mizer and Schneider, p. 55.
Commander Mizer would prove to be a capable and confident lawyer who handled his responsibilities with a maturity that seemed far beyond his years.

It is the story of the second trial—the military commission of Salim Hamdan entitled *United States v. Hamdan*—that is told in the screenplay that follows. My hope is that this short history of the prior Supreme Court case will provide the reader with a necessary understanding of the relevant legal history pre-dating the trial and an awareness of how the case has come to be regarded as one of the most important trials concerning executive power in the history of the United States.

II. *Hamdan v. Rumsfeld*: Legal Analysis and Implications

The decision in the Supreme Court case *Hamdan v. Rumsfeld* concerned two important principles of constitutional law: the separation of powers principle and the writ of habeas corpus. On one side of the decision were the conservatives: those who believed that the President had a right to expanded power during war and that Salim Hamdan, an unlawful combatant, was not entitled to rights normally afforded prisoners of war. On the other side of the decision were the liberals, those who believed that the President’s Executive Military Order of November 13, 2001 violated the limits of his power and instituted a system that unfairly deprived rights from the prisoners who were subject to its authority. Both sides had well-supported arguments to support their positions and both had a reasonable belief that the Court would side in their favor. The purpose of this section is to further analyze the basis for those positions in an attempt to deduce why one was more successful than the other. As well, the implications of the decision will be
considered in terms of how it can be expected to influence future interpretations of constitutional law.

In arguing their opposing positions, both Neal Katyal and Solicitor General Paul Clement each claimed precedent in the case *Ex Parte Quirin*: a 1942 Supreme Court case that upheld the President’s authority to unilaterally establish a military tribunal during war. The case concerned a group of Nazi saboteurs that were apprehended while trying to pass as U.S. military personnel shortly after landing on a beach in Southern Florida. The case was relevant to *Hamdan v. Rumsfeld* because it established a precedent for the creation of military tribunals by the executive branch. In *Quirin*, the issue in question was whether President Franklin Roosevelt had acted within the limits of his authority when he issued an Executive Order authorizing the creation of a military tribunal that would prosecute and eventually convict the German spies. The spies had appealed their detention by arguing that they were entitled to trial by a federal court and the full rights guaranteed therein; however the Supreme Court Justices delivered their decision in favor of the government, stating that:

> The law of war draws a distinction between …those who are lawful and unlawful combatants. Lawful combatants are subject to capture and detention as prisoners of war by opposing military forces. Unlawful combatants are likewise subject to capture and detention, but in addition they are subject to trial and punishment by military tribunals for acts which render their belligerency unlawful.\(^63\)

In other words, the Supreme Court had decided that the President could lawfully establish a military tribunal system during wartime for trying “unlawful enemy combatants”. In order to make their decision, the Justices had cited the military tribunals established during the Mexican-American War as precedent for their judgment.\(^64\)

According to Solicitor General Paul Clement, the *Quirin* decision had in turn established

\(^{63}\) *Ex parte Quirin*, No. 317 Supreme Court of the U.S. 31 Jul. 1942.

\(^{64}\) *Ex parte Quirin*, No. 317 Supreme Court of the U.S. 31 Jul. 1942.
a precedent for the Executive Order of November 13, 2001 by legalizing the President’s authority to establish a military tribunal during war. In fact, as Clement pointed out, President Bush had created the 2001 Order by re-writing the Order written by President Roosevelt in 1942.

Professor Katyal had a different interpretation of the *Quirin* decision, noting that the decision to sanction wartime military tribunals created by the executive had come with specific stipulations that were unfulfilled when Bush created his Executive Order in 2001. The stipulations of note concerned the formal process by which the President had declared war. When President Roosevelt had declared war in 1941, his decision was sanction by The Articles of War; however when President Bush declared war in 2002, the authority of his decision was codependent on The War Powers Resolution of 1973 and the Uniform Code of Military Justice (UCMJ)—both of which had been written in the years following the Supreme Court decision in *Ex Parte Quirin*.

A conventional interpretation of constitutional law deems that the most recent legislation takes precedent over a Supreme Court decision concerning the same topic. Accordingly, Katyal believed that the UCMJ had legal prerogative over the precedent established in *Quirin* since it had been written more recently. Unlike the Articles of War, which had been written in 1775, the UCMJ required that the executive branch received Congressional approval before establishing military tribunals for trying prisoners of war. So, in Neal Katyal’s perspective, the UCMJ had nullified the precedent established by the *Quirin* decision and made Congressional approval a requirement for military tribunals established by the President.
Between 1950, the year that the UCMJ was established, and 2006, the year *Hamdan v. Rumsfeld* was heard, there had yet to be a test of the UCMJ clause requiring Congressional approval for wartime military tribunals. Preceding the case, many speculated that *Quirin* would play a deciding role at the arguments, and indeed it did. Like Solicitor General Paul Clement, the conservative Justices, particularly Justices Scalia and Thomas, agreed that *Quirin* established a precedent for the establishment of military tribunals at Guantánamo Bay Naval Base because it sanctioned an expansion of executive authority during war. According to the conservative Justices, the exigencies of war—particularly the type of terrorist warfare characterizing battles in the War on Terror—validated an extraordinary expansion of President Bush’s authority that voided the requirements of the UCMJ. In his dissenting opinion, Justice Thomas repeatedly referenced *Ex Parte Quirin* as precedent for President Bush’s November 13, 2001 Executive Military Order:

> [The majority ruling is contrary to] the presumption we acknowledged in *Quirin*, namely, that the actions of military commissions are “not to be set aside by the courts without the clear conviction that they are” unlawful.\(^{65}\)

The liberal faction of the Court was not convinced. Although they saw the potential for there to be a precedent in the *Quirin* decision, they were mindful of the stipulations contained within the UCMJ. In the end, Justices Stevens, Breyer, Souter, Ginsburg, and Kennedy accepted Katyal’s argument, agreeing that that military tribunals established at Guantánamo Bay must require approval from Congress; however, their judgment stopped short of compelling certain rights for the prisoners that would be subject to those tribunals.

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In the hopes of winning expanded legal rights for his client, Salim Hamdan, Professor Katyal had argued that Articles of the Geneva Conventions should apply at Guantánamo Bay. According to Katyal, Hamdan was entitled to due process rights such as the right to see the evidence against him and right to testify as codified in Article 4 of the Geneva Conventions. Solicitor General Paul Clement disagreed, he argued that there was no precedent for providing such rights to Salim Hamdan because he had been classified as an “unlawful enemy combatant”, meaning a fighter who is not affiliated with a sovereign nation recognized by the United States. As such, Clement argued, he had no guarantee to the rights afforded by the Geneva Conventions, a document that pertains to lawful enemy combatants only. For the liberal Justices, this was a major point of distinction, because although they agreed that Hamdan was guaranteed the writ of habeas corpus in accordance with the UCMJ, there was no precedent for mandating any additional rights for an unlawful enemy combatant. Lacking such a precedent, the decision of the Justices leaned in favor of the government and their judgment in Hamdan v. Rumsfeld made it clear that there was no requirement to apply the Articles of the Geneva Convention at Guantánamo Bay.

In making their decision in Hamdan v. Rumsfeld, the Court had established an interesting precedent for the executive’s right to establish military tribunals. Although their ruling reversed the Circuit Court opinion and required that the President receive Congressional approval for establishing military tribunals, the Supreme Court decision neglected to mandate due process rights for prisoners that would subject to those tribunals. In other words, the Supreme Court had definitively said that the military commissions at Guantánamo Bay required Congressional approval, but so long as
Congress approved them, the President had was free to create them in whatever fashion he so desired. The Supreme Court passed no judgment on human rights requirements, leaving the opportunity open for a trial that was Congressionally approved but nonetheless unfairly prejudiced against the plaintiff.

By neglecting to mandate human rights requirements at Guantánamo, the Supreme Court created a void of judgment that would be a source of contention in the 2008 military tribunal *United States v. Hamdan*. From the outset, the defense sought to bring in the Geneva Conventions as a point of reference for considering Hamdan’s status as an “unlawful enemy combatant” as opposed to being a prisoner of war. Every time they did so, the prosecution pointed to the ruling in *Hamdan v. Rumsfeld*, in which the Supreme Court had stated that the governing statute at Guantánamo Bay is the UCMJ, not the Geneva Conventions. The defense responded by saying that they were referencing the Conventions not as a legal mandate, but as a point of guidance for the members of the jury when considering what protections a prisoner of war can reasonably expect to receive. This back and forth continued throughout the pretrial proceedings until the presiding Judge, Captain Keith Allred, ruled that the Geneva Conventions had no legal precedent at the trial and therefore any mention of them whatsoever should be avoided. As one might imagine, this was easier said than done. The cause being that the defense had a rational reason to fight for basic protections on behalf of their client given the Supreme Court’s support for the applicability of the writ of habeas corpus, a related right of due process. However, the ruling had neglected to provide a legal mandate that the defense could appeal to other than the Geneva Conventions.
With the conclusion of the military tribunal *United States v. Hamdan*, new implications have been set for interpretations of constitutional law concerning prisoners’ rights during military tribunals. Unlike in a conventional federal court, Salim Hamdan was deprived of several basic human rights during his military tribunal; namely the right to see the evidence against him and the right to confidentiality, amongst others. As occurs in the screenplay, the government prosecutors consistently stonewalled the efforts of Hamdan and his lawyers throughout the tribunal by denying him privileges. For example, at one point during the trial, Harry Schneider—one of Hamdan’s civilian lawyers—was told that he could not submit a bestselling book into evidence because the information contained within “constituted a national security threat”.

The fact that Hamdan’s trial occurred with such stringent and unfair restrictions in place has gloomy implications for future military tribunals in the United States. Now, any arguments in favor of increasing human rights for prisoners being tried by military tribunal will have to fight against the format established at the trial of Salim Hamdan. On the contrary, those in favor of further limiting prisoners’ rights will be able to use the verdict in the Hamdan case (which many considered to be unjustly lenient) as cause for increased restrictions. This leads to the disheartening prediction that prisoners’ rights will continue to decline at Guantánamo Bay. Now, retroactively considering the *Hamdan v. Rumsfeld* verdict in light of the military tribunal *United States v. Hamdan*, it can be seen that the ruling established two precedents, one negative and one positive. On the bright side, the ruling stipulates that all future military tribunals require Congressional approval; however the ruling also established a surprisingly low threshold for human rights requirements at said military tribunals. Future trials will be needed to test and solidify
these precedents, but as of right now, I believe they have grim implications for the future of humanitarian rights at Guantánamo Bay.

III. A Note on Authenticity

My screenplay incorporates factual history whenever possible, but a lack of historical documentation led to large portions being fabricated, rearranged, or otherwise fictionalized. The most notable instance is the absence of Lieutenant Commander Charlie Swift. When I began the writing process, I struggled with how I could best tell the story of the military commission at Guantánamo Bay without having to tell the complicated history that preceded it. My solution was to eliminate elements of the story that would require an explanation of the Supreme Court case and 2006 ruling. To make the story simpler, I removed Charlie as a character, and although I am quite fond of him, I think my screenplay is better for it.

Everywhere else in the screenplay I used real names and real dialogue whenever it was available in the public record. I was limited by the fact that large portions of the trial were classified “top secret”, and therefore will not become available to public until the year 2058 (50 years after the conclusion of the case). The lack of information meant that that I was limited to using partial quotations and I often had to supplement with, or write entire passages of, original dialogue. The same is true for private conversations between Hamdan and his lawyers, all of which are entirely original in the screenplay. Nearly every plot development comes from the story itself, even if the accompanying dialogue is fictional. From the outset, beginning with Salim’s capture at Taktapol, I tried to write a cinematic version of the actual events: Salim really was captured after four men had been
shot in front of him, and my mother really did bake a cake that my dad brought to Hamdan at Guantánamo. By using actual events as my basis and then envisioning them with the eye of a filmmaker, I hope to achieve the success of that historian who can make his subject come to life in a way that is both entertaining and genuinely informative.

IV. The Writing Process

Two goals guided me while creating this thesis. The first was to familiarize myself with the art of screenwriting. The second was to research thoroughly the historical events that are the basis of my screenplay. In order to achieve my first goal, I read several books about the craft of screenwriting, watched a selection of films (mainly courtroom dramas such as *Judgment at Nuremberg*, *A Few Good Men*, *The Verdict*, etc.), and read many screenplays. To achieve the second goal, I researched the history of military commissions at Guantánamo Bay by conducting interviews, consulting several different types of legal documents, and reading relevant books and articles.

V. A New Mode of History

In contemporary society, the cinema is a primary source of information about global events. Yet traditionally speaking, historians have disregarded cinema as an original “source” of history. I believe, as modern historians like Marc Ferro have sought to show, “[a film’s] image of reality can be as true as a document’s.”

By definition, history is a subjective interpretation of events. Personal inclinations are evident in the events a historian chooses to consider and the way in which he or she

does so. The subjective influence of a historian may be less evident in the written form than it is in a cinematic presentation due to the fact that creating a film involves many forms of representation in addition to writing—yet it exists nonetheless. Many historians have refrained from considering films as historical documents for the reason that a cinematic mode of history is too far detached from the historical material that it purports to consider. By dramatizing events a filmmaker adjusts many variables of the story being told. According to this opinion, cinema is a work of art and therefore not permitted to be used as either a source of history or a vehicle for understanding it.

French historian Marc Ferro argues that this is not the case; that instead, film can be a valuable tool for visualizing events that have taken place and can help develop an elevated conception of them. Unlike a historical document, Ferro contends, “Film is valuable not only because of what it reveals but also because of the sociohistorical approach that it justifies.”68 Meaning that a historian’s goal should be to understand events within the social context they occurred and since cinema is a multisensory experience, film can provide a nuanced understanding of history that delves beyond the limitations of the written word.

It is this understanding of film as a valid source of historical criticism that guided my thought process when creating this thesis. By adhering to actual events and dramatizing them in authentic fashion, I hope to recreate the drama of an event in a way that provides the viewer with a visceral experience of a historical topic.

VI. Statement of Purpose: Thesis as Screenplay

68 Ferro, p. 29.
Unlike a typical commercial product, my thesis is first and foremost an academic endeavor. As such, I have made creative decisions that maintain the focus of the screenplay on the military commission itself rather than, for example, developing complicated personal relationships for dramatic purposes. This is not to say that the plight of the characters is not dramatically satisfying, only that, at certain points, my tendency was to keep the focus on the military commission itself instead of fabricating dramatic material to make the screenplay seem more cinematic. To make it a more marketable screenplay I would re-write the story to further develop character arcs and use less of the actual trial testimony as dialogue, but for now my intention was to emphasize the drama of the story without sacrificing its academic and historical value.

It is the job of the director, actors, editor and others to bring a screenplay life, and give it the magic of a dramatic presentation. It is the job of the screenwriter to provide the necessary ingredients for that magic to occur, but it should be limited to the extent that intended emotional reactions are not an overbearing direction on the part of the writer. For example, in my film, the story of my father taking the case is partly a story of a corporate lawyer seizing at the opportunity to take on a principled case that may have a measurable impact on our system of justice. But nowhere in the script is there a line where he explicitly says this; instead I sought to bring this to light through tangential dialogue and careful screen directions. Throughout the film, it was my goal to be minimally didactic, and instead let the action of the film encourage a visualization of the script that deepens the reader’s conception of the events it concerns.

This is, after all, a thesis, and I wanted to make sure that the choice to cinematically present the events I am considering would not get in the way of the point I
am making. My point and thesis is that in the case of Salim Hamdan’s military commission, despite the denial of many of the rights he would have received in a federal civilian court (e.g., Miranda warnings, jury of peers, etc.), and despite the harsh methods he was subjected to, ultimately delivered justice.
United States v. Hamdan

By

Malcolm Schneider
On June 26, 2006 the United States Supreme Court decided *Hamdan v. Rumsfeld*, imposing a historic limitation on the President’s authority during times of war. The Court ruled that President George W. Bush lacked the executive power to establish a military commission at Guantánamo Bay, Cuba intended to be used for the trial of suspected terrorists and war criminals.

In response to this Supreme Court decision, Congress enacted the Military Commissions Act of 2006, which sanctioned a constitutionally permissible military commission procedure for the trial of prisoners at Guantánamo Bay.

Salim Ahmed Hamdan, a Yemeni national and the plaintiff in the Supreme Court case, would become the first person to be tried in a military commission at Guantánamo Bay. The crimes he was accused of included planning and facilitating acts of terrorism against the United States.

Pink streaks are lightening the sky above the Hindu Kush foothills that encircle the city of Kandahar. Thin wisps of smoke rise above the buildings. The early morning silence is broken by muted sounds of artillery shells bursting in the distance.
EXT. DUSTY COMPOUND, KANDAHAR

A man ushers his pregnant wife across a courtyard towards a fleet of Toyota Corollas parked along a far wall. In his arms he carries his four year-old daughter who is still fast asleep. Over his shoulder he is carrying two ratty duffel bags. He is wearing threadbare slacks, nondescript black leather shoes and a dark fleece vest over his pale kurta. He also wears a topi on his head and has a scarf tied around his neck. His wife is dressed in a head-to-toe black burka. The man unlocks the door of a muddy 1998 blue Toyota Corolla, lays his daughter in the backseat, and helps his wife find a seat next to her. He then puts the duffel bags in the trunk.

The man is SALIM AHMED HAMDAN: a thirty-three year-old Arab man, about 5’ 7”, with a full black beard. He has an average build and no outstanding features.

EXT. CITY STREET ON OUTSKIRTS OF KANDAHAR

The lone Corolla drives by yet-to-be opened market stalls lining either side of the road.

EXT. DESERTED TWO-LANE ROAD IN THE MOUNTAINS - SUNRISE

The Corolla drives on deserted Highway 4: a main supply route that winds through the rugged and barren terrain between Kandahar and the Pakistani border.

EXT. PAKISTANI BORDER - DAY

Salim embraces his tearful wife and daughter in front of the Corolla.

    HAMDAN:
        (so as to be nearly inaudible)
    Inshallah.

    WIFE:
        (murmured from behind her burka)
    Inshallah.

Salim hands his wife the duffel bags from the trunk, closes it, and returns to the driver’s side door. When closing the trunk Salim moves two big metal missiles to the side so that the lid will shut. The metal tubes make a dull clinking sound when they tap against one another.
The blue Corolla approaches a ramshackle checkpoint at Taktapol village. A hand painted yellow pole is lowered across the road, blocking all traffic. Four bearded Pashtun tribesmen with AK-47’s slung across their backs are questioning the driver of a white 1998 Toyota Corolla waiting to pass through the gate. The tribesmen are all wearing traditional pale kurtas over which each wears a Western-style sports coat or vest. All are wearing topsis except for one, who wears a leather beret.

As Hamdan’s blue Corolla pulls in place behind the white car, a scuffle breaks out between the guards and the driver. The lighter-skinned driver is forcibly removed from the car and held up by two of the guards. With the guard wearing the beret standing nearby, the fourth guard quickly shoots the driver in the head. His body drops to the gravel.

A black minivan speeds up towards the gate and the driver stops alongside the now empty white Corolla. Three Arab men jump out of the minivan yelling loudly and brandishing weapons. The tribesmen open fire, killing the three Arabs.

With a fearful look in his eyes, Salim silently opens the door of his car, creeps to the back left wheel, and begins sprinting away from the checkpoint into the rocky barrens lining the road.

Noticing this, the Pashtun tribesmen shout to one another and begin to chase Salim, aiming their weapons at his white kurt that starkly sticks out in the bleak, dry terrain.

The tribesman wearing the leather beret has moved to stand behind Salim’s car and he is looking its trunk, which he has just opened. He excitedly yells to the other guards in a Pashtun dialect, and they immediately lower their weapons.

Two of the Pashtun guards stand with their guns aimed at Salim, who is sitting on the floor between them with a black bag over his head and his hands zip-tied behind him.

One of the guards yells towards the hut’s only door, which is slightly ajar, letting in a shaft of dusty sunlight.
EXT. STONE HUT AT TAKTAPOL CHECKPOINT - AFTERNOON

Giving orders to the Pashtun guard wearing the leather beret is LIEUTENANT HANK SMITH: a blonde haired U.S. Army officer with a neat crew cut. He wears desert colored fatigues and dark sunglasses. Between them stands the fourth and final guard, who is translating.

HANK SMITH:
(Sternly)
Please leave the prisoner alone until I return.

The translator relates this message to the beret-wearing guard. He replies and the translator begins speaking in broken English.

TRANSLATING GUARD:
He asks when will we have the money.

HANK SMITH:
I will return with your reward once I have met with Gul Sharzai later this afternoon.

INT. STONE HUT AT TAKTAPOL CHECKPOINT

Hank Smith’s conversation outside continues while Salim remains sitting on the floor between two guards.

HANK SMITH:
In the meantime stand guard outside this hut and maintain security at the checkpoint.

The beret-wearing guard yells into the hut from outside. The guards inside the hut lower their weapons and walk out the front door, leaving Salim alone on the dirt floor. The door of the hut is slammed shut, leaving Salim sitting alone in the darkness.

FADE OUT

EXT. AERIAL VIEW OF GUANTÁNAMO BAY - MIDDAY

CAPTION (LOWER LEFT CORNER): "Six Years Later - U.S. Naval Station at Guantánamo Bay, Cuba"

An aerial shot shows the prison barracks of Camp Delta situated on a bluff overlooking Guantánamo Bay.
INT. PRISON CELL AT CAMP 4 DETENTION FACILITY, GUANTÁNAMO

Salim is sitting on a bench in a narrow cell. He beard is trimmed shorter and he appears slimmer, almost gaunt. He is dressed in an orange jumpsuit and a plate of food lies next to him. A man in a camouflage U.S. Coast Guard uniform has just put it there. He walks out of the cell and slams the door closed.

EXT. CAMP 4 - MORNING

Another guard has joined the one who dropped off the food. The two walk out of the detention facility and the hurricane-proof fencing surrounding the camp. They hop into a Humvee and drive away.

EXT. OFFICERS' QUARTERS AT GUANTÁNAMO

The Humvee swerves to avoid iguanas laying in the road that leads to the officers' quarters. A sign in the foreground reads: "IGUANAS ARE A FEDERALLY PROTECTED SPECIES. IT IS UNLAWFUL TO KILL OR OTHERWISE HARM THEM. VIOLATORS WILL BE PROSECUTED."

The Humvee pulls up in the background. The two military guards jump out and enter the officers' quarters.

INT. OFFICE OF COL. BRUCE VARGO, OFFICERS' QUARTERS

The guards deliver a report to COLONEL BRUCE VARGO: A tall heavy-set man with neatly cropped brown hair, a round face, and a thick neck. He is wearing Army fatigues. A stand holding up an American flag sits on the floor behind his desk.

PETTY OFFICER ONE:
Detainee 149 accepted his food and remained sitting in his cell.

COL. BRUCE VARGO:
As always....(shuffles papers)...But it seems that he might start talking soon...Col. David called this morning to report that the government is finally planning to file charges.

PETTY OFFICER TWO:
Sir. Where will the trial be held, sir?
COL. BRUCE VARGO:
Right here. I already put in the order to begin renovations at Camp Iguana this week. I want there to be no reason for postponing this trial.

INT. SCHNEIDER HOUSEHOLD - SEATTLE, WASHINGTON

CAPTION (LOWER RIGHT CORNER): "THANKSGIVING, 2007"

Two boys - MAC (17 years-old) AND SEBASTIAN SCHNEIDER (10 years-old) - are sitting at a wooden dining table watching Thanksgiving day football on TV. Their mother - GAIL RUNNFELDT - yells at them from the kitchen to help her. They ignore her and continue watching the game. Gail is in her 50s, casually dressed in jeans and an old T-Shirt.

The phone rings while Gail is grasping the roast pan holding the turkey. Two Labrador dogs are swarming around her feet. She yells at the boys to answer the phone.

The boys play rock, paper, scissors to see who will have to get up. Sebastian loses and casually gets up to answer the phone. Meanwhile Gail tells Mac to mute the TV; he ignores her.

SEBASTIAN:
(into the phone)
Hello?....(to Gail) It’s for dad.

GAIL:
I think he’s outside.

EXT. SCHNEIDER HOUSEHOLD - OVERCAST, AFTERNOON

Tall evergreens shadow over a sagging carport. A red Volvo SUV is parked on the gravel driveway. Behind the carport is HARRY SCHNEIDER: A middle-aged man with an easygoing nature and dark black hair. Harry is lowering an axe down on a block of wood.

In the background Sebastian opens the front door and yells to his dad from the porch.

SEBASTIAN:
Dad! Phone call.

HARRY:
Can you bring it out here?
Sebastian walks to the edge of the stone porch, throws his dad the phone, and returns to the house. Harry rests his axe on the ground and wipes his brow with the sleeve of his plaid shirt.

HARRY:
(into the phone)
Hello?...Col. David, Happy Thanksgiving...No not too busy...Yes...Yes, we heard that he got charged and the prosecution filed papers yesterday...Yes...Yes, I would like to stay on the case if you guys will let us. As you might imagine, I’ve had a little more fun doing this case instead of another corporate litigation trial...(laughs)...Yeah, well, it’s a point of principle...Yes, I appreciate that...Another lawyer? You have? Who?...He’s JAG Right?...Right...No, no I haven’t heard of him...Yes...Yeah, that should work. I’ll talk to Joe...Yes, you too...take care.

INT. SCHNEIDER HOUSEHOLD KITCHEN

Gail is plating the roasted turkey. Harry walks in and begins helping her.

HARRY:
(struggling with the turkey)
That was Col. David on the phone. He called to say that Salim has been charged and they’ve assigned counsel.

GAIL:
Who is it?

HARRY:
He’s another Navy JAG lawyer. Young guy. His name is Brian Mizer. Colonel David wants Joe and me to fly to D.C. next week to meet him.
EXT. WASHINGTON, D.C. - LATE MORNING

Exterior shots of a busy day on the National Mall. Snow lies on the ground and traffic is heavy on the roads.

INT. COL. STEVEN DAVID’S OFFICE, DEPARTMENT OF DEFENSE, D.C.

COL. STEVEN DAVID, a slender middle-aged man in an Army uniform with close cropped hair, sits behind his desk. A sign on his desk identifies him as "Chief Defense Counsel, Office of Military Commissions". Before him stands Navy LT. COMM. BRIAN MIZER, a thirty-something JAG lawyer who has neat blonde hair, a husky build, and a boyish face. He is wearing his dark blue dress uniform.

Their conversation is interrupted by the entrance of Col. David’s secretary, who drops a stack of files on his desk.

    COL. DAVID:
    (to his secretary)
    Thanks, Deb.

Col. David glances at the files and resumes his conversation.

    COL. DAVID:
    ...Harry and Joe have done a great job with the federal court case and presenting before the Supreme Court. You remember that movie MASH? Where they fly in the "pros from Dover"? Well, these guys are the pros from Dover. They really know this stuff. Who knows why, but it looks like Bush wants Hamdan to be the first case for the Guantánamo commission, and I’ve asked them to continue representing Hamdan as your co-counsel.

    BRIAN:
    Ok. When will I be able to meet them, sir?

    COL. DAVID:
    I called Harry yesterday and they will be arriving next Monday. In the meantime, here’s a stack of paperwork to get you started.

Col. David hands Lt. Comm. Mizer a folder titled "OFFICIAL RECORD, DETAINEE 149, SALIM AHMED HAMDAN".
INT. JOE MCMILLAN’S OFFICE, PERKINS COIE LAW FIRM, SEATTLE

JOE MCMILLAN, a slim middle-aged lawyer with a distinctly academic appearance, sits behind his desk. He has a neat beard that fills out beneath his glasses. Joe is wearing an open collar Oxford shirt tucked into his slacks. Across from him sits Harry, wearing a dark suit, white shirt, red tie.

JOE:
Yeah, I was out on the kayak when Col. David called, but I got his email about going to D.C.

HARRY:
Rox got us tickets to fly on Monday.

JOE:
Good, I’ll make sure to get the Nintendo hearing moved before we leave.

Joe reaches over to an envelope lying on the desk next to his computer and hands it to Harry.

JOE:
Got another letter today, this one’s from Colorado.

Harry opens letter, quickly glances at it.

HARRY:
(reading from letter)
"You guys deserved to be in the towers that day, then maybe you’d think twice about helping someone who murdered thousands of innocent Americans." That’s nice.

JOE:
Well, at least we’re finally using our legal degrees to do something we always wanted to.

HARRY:
I guess that’s right, no one sent me any hate mail when I negotiated that Boeing merger last year.

Joe chuckles and Harry leans back in his chair for a more relaxed sitting position.
JOE:
I looked up Mizer after I got Col. David’s email. He’s got a lot of appellate experience, but this guy is pretty young.

HARRY:
The Colonel mentioned that. Thirty-one, I think he said. But he’s apparently argued before the A.F. Court of Appeals more times than any one else on active duty.

JOE:
At thirty-one? He must not get out much.

Harry stands up and begins heading out the door.

Joe looks up from his desk and realizes he forgot to ask Harry something. He gets up and catches Harry as he is walking down the hallway.

JOE:
Hey, Harry!

HARRY:
Yep?

JOE:
Let’s make sure Chuck is there next week, he’s the only one who will be able to answer all of Mizer’s questions about Salim.

I/E. STARBUCKS, BENAROYA HALL, SEATTLE — LATE AFTERNOON, RAINING OUTSIDE

Harry and Gail are sitting across from one another at a table, drinking coffee.

GAIL:
If I can finish up a drafting job this afternoon then I should be able to pick up Remi and Sebastian tonight.

HARRY:
Great. Joe and I are leaving Monday, so I’ll try to get Henry to take Remi to his soccer game at Nathan Hale. Just so you know, it (MORE)
HARRY: (cont’d)
looks like we’ll probably also go
to Cuba next month to meet Hamdan
and begin preparing our defense.

GAIL:
Yeah, I figured.

HARRY:
Yeah, I think we are going to be
out of town a lot in the next few
months. That’s going to be
alright...right?

GAIL:
Yeah, of course. I know how much
this case matters to you. Finally
you got a chance to do the kind of
law we always wanted to.

HARRY:
Right, just wanna make sure you’re
on board.

GAIL:
Ok. Make sure you don’t drive your
car on Monday so the boys will have
one to get to school.

Gail takes a final sip of her latte and sets down an empty
cup.

GAIL:
Ready to head back up?

INT. CONFERENCE ROOM, JAG OFFICES, WASHINGTON NAVAL YARD

CAPTION (LOWER LEFT CORNER): "EARLY DECEMBER, 2007"

Harry, Joe, and Brian are meeting for the first time. Harry
and Joe wear suits, Brian is wearing his dress whites. A
PowerPoint presentation with a diagram titled "al-Qaeda
Chain of Command" is illuminated against the wall. Legal
filing boxes are piled up near the conference table, which
is littered with legal papers and coffee mugs. Brian is
sitting while taking notes, Joe is sitting in front of the
PowerPoint and Harry is seated next to Joe.

Harry checks his Blackberry and looks up at Joe.
HARRY:
He says he’s running late from class, but he’ll be here as soon as he can.

BRIAN:
Where does he teach?

JOE:
Chuck is a professor of Middle Eastern studies at Towson University in Baltimore. He does interpreting in his free time.

HARRY:
Make no mistake, Chuck is our most valuable asset. It’s hard to say whether Salim likes us, but he seems to trust Chuck. No Chuck, no client.

JOE:
One time Salim told a Toronto-Star reporter, "Chuck is not American, he is Yemeni." He’s knows the culture, not just the language, and Salim notices that.

Harry looks up from his Blackberry.

HARRY:
That’s quite a compliment for a guy from Marin County!

JOE:
Before Chuck gets here, let’s look over the charges.

Joe stands up and gestures towards the PowerPoint projection.

JOE:
Salim has been charged under the M.C.A. with two counts: conspiracy to commit terrorism and material support for terrorism. The first charge, conspiracy, is the much more serious of the two. The government is claiming that Salim was a co-conspirator with Osama bin Laden and therefore responsible for the 1998 embassy bombings in Africa and the USS Cole bombing in Yemen, in addition to the 9/11 attacks.
HARRY:
Our preparation for the trial should probably focus on defending the conspiracy charge. Material support is pretty much indefensible.

JOE:
Right. Given that Salim has admitted to being Osama’s driver, it’s going to be tough to mount any defense for the material support charge. I hate to say it, but I think we should plan to lose on that count, and pretending otherwise is just going to cost us credibility with the jury. These military juries are hand-picked by the service, if Salim’s guilty they are going to know it.

Joe clicks through to the next slide on the PowerPoint, which is a photo of the trunk of the blue Corolla Salim was driving when he was captured in 2001.

JOE:
In 2001, two months after the 9/11 attacks, Salim was picked up in Taktapol, Afghanistan at a joint-task force roadblock. There were two missile launchers in the back of the car he was driving.

Joe flips the PowerPoint to the next slide: a close-up of two missile launchers.

BRIAN:
(looking at the screen)
Surface to air SA-7’s.

JOE:
When they discovered the missiles, the Pashtun mercenaries immediately reported to Lt. Hank Smith, who went to the checkpoint and questioned Salim. Salim admitted to having been a driver for Osama, but explained that the Corolla he was driving was not his. It was just a car he had randomly taken from an al-Qaeda motor pool at the compound in Kandahar. See, he was hoping to leave Afghanistan before the U.S. (MORE)
JOE: (cont’d)
invasion really got underway, and
he had secretly transported his
pregnant wife and daughter to the
Pakistani border that morning so
that they could make their way home
to Yemen. When the Pashtuns grabbed
him at Taktapol he was on his way
back to Kandahar, where he was
planning to return the car and sell
his belongings to fund his own
journey home.

HARRY:
Like I said, it’s pretty much a
given that Salim will get the
material support conviction. To
defend against the conspiracy
count, we need to cop to the
material support charge, and then
emphasize that Salim was a personal
employee of bin Laden, not an
al-Qaeda terrorist.

BRIAN:
Did Col. David mention that the
government finally gave us access
to the prosecution’s classified
evidence?

JOE:
No, what is it?

BRIAN:
The videotape of Lt. Smith’s
interrogation of Hamdan at
Taktapol.

HARRY:
What? You have the videotape? Let’s
see it.

Brian walks to a TV in the corner of the room and turns it
on. A grainy homemade video begins playing. In the center of
the screen is Hamdan, wearing a black bag over his head. His
hands are zip-tied behind his back and he is flanked on
either side by Pashtun mercenaries. He is being questioned
in broken Arabic. This is the video of the earlier scene
that took place when Salim was interrogated at the Taktapol
checkpoint. The interrogator is yelling "Where is Omar?!"
Hamdan’s hood is lifted, he looks very scared.
INT. OLD EBBITT GRILL, WASHINGTON D.C.

Harry, Joe, Brian, and Chuck Schmitz sit in a booth near the bar. CHUCK SCHMITZ is a handsome 40 year-old professor with a clean-shaven face and tanned skin. He has a full head of hair and is wearing a pale purple oxford shirt with the sleeves rolled up and his collar unbuttoned. He wears cowboy boots. All four men are drinking beer from the bottle.

CHUCK:
In the interrogation video, Salim clearly acknowledges that he knew about the missile launchers. What he says is, "the missiles are with me, but not mine." He even repeats it when Lt. Smith asks him to. There’s no error in the translation, I’ve listened a dozen times.

HARRY:
So he grabbed a car without checking the contents and there happened to be some missiles in the trunk. That doesn’t mean he was going to use them. He was just a driver getting a car. One strategy would be to try and get testimony from other Guantánamo inmates that are high-ranking al-Qaeda members. Some of those guys are pretty outspoken about planning 9/11 and they might resent somebody saying that one of their drivers had anything to do with it. Hopefully they’ll undermine Salim’s credibility as a terrorist by discounting his contributions to al-Qaeda.

BRIAN:
Khalid-Sheikh Mohammed and Walid bin Attash should be our top choices. KSM calls himself the 9/11 "mastermind" and bin Attash is a Yemeni al-Qaeda member who knew Salim from home.

JOE:
(matter-of-factly)
We would need to file pretrial motions soon since the trial starts (MORE)
JOE: (cont’d)
in June. Do we know who is presiding yet?

BRIAN:
Captain Keith Allred. He’s a Navy judge from San Diego.

HARRY:
Ok. We also need to see if he’ll also let us submit a questionnaire to potential jurors.

BRIAN:
Why?

A waitress walks up and begins setting plates in front of them; two plates with steaks, two with fish.

JOE:
(somewhat sheepishly)
Harry and I thought it would be good way to weed out jurors that might have a bias.

WAITRESS:
Here we are, who had the tuna?

CHUCK:
(signalling to Joe)
Us.

HARRY:
(explaining)
Seeing as the jury will be an active service military panel, some of these guys were "in country". Iraq or Afghanistan. We need to make sure that anti-Arab, Muslim, or other prejudices aren’t a problem.

BRIAN:
I see. Mind if I take the lead on that? Seeing as I’m a member of the Navy myself.

JOE:
(relieved)
Great. That would be much better than having us do it.

The waitress finishes handing out plates.
WAITRESS:
Enjoy!

HARRY:
Welcome to the team, Brian, we’re glad to have you.
(leading a toast)
Today is a good day for Salim and a good day for us.

EXT. MCCALLA AIR FIELD, GUANTÁNAMO - MIDDAY

CAPTION (LOWER LEFT CORNER): "MAY, 2007"

Harry, Joe, Brian, and Chuck pick up their baggage from an outdoor carousel and head towards security screening. Two petty officers on baggage duty, one holding a guard dog by the leash, idly talk to one another as they watch the plane being unloaded. Coming out of the plane is a rolled up red carpet, some lamps, and a large leather chair.

BAGGAGE MAN 1:
(lifting a chair off of the carousel)
What’s this all about?

BAGGAGE MAN 2:
(rolling the carpet off of the carousel)
That’s the stuff they brought down to spruce up the courtroom at Camp Iguana.

BAGGAGE MAN 1:
(grabbing another chair)
Really?

BAGGAGE MAN 2 lifts another chair off of the carousel and leans against it.

BAGGAGE MAN 2:
Yep, we must be due for some media attention down here.

BAGGAGE MAN 1:
Well yeah, I heard Osama’s driver got the first trial. But what about all these prisoners boycotting? Are they sure he’s gonna show up for his trial?
The Jerk House is an open-air Jamaican restaurant that overlooks Guantánamo Bay. The defense team is sitting at a table enjoying jerk chicken and rice while watching the sunset over the bay. They are all dressed casually in loose fitting slacks and short sleeve shirts or T-shirts. "Cream of the Crop" by Gregory Isaacs is playing from a boom box in the kitchen.

Chuck returns a clean drumstick to his plate and downs the rest of his beer.

CHUCK:
Well (he finishes the beer and sets it on the table), I can't say I don't like it here.

Chuck stretches out his arms, puts the bottle on his plate and starts carrying it up to the order counter. The other three follow suit.

JOE:
I think tonight we should try to finalize the jury questionnaire.

BRIAN:
Sounds good.

JOE:
Emily might be able to help us out with that. (to Brian) Emily is Dr. Karem, Salim's court-appointed psychiatrist.

BRIAN:
Oh. You're thinking Salim's psych assignment might be helpful for the questionnaire?

HARRY:
Well it has nothing to do with Salim, but Emily has a get-to-the-point way about her that will help us write fewer questions and get better answers.

Harry hands his plate to GREGORY: the 25 year-old Jamaican behind the counter. He has dreadlocks that hang to his shoulders and a thick beard knotted around the base of his chin. He is nodding his head to the music while chopping an onion.
HARRY:  
(Handing him his plate)  
Thanks.

GREGORY:  
(said with thick Jamaican accent)  
No problem, brother. See ya next time.

I/E. DEFENSE TEAM TRAILER - NIGHT

Outside the trailer moths flutter around the porch lights and the air buzzes with the hum of crickets. Inside the defense team is sitting around a table littered with documents, an ashtray, and bottled water. A standing fan whirs in the corner. Joe sits at a table typing on a laptop. He is wearing a Seattle Sonics T-shirt. Brian stands behind him looking over his shoulder, wearing a NAVY T-Shirt dampened below the collar. Chuck is sitting in the corner reading a book. Harry sits on the far side of the table next to EMILY KERAM: a 40 year-old psychiatrist with short dark hair and pale skin. She is nearly six feet tall. Her face is slightly weathered, hinting at a life spent hearing other people’s problems. Harry and Emily are chatting. Brian takes a swig from a plastic water bottle and leans over towards the computer to point something out to Joe.

EMILY:  
(chatting with HARRY)
...that chicken is good because it’s authentic. All the concession jobs here are taken by foreigners working on visas since no American civilians can be on base. The Jerk House is all Jamaicans but there are a fair number of Filipinos who staff the canteen and storage facilities.

Brian sees something on the screen and interrupts their conversation to ask Emily a question.

BRIAN:  
(pointing at the computer screen, he begins reading aloud while looking up at Emily)

"Do you know anyone who was in the Pentagon or the World Trade Center on September 11, 2001?" Is that too specific?
EMILY:
No, definitely, not. What you should care about is a visceral reaction to the experience. Asking about the 9/11 attacks is crucial. Can you read me the last one again? Then I got to go get some sleep.

JOE:
Do you have any experiences, feelings, or impressions about Muslims that would make it difficult for you to listen to the evidence with an open mind?

HARRY:
Good.

EMILY:
(nodding)
Yep, that’s good. Anything else fellas?

JOE:
Nope.

HARRY:
(to Emily)
Thanks for your help tonight.

EMILY:
Alright, it’s good to see you guys. Brian, nice to meet you.

Emily gets up and leaves the trailer. JOE closes the lid of his laptop and Brian begins wiping down a chalkboard where they have written "QUESTIONS - 9/11, ARABS, MUSLIMS, WAR EXPERIENCE, MILITARY RANK"

JOE:
I’d like to file the questionnaire before we present our motion to include testimony from KSM and bin Attash.

BRIAN:
I think so too, since we are less likely to get approval for the KSM testimony. Also, I’ve heard rumors that KSM has attracted some negative attention lately by encouraging all detainees to boycott all hearings.
CHUCK:
(folding the page in his book
and looking up)
Sounds good. What time do we go
tomorrow?

HARRY:
We are approved for visiting Salim
at 10 a.m. at Camp Delta.

CHUCK:
Alright, anyone wanna jog before?

HARRY:
(chuckling to himself)
I think you’re gonna find yourself
alone on that one Chuck.

CHUCK:
(joking with HARRY)
The way I saw you tucking into that
chicken I think you oughta try it
sometime.

Harry laughs.

INT. CAMP 4 DETENTION FACILITY VISITING ROOM

Harry, Joe, and Brian are sitting at a steel table across
from Salim. Chuck sits next to Salim, ready to translate.
Next to the table stands an armed guard, and two more are
standing on either side of the small room. Salim is chained
to the floor by a strap around his ankles. Salim is quietly
eating French fries from McDonald’s. He is not talking, and
his head is slightly tilted downwards. He takes one fry in
his hand, bites it, and studies the fry while he chews
slowly. He swallows and bites again. While eating his fries
he looks each lawyer in the face one-by-one. His gaze is
fixed and piercing, as if he was trying to glean an
understanding from the person just by looking in their eyes.
The defense team watches quietly, wary not to annoy him but
also eager to engage him.

SALIM:
This is all of you?

HARRY:
Yep, it’s only us. (nods towards
Brian) Brian just joined the team
last week.
Brian is sitting across the table from Salim wearing his full dress whites. Brian tries to smile at Salim, but it appears forced and sits awkwardly on his face. Salim takes a long drink of water from a paper cup and then wipes his mouth.

BRIAN:
Hello.

Salim begins stroking his beard while staring at Brian.

INT. SECURITY SCREENING AREA AT CAMP 4

The defense team is filing out of the security gate at Camp Delta following the meeting with their client. Joe and Harry walk in front, Brian and Chuck follow.

JOE:
I think he liked you. You should have seen the way he acted the first time he met me and Harry.

BRIAN:
I hope so, he didn’t look too happy though...he just kept eating those French fries.

HARRY:
(chuckling to himself)
Besides Chuck, those French fries are the best thing we got going for us whenever we wanna talk to Salim.

BRIAN:
I don’t know what surprises me more, that Salim likes Big Macs or that there’s a McDonald’s at Gitmo.

CHUCK:
Today he said he said he’d like an ice cream next time.

JOE:
Good luck getting that across the base in this heat. You think he’ll be up for more talking next time?

BRIAN:
Yeah, I was wondering about that. It doesn’t seem like we talked about much today.
Chuck takes off his belt and shoes. He drops his briefcase on the conveyor belt next to his shoes. He turns his head to talk to Joe behind him.

CHUCK:
Yeah, I think he’ll talk more next time.

Chuck walks through a metal director and holds his arms out for screening. After a guard passes a detector wand over his body, he grabs his shoes and starts putting them back on while his briefcase is swabbed by a petty officer.

CHUCK:
In Yemen people always wait three days before they will talk business, you know. The first two days you sit drinking tea and eating dates. That’s just the way they do it.

Chuck lifts his heel up onto the conveyor belt to tie his shoes.

CHUCK:
Salim seems to be a little wary of Brian. Did you see that? It’s hard enough for him to understand when civilian lawyers say they are here to help him, so when a big guy shows up in a uniform, it makes sense that he’s skeptical.

The petty officer hands Chuck his briefcase. Harry stands at the back of the security line, taking off his sports coat and laying it on the conveyor belt.

HARRY:
(speaking to Chuck)
Yeah, makes sense, but we can’t be getting worried about Salim being a little testy. Given the recent boycotts, what we need to make sure is that he’s still on board for participating in the trial.

INT. COURTROOM AT CAMP IGUANA, GUANTÁNAMO

JUDGE KEITH J. ALLRED, a clean-cut 50 year-old man with a narrow face and neat tie tucked under his robes sits at the bench. Behind him are flags from each branch of the U.S. military and an American flag. The jury box is empty since
this is a pretrial proceeding. Deep blue curtains hang along every wall of the courtroom and the floor is covered with vibrant red carpeting. A smattering of press reps sit in the gallery at the rear of the court. Salim is sitting next to his lawyers at a table on the right side. He is shackled and dressed in a white jumpsuit and headdress. He is wearing headphones that provide him with Arabic translations of what is being said. On the left side of the courtroom sits the prosecution—three men, one dressed in military uniform, two dressed in suits. Sitting in the seat closest to the center of the room is LT. CMDR. TIMOTHY STONE: a husky man with a thick build and a thin pencil mustache. His head is completely bald and shines in the fluorescent lighting of the courtroom.

JUDGE ALLRED:
(Sitting up straight in his chair, he leans forward towards the defense team)
I have decided to defer making a decision on your motion to allow high value detainees Khalid Sheikh Mohamed and Walid bin Attash to testify in this court. I will make the decision when we begin proceedings next month. In the meantime, I grant permission for you to submit written questions to that the detainees can respond to if they elect to do so. In the event that I decide to deny your motion for live testimony, I will grant permission to admit their written responses.

LT. CMDR. STONE:
Your Honor.

JUDGE ALLRED:
Does the prosecution wish to speak?

Lt. Cmdr. Stone stands up.

LT. CMDR. STONE:
Yes. If it pleases your Honor, the prosecution requests that the military judge permit a formal argument to be made against the introduction of said testimony in these proceedings.
JUDGE ALLRED:  
(looking down at papers) 
Granted.  
(looking up once again) 
Additional time will be allotted 
when we reconvene prior to trial.  

Judge Allred waits for Lt. Cmdr Stone to sit and then begins 
speaking in a deliberate tone.  

JUDGE ALLRED:  
Concerning my decision to deny a 
majority of the motions filed by 
the defense, I would like to 
provide an explanation that will 
clearly establish the legal 
parameters by which this military 
tribunal will operate.  

Judge Allred takes a deep breath and begins speaking.  

JUDGE ALLRED:  
Mr. Hamdan is not entitled to the 
relief requested by his defense 
counsel because the U.S. 
Constitution and other procedural 
and evidentiary safeguards, such as 
the Geneva Conventions, do not 
apply to the prosecutions at 
Guantánamo Bay. This is in 
accordance with the legal 
guidelines set forth in the 
Military Commissions Act approved 
by Congress on October 17th, 2006.  

Judge Allred waits a beat.  

JUDGE ALLRED:  
As such, the result in this case is 
at odds with what would normally obtain 
under our law. Therefore, the 
prosecution will be permitted to 
present all evidence obtained from 
the accused following his 
capture—including the videotaped 
interrogation conducted at the 
Taktaopol roadblock on November 24, 

Judge Allred takes a sip from a glass of water while he 
waits for his statements to be translated for Salim.
JUDGE ALLRED:
Anything else today, gentlemen? If not, we will conclude with a final pretrial hearing tomorrow and then recess until the trial commences on July 3.

Judge Allred smacks his gavel against the bench and begins to rise from his seat. Everyone else stands, waiting to exit after the judge has left the courtroom.

Salim abruptly begins speaking in Arabic into a microphone sitting on the defense table. His words are translated and broadcast over a loudspeaker.

SALIM:
May I be heard?

JUDGE ALLRED:
(said while lowering himself into his seat)
Excuse me?

SALIM:
Your Honor, this is Hamdan. I am speaking to you. May I—may I speak to you for a few minutes?

JUDGE ALLRED:
Yes—yes, you may.

Judge Allred turns towards the court stenographer, a man who is wearing a military uniform.

JUDGE ALLRED:
Let the record show that the detainee has requested to speak.

Judge Allred looks back towards Salim.

JUDGE ALLRED:
Please continue, Mr. Hamdan.

HAMDAN:
The animal has rights or not? Can you answer me please?

JUDGE ALLRED:
Pardon? I’m afraid I don’t understand.
HAMDAN:
The animal has rights, no?

Judge Allred turns toward the defense team with a puzzled look on his face. The three defense lawyers look searchingly at Salim, and then stare blankly back at Allred.

Chuck takes the microphone. Salim looks at him, determined that Chuck will make his point clear.

CHUCK:
I think Salim is speaking about a particular animal—the iguanas. When he is saying "animals" he is using a colloquial term for lizard.

Judge Allred suddenly realizes what Salim is getting at. He nods at Chuck and turns towards Salim. Meanwhile the defense team silently share a moment, impressed with the nuance of Salim’s impromptu argument.

JUDGE ALLRED:
Okay, I understand. Yes, Mr. Hamdan, the animals on this base are a federally protected species.

SALIM:
What about the rest of us. Why don’t we have rights like the animals?

Judge Allred again turns towards the defense team, who remain nonplussed. The judge pauses, and then resumes his conversation with Salim.

JUDGE ALLRED:
Mr. Hamdan, I understand your frustration, but I want to assure you that you do have rights. The legal statute for animals isn’t quite the same as for detainees, it is a different set of rights that you are given.

SALIM:
I understand, your Honor, that you are one man. But I feel like there is no justice here. (pauses) If I feel like there is no justice, then why should I have a trial? You have already said I’m an illegal combatant, what more is there to say? (long pause) I’m sorry your (MORE)
SALIM: (cont’d)
Honor, but I am intending to
boycott this trial.

Salim’s defense team is taken aback. None of them makes any
sudden motions, but they look towards one another out of the
corner of their eyes.

JUDGE ALLRED:
Mr. Hamdan. (pause) I hope that you
do not decide to boycott this
trial. It is your decision to do
so, but I strongly discourage it.
Your defense team has worked hard
to present a case and you can trust
them to argue on your behalf.

SALIM:
If there is no justice, I feel like
I can trust no one.

JUDGE ALLRED:
Can I ask that you sleep tonight
and make a decision tomorrow? We
have time for one more hearing
tomorrow.

Salim leans back slightly and looks down for a moment. He
raises his head up and pauses before speaking into the
microphone.

SALIM:
I will sleep, but I believe my
decision is made. I’m sorry, your
Honor.

JUDGE ALLRED:
Okay.

Judge Allred turns towards the stenographer.

JUDGE ALLRED:
Let the record show that the
defendant has threatened to boycott
these proceedings, but for the time
being retains counsel. Court is
adjourned. (bangs gavel)

At the defense table, Joe makes a motion to talk to Salim,
but he is brusquely disregarded when Salim brushes him away
with his hand.
EXT. DEFENSE TEAM TRAILER - NIGHT

Crickets are chirping and insects softly buzz. Chuck is lying in a hammock strung over a small deck connecting two trailer houses. He is reading a book. A few feet away Harry is talking into a cell phone.

HARRY:
Yeah, we are waiting until tomorrow to see what he decides....today we lost on almost all our motions.

INT. GAIL RUNNFELDT’S OFFICE, SEATTLE - DAY

Gail is sitting at her desk, surrounded by photos of her children, her computer, and stacks of legal files. Her office on the 46th floor looks out over Elliot Bay. The sky is clear and several sailboats are crisscrossing the water below.

GAIL:
(into the phone)
Well, I can’t say I don’t understand why he might want to boycott the trial....Had Salim ever spoken in court before?...Was he nervous?

EXT. DEFENSE TEAM TRAILER - NIGHT

HARRY:
(into phone)
No, he seemed really confident. Which isn’t a good sign for us. I think Allred was pretty taken aback by his decision to speak.

Harry uses his free hand to adjust one of the shirts hanging from an outdoor clothesline.

HARRY:
It seemed like he genuinely wanted Salim to reconsider and participate in the trial.
INT. GAIL RUNNFELDT’S OFFICE - DAY

GAIL:
Well, I’ll be thinking of you tomorrow. Make sure to email me when you are about to get on the plane.

EXT. DEFENSE TEAM TRAILER - NIGHT

HARRY:
Will do. Bye.

Harry puts the phone in his pocket, pauses to look at the moon hanging low over Guantánamo Bay, and turns back towards the trailers.

INT. COURTROOM AT CAMP IGUANA

Court is in session, and the gallery is full of press reporters.

SALIM:
(speaking slowly and forcefully)
Yesterday I told you that I did not want to come to this court because there is no such thing as justice here. The law is clear. The law in America is clear. The international law is clear. But it does not matter.

Salim reaches for a piece of paper lying on the defense table in front of him and holds it up.

SALIM:
If you ask me what the color of this paper is, I will tell you the color is white. You say, no, it’s black. I say white. You say black. I say, fine, it’s black. Then you say, no it’s white....This is the American government. Do you understand what I have just said, your Honor?

Salim pauses for the translation to be broadcast. Judge Allred nods, but says nothing.
SALIM:
These words are not directed to you, your Honor; I am talking about the American government....It has been four years now that we are in this court....We fought the Supreme Court and the Court made a decision. Then Bush went to the Congress, and they changed the law...Why did they change the law? Just for my case?

JUDGE ALLRED:
(adding weight to his words by deliberately pausing between sentences)
I understand your frustration, Mr. Hamdan...I know that you have been held here for six or seven years now...I know that the government has tried three times to try you for the offenses it believes you have committed. Twice they have done it wrong...I believe you are entitled to a fair trial. I want you to have a fair trial.

SALIM:
I have no fair trial, your Honor.

JUDGE ALLRED:
Mr. Hamdan, I think you should have great faith in American law because your case has already been to the Supreme Court of the United States, and you won. You said that you deserved a trial and they agreed. You won, the president lost. This is that trial...the Supreme Court of the United States said to the President of the United States, you cannot do that to Mr. Hamdan. And you were the winner.

Salim appears unconvinced. Allred pushes ahead.

JUDGE ALLRED:
Your name is printed in our law books. You beat the United States once in our system with these attorneys that are here with you today.
SALIM:
Your Honor, I am sorry, but this is my choice. I trust you, but not this law, not this government. There is no justice here. You say I win, but nothing has changed. I'm still here. I'm still a prisoner. I will just keep winning until I lose. I refuse to participate in this trial and I refuse all the lawyers appearing on my behalf and I don't allow my, all my lawyers, I don't allow them to talk without my presence. I would like to return to my cell now. Thank you and I'm sorry.

Salim listens to the translation being broadcast and rises from his seat once the speaking has ended. Allred nods in resignation, giving his approval for the detainee to be removed from the courtroom.

Harry stands up.

HARRY:
Wait, Salim.

Salim is walking away, but he stops and turns around.

SALIM:
(In English)
I'm done waiting.

HARRY:
No, Salim...

SALIM:
Enough waiting Harry! This is my only choice! I have only one choice.

HARRY:
But, Salim. Hold on...

Judge Allred bangs the gavel before Salim, who is getting angry, can respond.

JUDGE ALLRED:
(banging gavel)
Mr. Schneider! Enough!
I/E. THE JERK HOUSE RESTAURANT - SUNSET

"Exodus" by Bob Marley is playing from the loudspeaker. The defense team sits around the same table as before, but this time they appear quite dejected.

JOE:
I think we have to respect Salim’s decision....If we try to present the case without him in the courtroom next month then we are going to alienate him even further.

BRIAN:
Right, but he hasn’t technically fired us. He needs to file official documentation. We can keep going until he puts it in writing.

JOE:
Right, but we can’t do that.

HARRY:
No, I think Joe’s right...We can’t disregard Salim like that.

BRIAN:
Listen, I might not care since I haven’t known him as long, but we’ve got a job to do. This is military law, not corporate litigation. Someone has to present the case or else it’s a breach of orders.

HARRY:
What do you think, Chuck? What’s Salim thinking?

Up until this point Chuck has been leaning back, scratching his chin in contemplation.

CHUCK:
I think he’s feeling like, "Fuck this." Wouldn’t you?

The defense team sits in a deep silence for a while.

Gregory walks up with four fresh beers.

GREGORY:
(said with thick Jamaican patois)

(MORE)
GREGORY: (cont’d)
What you guys need right now is a
drink. I heard about your man
Hamdan, but I know he’s gonna
change his mind.

Gregory is placing the beers down at the table, but not
getting much of a reaction. Everyone just says thank you
glumly.

GREGORY:
And when he does, I’ll cook a big
goat down here to celebrate.

HARRY:
You’re gonna cook us a goat?

GREGORY:
That’s right. One big Jamaican goat
covered in Jerk spice. You’re going
to love it....Harry.

The defense team laughs in reaction to Gregory’s exaggerated
pronunciation of Harry’s name. Gregory begins walking away,
also laughing.

JOE:
(chuckling appreciatively)
Thanks Gregory, but I think the
only goat we’re gonna get down here
is our own.

INT. DEFENSE TEAM TRAILER

Harry and Brian are packing their bags to return home. Joe
is brushing his teeth in the bathroom with the door open. He
stops brushing, spits in the sink, and steps into the
bedroom holding his toothbrush by his side.

JOE:
The way I see it we have about a
month to get him back on board. No
client, no case. So, let’s see if
we can get a little more time.

HARRY:
How?

JOE:
What if we got Emily to do a psych
eval for us? You know, if we can
prepare a motion to stay the trial
(MORE)
JOE: (cont’d)
in order to have Salim evaluated by Emily.

HARRY:
On what grounds?

JOE:
Whether or not Salim is competent to decide to boycott. It’s not like he’s being rational here. He boycotts, he gets a life sentence. I don’t need a doctor to tell me that’s crazy, but Judge Allred does.

BRIAN:
Is that something we want to do? Show that our client’s major decision categorizes him as "insane"?

JOE:
I don’t see why not. What’s to lose?

HARRY:
Has Allred left the island yet?

BRIAN:
No, his flight is an hour before ours.

HARRY:
Ok, I’m gonna go see if it’s an option.

INT. WAITING ROOM AT MCCALLA AIRFIELD

Judge Allred, wearing Navy fatigues, is sitting in the waiting lounge and idly checking his Blackberry. A petty officer enters.

BAGGAGE MAN 1:
Your flight is ready, your Honor.

Judge Allred pockets his Blackberry, grabs his bag, and heads towards the door. Harry walks in from a door on the other side of the room.
HARRY:
Excuse me your Honor?

JUDGE ALLRED:
Mr. Schneider, yes. What’s up?

HARRY:
Lieutenant Commander Mizer, Mr. McMillan and I were just talking. We’re wondering if you’d consider a motion to stay the trial so that we can have a psychiatric evaluation of our client.

Allred finishes typing on his blackberry and looks up.

JUDGE ALLRED:
Um...Yep that should work. Write a motion and file it with my office this week. I’ll decide within a few days of getting it.

HARRY:
Okay. Thanks, your Honor.

Allred starts walking out the door towards the tarmac.

JUDGE ALLRED:
(quickly nodding at Harry and then returning to his Blackberry)
No problem.

Harry turns and walks back towards the door he came through.

EXT. FRONT STEPS OF MCCALLA AIRFIELD TERMINAL - MORNING

Joe, Brian, and Chuck are exiting a Humvee driven by a petty officer. Harry stands on the sidewalk.

Joe, with a messenger bag slung over his shoulder and his coat draped over his arm, hands Harry a bag with his free hand.

JOE:
What’d he say?

HARRY:
(taking the bag)
Thanks. He said yes, but we need to file it within a few days to have a chance of postponing the trial date.
The team begins walking up the steps to enter the terminal.

JOE:
Then we’ll need to get in touch with Emily ASAP. I’ll email her once we clear Cuban airspace.

BRIAN:
Even if Allred grants our motion, the trial is only going to be stayed for a few days. In the meantime we’re gonna need to finalize our trial presentation and get a couple of mock hearings under our belt.

Joe holds the door open for Harry, Chuck and Brian.

JOE:
I’ll email Trish and ask her to reserve the mock courtroom at the firm for the next three weeks.

INT. SECURITY GATE AT MCCALLA AIRFIELD TERMINAL

Harry arrives and sets his bag down. He sits in a chair to remove his shoes.

HARRY:
That’s all we have? Three weeks?

BRIAN:
Four if he stays the trial.

CHUCK:
He better, that jerk goat sounded pretty damn good.

EXT. TARMAC AT MCCALLA AIRFIELD - MIDDAY

A military plane takes off. Fade in "Exodus" by Bob Marley, which continues playing over following scenes.

INT. HARRY SCHNEIDER’S OFFICE, DOWNTOWN SEATTLE

CLOSE ON: Harry sits at his desk typing a motion. His fingers flick across the keyboard while he gazes at a piece of paper propped on the windowsill alongside his desk.
INT. JOE MCMILLAN’S OFFICE

Joe is standing in front of a large board labeled "al-Qaeda Chain of Command". He is taking photos posted along the side of the board and placing them in a schematic order in the middle. He seems perplexed by a photo that is placed midway up the al-Qaeda Chain of Command.

INT. HARRY SCHNEIDER’S OFFICE

Joe walks in to Harry’s office holding the photo and knocks on the open door. Harry looks up.

INT. HAMDAN’S PRISON CELL – LIGHTS ON, TIME UNKNOWN

Salim sits in the middle of his bed with his legs on the floor, staring straight ahead. He is wearing white pajamas, his bedding is white, and all walls are white. An overhead panel of yellow light provides the only illumination. A squat stainless steel toilet is visible against the wall.

INT. MIZER HOUSEHOLD, ARLINGTON, VIRGINIA

Brian is wearing a T-Shirt and sweatpants. He is reading aloud from a document he holds in his hand while pacing back and forth across his living room. The living room has arched doorways leading from one room to another. Three sofas sit around a coffee table and military medals are placed atop the mantelpiece.

INT. JUDGE ALLRED’S CHAMBERS

Judge Allred sits at a large leather top desk in wood paneled chambers, reading documents. He is smartly dressed in a collared shirt and a neat tie. His robe hangs behind him on a standing coat rack. He is holding a Gatorade in his left hand. He takes a sip from it and sets it down on the desk. With his right hand he grabs a pen, signs the document, and sets it to the right.

EXT. PAKISTANI BORDER – DAY

CLOSE ON: Flashback to Salim embracing his wife and daughter at the Pakistani border
INT. HAMDAN’S PRISON CELL

Hamdan sitting on his bed without an expression on his face.

I/E. HIGHWAY 4 CHECKPOINT, TAKTAPOL, AFGHANISTAN

CLOSE ON: Flashback to Salim sitting in the driver’s seat of the 1998 blue Corolla, watching a man being pulled from the white car in front of him and getting shot in the head.

EXT. SEATAC AIRPORT, SEATAC, WASHINGTON - MORNING

CLOSE ON: Brian, wearing full whites, is waiting on the curb at Sea-Tac Airport. He has a messenger bag over his shoulder and is carrying a briefcase with his right hand. Legal filing boxes are stacked up on the sidewalk next to him.

Harry and Joe pull up in a red Volvo SUV. Joe jumps out to shake Brian’s hand and begins loading filing boxes into the back. Harry hops out of the driver’s seat, walks around the front of the car, and lifts the last filing box.

EXT. CAMP IGUANA - LATE AFTERNOON

Iguanas lie in the road leading to Camp Iguana, basking in the lowering sun.

I/E. SCHNEIDER HOUSEHOLD - SUNSET

Joe, Brian, and Gail are sitting at a table on an outside deck, finishing dinner. In the distance a ferry can be seen crossing Puget Sound, and the snow-capped Olympic Mountains are faintly visible across the water. Harry moves around the table gathering dirty plates. Brian is dressed casually and holds a glass of wine in his hand. He listens to Gail as she asks him a question and he leans forward, eager to provide an answer. Joe listens indifferently to their chatter; his mind is elsewhere.

Harry heads indoors and the music begins to fade out.

FADE OUT
INT. MOCK COURTHOUSE, PERKINS COIE LAW FIRM, SEATTLE

Harry and Joe are wearing dark suits. Brian is dressed in full dress whites. Harry and Joe sit at the defense table—each with a glass of water and a legal pad in front of them.

JOE:
(speaking to Brian)
Now, when they present the video interrogation, our argument has to focus on Salim’s decision to admit to having the missiles in the car.

BRIAN:
Right. And then I’ll talk about his overall willingness to cooperate with his interrogators.

JOE:
Yeah, because that’s going to score us points for defending the conspiracy charge. We gotta cut our losses on the material support charge.

HARRY:
I’ll set that up when I give the opening statement. Then Joe will bring it home with the closing argument.

Harry pauses to take a sip of water.

HARRY:
When we build our defense to the material support charge, we need to recognize that the M.C.A. imposes criminal liability on anyone who has...

Harry lowers his head and begins reading aloud from a document in front of him.

HARRY:
...ever done anything for Osama, even if...

Harry’s train of thought is interrupted by someone knocking on the door.
JOE:
Come in!

A redheaded woman wearing a pale blouse and glasses pokes her head in the door. She is ROX: Harry’s secretary.

ROX:
(leaning through the door)
Harry, I’ve got Colonel David on the phone.

HARRY:
Oh, can you send him through on speaker?

ROX:
(snapping her chewing gum)
Hold on.

HARRY:
(looking at Brian and Joe)
Let’s hope we get good news here.

The phone lying on the defense table rings once and Harry presses his finger down on a button to accept the call.

HARRY:
Hello? Colonel David?

COL. DAVID:
(out of the speaker phone)
Harry?

HARRY:
Hello sir, I’ve got you on speaker here with Joe and Lieutenant Commander Mizer.

CUT TO:

INT. JAG OFFICES, WASHINGTON NAVAL YARD

Col. David is on his cell phone walking down a bare hallway. He is wearing Army fatigues.

COL. DAVID:
Excellent. Hello, fellas. I was hoping I’d catch all of you together.
JOE:
What can we do for you?

COL. DAVID:
Listen, I just got out of a meeting
with Berrigan and some J.T.F. Gitmo
guys from the Pentagon. Colonel
Vargo tells me your client is
planning to boycott. Have you guys
been in touch with him?

Col. David arrives at the door to his office and pushes down
on the handle with his right elbow. Inside, his office is
spartan—a wooden desk, a metal chair, and a standing coat
hanger.

JOE:
We’ve exchanged letters through
Chuck. The replies we’ve gotten all
include instructions to not defend
him.

In his right hand Col. David is holding a file of papers
that he throws on the desk. He walks to the window and gazes
at the military ships docked in the Naval Yard harbor.

COL. DAVID:
(speaking slowly)
You need to go back down there and
talk to him. You need to try one
more time to convince him to
cooperate and allow you to defend.
This case is our first and best
shot for actually having a trial at
Gitmo anytime soon. Nothing else
has progressed nearly this far. If
Hamdan boycotts, then we’re
screwed,...

CUT TO:

INT. MOCK TRIAL ROOM, PERKINS COIE LAW FIRM

COL. DAVID:
(over the speakerphone)
...There will never be a test of
the Military Commissions Act and
America’s international credibility
is going to keep dive bombing...Has
he explicitly terminated counsel?
HARRY:
No, not explicitly. According to his letters, he has fired his military counsel, but he hasn’t said anything about his civilian lawyers.

COL. DAVID:
Interesting. How has that affected your preparations?

JOE:
Brian has taken a backseat for the foreseeable future, but without Brian’s military credentials, our defense is going to look pretty meek. We need someone in uniform on our side of the courtroom.

INT. JAG OFFICES, WASHINGTON NAVAL YARD

COL. DAVID:
(into the phone)
Did Allred approve your motion to stay the trial?

JOE:
Yeah, we got one more week, so our new trial date is July 14th.

COL. DAVID:
Great, well I’d appreciate it if you guys would get down there a couple of days early and try one more time. If this tribunal is gonna get off the ground Hamdan’s gotta play ball.

INT. SCHNEIDER HOUSEHOLD, STUDY

CLOSE ON: Harry is sitting at his computer wearing a dark green fleece. It is dark outside and a small TV glows in the corner.

Gail walks in from the hallway. A black lab follows at her feet--its paws clicking on the wood flooring as it enters the room.

GAIL:
I’m baking a cake. A cake for Salim.
Harry replies without looking up from his keyboard.

    HARRY:
    What?

    GAIL:
    I’m baking a Yemeni cake for you to take to Salim.

Harry now gives his wife his full attention, obviously skeptical of her proposal.

    HARRY:
    What are you talking about? How am I going to get a cake into Guantánamo?

    GAIL:
    It’s called bint al sahn. I found the recipe on the internet.

I/E. MIAMI INTERNATIONAL AIRPORT - SUNNY

CAPTION (LOWER LEFT CORNER): "JULY, 2008"

Chuck, Joe, and Brian are sitting on a nondescript airport bench waiting for their flight to Cuba. The area around them is relatively empty and there is no attendant behind the ticket counter. A military employee opens a service door marked "EMERGENCY EXIT" and walks up to them.

    MILITARY MAN:
    Hello, are you the Hamdan defense team?

    JOE:
    (looking up from his laptop)
    Yes, we are.

Joe begins to close his laptop, Chuck folds the page in his book, and Brian stands at the ready.

    MILITARY MAN:
    Your flight is ready. Are you prepared to board?

    JOE:
    Yes, we should be. One of us stepped away for a minute but...

Harry strides up with a bright yellow plastic bag tucked between his thumb and the top of his leather briefcase.
HARRY:
No, I’m here. Just had to pick up something.

Harry gestures to the yellow plastic bag by lifting the hand holding the briefcase. The bag is folded to indicate that there is a book inside.

MILITARY MAN:
Right this way.

The military employee leads them to the service door, which he holds open to allow them onto the service stairs. He continues speaking while he holds the metal door open.

MILITARY MAN:
Your flight today is going to be a bit different than normal. Right now our cargo planes are busy running supplies up to Camp Blanding, so we had to charter a private aircraft.

JOE:
Oh, no problem.

EXT. TARMAC AT MIAMI INTERNATIONAL AIRPORT

CLOSE ON: A metal door opens. The defense team files out onto the tarmac in the brilliant sunlight. They pause to stare at something off camera.

HARRY:
Looks like we’ll have plenty of legroom today.

CUT TO:

EXT. TARMAC AT MCCALLA AIRFIELD - LATE AFTERNOON

A jet rapidly descends towards the tarmac of McCalla Airfield. As it comes closer into view, the logo of the Miami Heat basketball team becomes visible along the body of the plane.

CLOSE ON: Two petty officers sitting in the front seat of a motorized baggage cart share a glance of astonishment. They are the same baggage handlers who earlier remarked on the fancy furnishings being unloaded from a cargo plane.

The jet drives off-frame screen right as the rumbling of the engines begins to die down.
INT. CAMP 4 DETENTION FACILITY VISITING ROOM

Just like before, Harry, Joe, and Chuck sit at a steel table across from Salim, except this time Brian is not here.

In front of Salim is what appears to be a partially eaten pound cake, sitting on Saran wrap. It is the bint al sahn that Gail made. Salim is slowly chewing with his mouth closed, staring slightly downward.

Harry, Joe, and Chuck eagerly watch Salim eat. Harry waits for Salim to swallow his bite and then breaks the silence.

HARRY:
How--How does it taste?

Chuck translates, while Salim pulls another chunk off of the cake and repeats the cycle: bite...chew....swallow. He finishes swallowing and speaks.

SALIM:
It is different from home.

Salim grabs another chunk, chews, swallows, then stops to speak.

HARRY:
Does it taste ok?

Salim pauses.

SALIM:
I do not wish to offend your wife.

Salim runs his tongue around the inside of his mouth and swallows again. He begins speaking after a long pause during which he appears pensive.

SALIM:
Please tell your wife, it is the best bint al sahn I’ve had in seven years.

Salim has only the slightest hint of a smile on his face while he waits for Chuck to translate his compliment.

INT. DEFENSE TEAM TRAILER

The defense team is unpacking their bags.
CHUCK:
(hanging a Hawaiian shirt)
I wouldn’t be worried, Yemenis always wait to talk business. At least he ate the cake.

JOE:
(plugging in his laptop)
He better talk soon. We are going to be in hot water if he’s not on board within three days.

Chuck pulls a pair of swimming trunks out of his suitcase.

CHUCK:
On that note, who wants to take a dip?

EXT. BEACH AT GUANTÁNAMO BAY – LATE AFTERNOON

The defense team, wrapped in towels, are trotting up from the beach back towards their trailer. Two armed guards stationed at an outpost yell to them.

ARMED GUARD 1:
You guys got pretty far out there.
We were trying to get your attention because we saw a couple of shark tips about thirty yards off the reef.

HARRY:
(looking towards Chuck)
I thought you told us to look for manatees?

The group chuckles to themselves and continue up the path.

INT. CAMP 4 DETENTION FACILITY VISITING ROOM

The defense team--without Brian--sits at the table opposite Salim. Everyone is silent for a long while. Salim is looking directly at his lawyers.

SALIM:
I told you, I do not want to do this...I have no way to know if this trial is real.

Salim waits a beat.
SALIM:
How do I know you don't live just
across the fence?...That you don't
drive home every time you visit and
come back after thirty days?

All four sit in silence while Chuck translates.

SALIM:
(looking at Harry)
Why are you doing this?

Harry appears less confident than he would like to be, he
takes a moment to find his resolve.

HARRY:
The reason why I'm interested in
your case is because I believe it
is important for our nation to do
this right...To provide justice to
those accused of being our enemies
as we have always done.

Salim ponders Harry’s response for a moment. Then he gets up
to leave.

HARRY:
Salim, if you don’t do this trial
you won’t ever have the chance to
leave here. You will never see your
family again.

Salim stops and turns around, his face is worn and tired.

HARRY:
We can do this, Salim.

SALIM
Ok...I will not boycott.

Harry seizes on the momentum, but proceeds with care.

HARRY:
Good, but we’ll need Mizer too. I
have to have Commander Mizer too,
Salim. We need the guy in uniform.
Everyone else in the courtroom is
going to be in uniform, the judge,
the jury, the other
lawyers...everyone. We need our guy
in uniform. I can’t do it without
Mizer.
Salim glances towards Chuck, then looks again to Harry and Joe. Salim nods.

EXT. THE JERK HOUSE RESTAURANT - DUSK

The entire defense team is sitting around their usual table finishing dinner. Emily has joined them for the meal and she is smoking an after dinner cigarette. Emily notices that Chuck is watching her smoke.

EMILY:
(gesturing to the cigarette)
We all have a vice down here.

Chuck shakes his head as if to say he wasn’t being judgmental.

Joe reaches forward to grab another piece from a big plate of meat in the center of the table. He cuts off a bite, chews, and swallows. He runs his tongue around his upper teeth and takes a sip of beer.

JOE:
Best goat I’ve had since my Peace Corps days in Africa.

Joe begins cutting another bite.

JOE:
Tomorrow we get the jury questions back, so we can read them over and get some feedback from Emily.

The group stands up to take their dirty plates to the counter, where Gregory is busy cooking.

GREGORY:
(with thick Jamaican accent)
Hey, I see you guys liked the goat.

Brian replies while scraping the bones on his plate into the trash.

BRIAN:
Yes, it was very good.

GREGORY:
Glad to hear it, my brother. I’m glad your man’s back on the case.
INT. CONFERENCE ROOM, CAMP IGUANA

The defense team is sitting around a large wooden table in a nondescript conference room. Four windows look out across the road to the sea in the distance—an air conditioner whirs in one of them. The lone decoration is an American flag standing in one corner. On the table the defense team has spread out all of their legal documents.

Chuck walks in, holding a coffee from McDonald’s and a tray with four more in his other hand. He begins passing them out while Emily finishes her point.

EMILY:
...I don’t think you can get him on the stand, but I wouldn’t put it him up there even if you could. He’s just way too unpredictable.

JOE:
What about KSM and bin Attash? What would it be like to get them up there?

EMILY:
I haven’t evaluated them so I don’t know, but I think there’s a very slim chance of that ever happening.

BRIAN:
Yeah, we’re thinking that too, we wrote up some questions for them to answer and send back to us. So now we have Al-Qaeda pen pals.

HARRY:
Speaking of questions, should we take a moment to look over the answers we got back from the questionnaires?

Harry hands copies to Joe and Brian, keeping one for himself. Chuck and Emily look on over their shoulders.

Everyone begins reading in silence. As they are reading, their eyes begin to widen in astonishment.

HARRY:
It seems like every single member of this jury has been in combat operations within the past year.
JOE:
Serbia, Iraq, Afghanistan...Are you reading the responses to the 9/11 questions?

INT. COURTROOM AT CAMP IGUANA

Brian is presenting a pretrial motion concerning the voir dire questionnaire. A prospective juror wearing a green Army uniform sits in the witness box. A peaked cap sits on the railing in front of him. The medals covering his left pocket attest to a long and successful military career.

BRIAN:
....Responding to a question of whether the potential juror had known anyone to be the victim of a terrorist act, the candidate wrote, "The commanding officer of the USS Cole was a friend of mine. I was saddened and angry."

CLOSE ON: Army general, bowing his head in acknowledgment of the statement.

ARMY GENERAL:
Yes, I was stationed in Yemen twice, once during the Persian Gulf War and then later just prior to the attack in 2000.

CUT TO:

CLOSE ON: Harry, questioning a different juror candidate.

HARRY:
...We are cognizant of the fact that the jury panel will be composed of senior military officials, but we are concerned about individuals serving as jurors if someone close to them experienced the attacks of 9/11 firsthand. In her response, this potential juror wrote...

CLOSE ON: A sergeant from the U.S. Marines wearing her full dress blues sits in the witness box, passively listening to her response being read.
HARRY:
..."I was in Manhattan that day. My roommate at the academy was in the Pentagon at the time of the attack and I was unable to contact her until late in the afternoon. I was very upset." Your Honor, we believe her proximity to the catastrophe might prejudice the candidate against our client.

CUT TO:

Joe is concluding the final arguments concerning jury selection. An Air Force Colonel sits in the witness box in dress blues. He appears more intimidating than the other candidates given his formidable size and steely demeanor.

JOE:
Another concern is that prejudices against our client’s religion or ethnicity will affect a juror’s objectivity.

CLOSE ON: The Air Force Colonel. Whereas the other candidates appeared indifferent to their examination, this candidate seems testy.

JOE:
...The question was, "Do you have any experiences, feelings, or impressions about Muslims that would make it difficult for you to listen to the evidence with an open mind and render a verdict based solely on the evidence presented in court?"

WIDE SHOT: Joe continues questioning.

JOE:
The Colonel replied: "Yes. Based on Muslim belief that it is permissible to lie, cheat, or steal from so-called 'unbelievers', I would find it hard to trust the testimony of Arabs."

CLOSE ON: Judge Allred turns towards the Colonel.

JUDGE ALLRED:
Did you mean to say "Muslims" instead of Arabs?
CLOSE ON: The Air Force Colonel, responding to Judge Allred's question.

A.F. COLONEL:
(defensively)
I meant both. However, your Honor, I would add that my feelings about Arabs are irrelevant to my role in this tribunal.

WIDE SHOT: Entire courtroom, AF Colonel defiantly listening to Judge Allred's decision.

JUDGE ALLRED:
I understand, Colonel, but I disagree. I am removing you from this panel based on your admitted views.

CLOSE ON: The AF Colonel hardens his face and looks from Judge Allred to the military lawyers at the prosecution table.

INT. COURTROOM AT CAMP IGUANA

CLOSE ON: Harry exiting the courtroom. He is massaging his temple with his index and forefingers as he approaches a guard standing at attention by the doorway.

HARRY:
(to the guard)
Excuse me, where can I get a cup of coffee here?

GUARD:
There's no coffee allowed in the building, sir, Judge's orders.

HARRY:
What?

GUARD:
Judge Allred doesn't allow caffeine to be served in the building.

HARRY:
Why?

GUARD:
Judge Allred is a Mormon, sir. No caffeine.
HARRY:
Oh yeah...that’s right. Well, see, I just have this headache that I think a cup of coffee would fix....Can I make a deal with you?

GUARD:
What?

HARRY:
Is Allred ok with us getting coffee from the canteen back at the barracks?

GUARD:
Yeah, you can bring it in, but you just won’t be able to get any here.

Joe walks up and interrupts the conversation.

JOE:
Harry, do you have a copy of the KSM questionnaire?

HARRY:
(turning to Joe)
Yeah. I think I put it in my briefcase. I’ll grab it in a minute.

JOE:
Great, thanks.

Joe walks away to catch up with Brian and Chuck.

HARRY:
(turning back towards the guard)
Do you drive the Humvee?

GUARD:
Yes sir, I am authorized to drive. But we don’t have time to go all the way to your barracks for a cup of coffee.

HARRY:
Headquarters then?

GUARD:
No sir, I’ll show you.

CUT TO:
CLOSE ON: Harry finishing a coffee from McDonald's and throwing the empty cup into a trashcan.

WIDE ANGLE PAN: Harry walks into the courtroom and takes his seat at the defense table.

BAILIFF:
All rise.

Judge Allred walks in and takes his seat on the bench, bangs gavel.

JUDGE ALLRED:
The session has resumed. We will now proceed to the question of whether to admit testimony from high-value detainees Khalid Sheikh Mohamed and Walid bin Attash. Will the trial counsel please proceed?

Harry stands up from his seat behind the defense table and buttons his jacket while striding towards the front of the courtroom.

HARRY:
There are individuals on this island who know for sure whether Mr. Hamdan had any involvement in the planning or execution of the terrorist attacks. They are the high-value detainees who admit their own involvement. Walid bin Attash has admitted to his role in planning and executing the attacks on the USS Cole and the bombing of American embassies in Kenya and Tanzania. Khalid Sheikh Mohamed has described himself as the "mastermind" of 9/11.

CLOSE ON: The prosecution table, where the lawyers impassively listen to Harry's argument.

HARRY:
...but the government doesn't want them to testify. Why?...Frankly, the government would have this commission believe that the sky will fall if these witnesses testify. Repeatedly, their lawyers have told us that allowing Mr. Mohamed and Mr. bin Attash to testify would present a genuine (MORE)
HARRY: (cont'd)
threat to our national security.
Are we to believe this? Our
questions for the two detainees are
specific, and their responses will
describe nothing more than the role
of Mr. Hamdan within the al-Qaeda
organization. We’re not asking for
secrets, which want to know about
their driver....Your Honor, given
that their testimony might go a
long way towards absolving my
client from a conspiracy charge, we
ask that you admit their testimony,
if not on the stand, at least in
the written form.

Harry returns to his seat behind the table. Rising from his
seat at the prosecution table and walking towards the bench
is CLAY TRIVETT: A thirty-five year-old Defense Department
civilian lawyer. He has medium-length brown hair and the
hint of a receding hairline. He is clean-shaven and wears a
dark charcoal suit with a small pin of the American flag
fastened to his left lapel.

CLAY TRIVETT:
(towards Judge Allred)
Sir, defense counsel is quite
correct in the fact that the sky
may not fall if this testimony is
admitted. But it’s not the sky that
the prosecution is concerned about.

CLOSE ON: Clay Trivett lifts his hands and clasps them in
front of his chest, breathes in, and allows his hands to
fall to his waist.

CLAY TRIVETT:
...The prosecution is charged with
protecting the security of the
United States in these proceedings.
The detainees that the defense is
seeking access to hold in their
heads some of the most serious
intelligence that the United States
has. It is no stretch of truth to
say that allowing them to testify
would be a direct threat to the
welfare of American citizens. It is
my job to protect those citizens.
As high-ranking al-Qaeda
operatives, these detainees have
studied our methods to the point of
(MORE)
CLAY TRIVETT: (cont’d)
becoming experts. If we can’t
protect those methods, it’s not the
sky that will fall, your Honor,
it’s another building.

Clay Trivett finishes and returns to his seat.

WIDE ANGLE: Those in the courtroom mull over Clay Trivett’s words in silence.

I/E. DEFENSE TEAM TRAILER - EVENING

CLOSE ON: TV displaying a channel titled "JTF-GTMO TV". Below the title is a chart with the heading "Ferry Sailing Times". On one side of the chart are sailing times from Leeward Point to McCalla Field. On the other side are McCalla Field to Leeward Point sailing times. Harry sits at a desk muttering to himself as he reads from a paper he is holding.

CAMERA PAN: To the deck outside. Joe is hanging his laundry on the line. Emily is sitting in a deck chair smoking a cigarette.

JOE:
...I think it works both ways. On the one hand, their military experience makes them uniquely qualified to judge Hamdan’s threat as a terrorist. On the other, they’ve spent years avoiding roadside bombs in the Middle East and they might have it in for anyone remotely connected to the enemy.

Emily takes a drag from her cigarette and slowly exhales the smoke.

EMILY:
I’m going with the latter. I think these guys are gonna make an example out of Salim. Turn this story into something they can put on the front page of The New York Times to show America that they got it right. That the bad guy is in jail.

Joe grabs another piece of laundry and begins hanging it up.
JOE:
What'd you make of Trivett’s comment about another tower falling?

EMILY:
I think it was some calculated courtroom drama that may work with some judges, but it’s not gonna fly with Allred.

Joe grabs another piece of laundry.

JOE:
(pinning a shirt to the line)
Even if we can’t get them on the stand, getting written responses from KSM and bin Attash will still help us out a hell of a lot if they say Salim was just another driver.

Emily stubs out her cigarette out in an ashtray and collects her files from the table next to her.

EMILY:
Good luck tomorrow, Joe. I’ll be in the gallery to watch the show.

Emily stops by the door inside before walking down the steps away from the trailer and into the darkness.

EMILY:
(speaking through the doorway)
Good luck tomorrow, Harry.

INT. COURTROOM AT CAMP IGUANA

WIDE SHOT: The first day of trial. Eager press reporters fill the gallery and the murmur of their chatter fills the room. Both the defense and prosecution wait at their tables for the trial to begin.

BAILIFF:
All rise.

Judge Allred enters the courtroom and takes his place at the bench. He takes a moment to look over the courtroom before he begins speaking.

JUDGE ALLRED:
Today the eyes of the world are on Guantánamo Bay, watching detainee

(MORE)
JUDGE ALLRED: (cont’d)
Number 149, Mr. Salim Ahmed Hamdan, face the first military commission convened by the United States since World War Two. This tribunal has been designed in accordance with the Military Commissions Act of 2006 enacted by Congress in 2006. The jury is composed of active service military personnel and their purpose is to deliver a fair verdict based on the evidence presented to them. The prosecution has charged Mr. Hamdan with two counts of crimes against the United States. First, conspiracy to commit terrorism and second, for providing material support to terrorists. Our task is one we must all undertake with the utmost care. The ability to conduct a just and fair tribunal will restore faith to those who have questioned our government’s commitment to America’s national values. Justice must be served here, and must be done fairly and impartially for all to see.

Judge Allred reaches for the gavel.

JUDGE ALLRED:
With that introduction, I now call to order this military commission.

Judge Allred bangs gavel.

JUDGE ALLRED:
Lieutenant Commander Timothy Stone will be giving the opening statement for the prosecution. Mr. Prosecutor, you may begin.

Lt. Cmdr. Stone rises from behind the prosecution table. He is wearing Navy dress whites and his paunch slightly hangs over the buckle of his belt. He walks deliberately towards the jury box and begins speaking in an authoritative tone.

LT. CMDR. STONE:
On November 24, 2001 Salim Hamdan was captured at a roadblock in Taktapol, Afghanistan operated by a combined joint-task force under the supervision of Army Lieutenant Hank (MORE)
LT. CMDR. STONE: (cont’d)
Smith. During an interrogation that took place immediately following his capture, Mr. Hamdan admitted to being a close associate of Osama bin Laden, founder of the Islamist terrorist organization al-Qaeda. Hamdan admitted to quote, "having been with bin Laden on the day of the September 11th attacks." In fact, Mr. Hamdan was driving the car carrying Osama when he received the news that the Twin Towers had been hit.

Lt. Cmdr. Stone swivels to face the jury head on.

LT. CMDR. STONE:
According to Mr. Hamdan, Osama received a phone call and then said, and I quote, "If they hadn’t shot down the fourth plane, it would have hit the dome."

Lt. Cmdr. Stone waits a beat for emphasis, continues.

LT. CMDR. STONE:
On the morning of September 11th, while the world was mourning the loss of over 3,000 American lives, virtually no one knew the intended target of the fourth plane...But he knew.


CLOSE ON: Salim, wearing headphones and listening to Lt. Cmdr. Stone without displaying any emotion.

LT. CMDR. STONE:
Mr. Hamdan knew. He knew because he was protecting and assisting Osama bin Laden.

I/E. COURTROOM LOBBY

CLOSE ON: Harry finishes sipping his coffee, raises the cup to the guard standing by the door, throws it in the trashcan, and enters the courtroom.

WIDE ANGLE: Harry takes his seat next to Joe, who murmurs in his ear. Harry nods back, then looks over his shoulder to make eye contact with Salim, to whom he also nods.
INT. COURTROOM AT CAMP IGUANA

CLOSE ON: The camera follows Harry as he silently walks to the front of the jury box and pauses before speaking.

    HARRY:
    It has been said that no soldier sheds a tear for his enemy...We believe that the evidence in this case will show that this man, Salim Hamdan, is not an enemy. That he is not a war criminal, and that he did not take up arms against the United States.

WIDE ANGLE: Harry moves down the jury box.

    HARRY:
    This man is not the enemy.

Harry gestures towards Salim, then he brings both hands up to his chest and extends his index fingers.

    HARRY:
    The enemy’s here. They’re right down the road at Camp Delta. Why aren’t they being tried?

CLOSE ON: Jury box, military personnel listening.

    HARRY:
    They’re happy to be tried. They are perversely proud of what they have done...This guy drove.

Harry pauses for emphasis.

    HARRY:
    You are going to hear evidence over the next several weeks that the crimes committed by those men were horrific and that the people who were responsible are treacherous and unrepentant. The evidence will show, no doubt, that what they accomplished was devastation and destruction of the kind and nature we hope never to see again. What they did would cause any American to be stunned, to be shocked, to be saddened...to be angry. The evidence will be such that it will cause any American to be upset and

(MORE)
HARRY: (cont'd)
perhaps want to exact some measure of revenge so that those people, those responsible, are brought to justice.

Harry walks towards the defense table.

HARRY:
...but Salim Hamdan is not one of those people. Crimes were committed, but they were committed by others who are not before you. Hamdan was a paid employee; he worked for wages; he did not work to wage terror against the United States. He had a job because he had to earn a living, not because he wanted to participate in jihad against America. Being an uneducated man with slim job prospects in his home country, he seized the opportunity to work as a driver in Afghanistan. Hamdan did not leave Yemen to enter a conspiracy to kill Americans. He left Yemen to get a job.

Harry walks back towards the jury box.

HARRY:
...In the seven years since Mr. Hamdan has been captured, he has spoken to his family exactly once. He has been detained, without being charged, for the greater part of a decade. Most of that time he has spent in solitary confinement. The United States government has decided that he does not deserve the rights guaranteed by the U.S. Constitution. The U.S. Government has also decided that Hamdan is not entitled to the rights codified in the Geneva Conventions negotiated following the conclusion of World War II. But, finally, the Military Commissions Act has provided Mr. Hamdan with some opportunity for justice.

CLOSE ON: Harry pauses for emphasis before delivering his conclusion.
HARRY:
You sit at an important point in time, at a location that will have a prominent place in our nation’s history...This trial is more than just a determination of whether Hamdan is guilty or innocent...While the world watches, this trial will test of how fairly our nation dispenses justice to those accused of being our enemies.

INT. DEFENSE TEAM TRAILER

Empty bedroom. The door to the bathroom is ajar and the noise of crickets chirping outside is paired with sound of someone brushing his teeth. A knock on the door comes from off-screen.

Whoever is brushing stops, spits in the sink, and closes the bathroom mirror. Joe walks out of the bathroom in a T-shirt and sport shorts, wiping toothpaste from his lips with a washcloth. He looks at his watch, which reads 10 p.m.

Joe opens the door. A petty officer in full uniform is waiting outside, standing at attention with a large blue binder under his arm. He lowers his hand and begins speaking.

PETTY OFFICER:
Good evening, sir. I have a delivery for Salim Hamdan’s defense counsel. It is a redacted copy of detention data being submitted as evidence by the prosecution.

The petty officer hands Joe the large blue binder. Joe begins to say thanks, but the petty officer turns around and lifts two huge file boxes from behind him onto the carpet inside the door.

PETTY OFFICER ONE:
Good evening.

The petty officer swivels on his feet and has started walking away before Joe can say a word.

Joe closes the door and begins leafing through the binder with a dazed look on his face.
INT. COURTROOM AT CAMP IGUANA

JOE:
...your Honor, delivering an evidence file at 10 p.m. the night before presentation begins seems like a deliberate attempt to thwart any well-planned defense of my client.

Joe looks exhausted as he walks to the defense table and retrieves the large blue binder he received the night before.

JOE:
Among other information we received last night, we just learned about Mr. Hamdan’s participation in a sleep-deprivation program codenamed "Operation Sandman", in which my client was kept awake for 14 days straight preceding a week-long series of interrogations by FBI Special Agents Daniel Johnson and Kevin Wilmore.

JUDGE ALLRED:
Agents Johnson and Wilmore have already testified in pretrial proceedings that they had no knowledge that Mr. Hamdan had been subjected to any form of coercion prior to their arrival in Guantánamo. Isn’t that correct?

JOE:
Yes, your Honor. In my view, keeping Agents Johnson and Wilmore uninformed was a deliberate decision by the government so that interrogators testifying at this trial would be unable to say anything about his treatment when they took the witness stand.

JUDGE ALLRED:
Your suspicions are merely conjecture, Mr. McMillan. If you have no further argument, would you please take your seat so that the prosecution can begin its presentation of evidence?
Joe opens his mouth to speak, pauses, and decides to bite his tongue. He takes his seat behind the defense table. Lt. Cmdr. Stone rises, and as he is walking towards the bench, the bailiff steps behind a curtain on the left side of the courtroom and returns rolling a television towards the jury box.

LT. CMDR. STONE:
Up until now the defense has focused on the fact that Hamdan is not a terrorist because he didn’t hold a high-ranking position in al-Qaeda. This is misleading and incorrect. According to the Military Commissions Act of 2006, a terrorist is--and I quote from page 123, stat. 2611-- "Any person...who intentionally provides material support or resources to an international terrorist organization engaged or engages in terrorism" end quote. Given this description it will be shown that Salim Hamdan is, without a doubt, a terrorist.

JOE:
(from his seat)
Objection, your Honor!

Judge Allred looks at him, waiting for him to speak.

JOE:
The prosecution has neglected to mention the definition of a war criminal written in Article 6 of the Geneva Conventions governing the treatment of prisoners of war, which clearly states that a person must directly engage in warfare with an enemy in order to be classified as a war criminal.

Judge Allred seems to ponder Joe’s objection, but not for long because Lt. Cmdr. Stone cuts in to refute it.

LT. CMDR. STONE:
Your Honor, the Geneva Conventions are entirely irrelevant to the conduct of this trial.
JUDGE ALLRED:
Indeed, Lieutenant Commander Stone?

LT. CMDR. STONE:
Yes, your Honor. The sole legal
precedent for conducting a military
commission at Guantánamo Bay is the
Military Commissions Act of 2006,
regardless of the United States
signatory status towards the Geneva
Conventions.

Lt. Cmdr. Stone returns to his table and grabs a document
that he brings to the bench.

LT. CMDR. STONE:
(placing the document in front
of Judge Allred)
Your Honor, this is a copy of the
Hamdan v. Rumsfeld decision in
which the Supreme Court clearly
dictates that certain rights
normally afforded to a prisoner of
war do not apply at Guantánamo Bay
due to its geographic location in a
foreign sovereign nation. As it
states, the U.S. Constitution does
not apply.

Lt. Cmdr. Stone turns and faces Joe at the defense table.

LT. CMDR. STONE:
And, given that Mr. Hamdan is not a
soldier of any recognized nation,
he has no rights under Geneva.

Judge Allred continues scanning the pages for a few moments,
then looks up.

JUDGE ALLRED:
The prosecution is correct. The
objection is overruled and I ask
that the jury take care to
disregard any mention of a legal
precedent other than the Military
Commissions Act of 2006. Please
continue, Commander Stone.

Joe sits down and begins scribbling on the legal pad in
front of him.
LT. CMDR. STONE:
As I was saying, the goal of the prosecution is to demonstrate that Mr. Hamdan is guilty--and not just by association. He may not have fought for al-Qaeda on the battlefield, but he fought nonetheless. As we begin our presentation of the evidence, I ask that you consider what you see with an eye towards understanding Mr. Hamdan’s central role in making sure that al-Qaeda’s plans were successfully executed. To begin with, I would like to demonstrate the magnitude of the crimes committed by Osama bin Laden and his al-Qaeda operatives by playing a short video compiling recorded footage of the terrorist attacks that took place on September 11, 2001.

Lt. Cmdr. Stone nods to the bailiff, a signal that he can begin playing the tape. As he does, the lights dim and the prosecutor takes his seat.

CLOSE ON: Chuck whispering in Salim’s ear in the dimming light and gesturing towards the video.

CLOSE ON: TV screen showing CNN footage of airplanes colliding with the World Trade Center in New York City.

CLOSE ON: Salim watching, wide-eyed.

CLOSE ON: TV screen showing people jumping from the burning buildings, the collapsing towers, people running in the streets, and bodies being carried from the rubble.

CLOSE ON: Members of the jury, restraining their reaction to the emotional video footage. Clenched jaws and deep breathing through their nostrils indicates that they are deeply affected by what they are seeing.

CLOSE ON: Salim, beginning to weep.

CLOSE ON: TV screen showing a reporter standing in front of the ruined buildings while panicked New Yorkers flee towards the foreground, covering their faces from the dust and nursing myriad injuries.

CLOSE ON: Salim, weeping into his hands.
TV REPORTER:
(on video)
...sources say that the hijackers of the plane that crashed into the Twin Towers and The Pentagon were known associates of Osama bin Laden, leader of the al-Qaeda terrorist organization that has claimed responsibility for the attacks...The FBI has confirmed that two of the hijackers, Khalid al-Mihdhar and Salem al-Hazmi, were associated with bin Laden, and that both are suspected to have been involved in the bombing of the USS Cole that took place in Yemen last October...

WIDE ANGLE: Salim turns away from the TV screen to face the guard standing next to him. A second armed guard walks over from his place near the wall and the two of them escort a weeping Salim out of the courtroom.

FADE OUT

INT. COURTROOM AT CAMP IGUANA - LATER THAT DAY

Judge Allred is speaking from the bench. The courtroom is packed just as it had been during the morning session, but Hamdan is missing.

JUDGE ALLRED:
Commander Mizer, I understand that your client has abstained from this afternoon’s proceedings.

BRIAN:
(standing up behind the defense table)
Yes, your Honor. Mr. Hamdan had never seen the 9/11 attacks before, (looks at prosecution) and the experience was quite upsetting for him. (Brian sits)

JUDGE ALLRED:
Very well. (turns towards the prosecution) Mr. Stone, the prosecution may continue with its presentation of evidence.
Lt. Cmdr. Stone walks towards the front of the courtroom. While doing so he turns to the defense team and nods ever so slightly as if to signal a victory.

LT. CMDR. STONE:
We would like to continue with the presentation of a diagram depicting the organizational structure of the al-Qaeda terrorist organization.

Lt. Cmdr. Stone walks to a screen on which is projected a PowerPoint slide displaying an organizational diagram titled "Al-Qaeda Hierarchy". A man wearing a dark suit sits in the witness box next to the screen where the diagram is projected. He is THOMAS SANDERS: a forty year-old man, about 5'6", with short curly brown hair and thick eyebrows. He wears wire-rimmed glasses and a gray pinstriped suit.

LT. CMDR. STONE:
This is exhibit 23. I offer it into evidence on behalf of the prosecution. I have asked Mr. Thomas Sanders, an anti-terrorist specialist from the FBI, to present this diagram he has created that clearly shows Salim Hamdan’s role as a terrorist operative within the al-Qaeda organization. Mr. Sanders, if you please?

Lt. Cmdr. Stone walks back to his seat.

THOMAS SANDERS:
Yes. Well, there is not much to be said about this chart, it pretty much speaks for itself. At the top of the diagram I have placed the highest-ranking al-Qaeda leaders, including Osama bin-Laden and Khalid Sheikh Mohamed. Below them I have listed subordinate members, grouped into descending levels of responsibility. Can we flip to slide 2, please?

The PowerPoint slide switches to a close-up of the diagram showing a photo of Salim labeled within the larger diagram.

THOMAS SANDERS:
Here I have enlarged a part of the diagram denoting Mr. Hamdan’s role within the al-Qaeda organization. Salim Hamdan was a member of (MORE)
THOMAS SANDERS: (cont’d)
Osama’s personal group of
dependents; therefore his name is
listed near the top of the al-Qaeda
hierarchy, within a sub-category
denoting members that have a
personal relationship with Osama
bin-Laden.

PowerPoint slide switches to a third diagram entitled "Close
Associates of Sheikh Osama bin-Laden".

THOMAS SANDERS:
As you can see, Mr. Hamdan was
immediately responsible to the
highest ranking officials within
al-Qaeda, who together form the
high council of the organization,
The Shoura.

CLOSE ON: The jury, looking at the projected diagram.

LT. CMDR. STONE:
(from his seat)
No further questions, your Honor.

Joe tugs at Harry’s elbow and whispers something into his
ear. Harry immediately stands.

HARRY:
Will your Honor grant permission
for the defense to speak?

JUDGE ALLRED:
You may proceed.

Harry walks towards the front of the courtroom.

HARRY:
Could we return to the previous
slide?

The PowerPoint returns to the slide showing the enlarged
portion of the diagram with Salim’s name and photo.

HARRY:
(speaking to Mr. Sanders)
I understand you have prepared this
diagram, Special Agent Sanders?
THOMAS SANDERS:
Yes, I have.

HARRY:
Do you see the names at the top of the diagram?

THOMAS SANDERS:
Yes.

HARRY:
Generally speaking, are these the men that you understand were definitely involved in the planning, the organizing, the implementation and the execution of the 9/11 crimes, the USS Cole bombing, and the East African embassy bombings?

THOMAS SANDERS:
Yes, it’s the top leadership of al-Qaeda. They devised and executed all al-Qaeda attacks.

HARRY:
People like KSM? Khalid Sheikh Mohamed?

THOMAS SANDERS:
(pointing towards the diagram)
Yes. He’s here at the top.

HARRY:
People like Walid bin Attash?

THOMAS SANDERS:
Correct.

HARRY:
(pointing to the PowerPoint)
Do you see this name towards the top? Abu Asem Al..Ma--Magri...

THOMAS SANDERS:
Maghribi? Yes I do.

HARRY:
Maghribi. Do you know who that is?

THOMAS SANDERS:
He’s a Moroccan national who was the head of Osama bin-Laden’s personal security detail.
HARRY: Head of his security team?

THOMAS SANDERS: According to Mr. Hamdan, yes, that’s correct.

HARRY: In charge of all Osama’s body guards?

THOMAS SANDERS: Of all the body guards and drivers that transported bin-Laden wherever he went.

HARRY: Okay. So Maghribi was in charge of Osama’s personal bodyguards. Mr. Hamdan told you that?

THOMAS SANDERS: He told me that Abu Asem from Morocco was the head of the convoy detachment when they transported Sheikh Osama.

CLOSE ON: Hamdan listens attentively to the conversation occurring between Special Agent Sanders and Harry.

HARRY: As far as you know, did Mr. Hamdan’s information check out?

THOMAS SANDERS: Yes, after speaking with Hamdan we confirmed Maghribi’s high-ranking role in the organization through other intelligence sources.

WIDE OUT: The courtroom watches Harry’s cross-examination of Special Agent Sanders.

HARRY: So Mr. Hamdan’s information was spot on?

THOMAS SANDERS: Yes.

HARRY: Do you imagine that he jeopardized his safety by providing such information?
THOMAS SANDERS:
Yes, I imagine providing the intelligence would have angered the other members of al-Qaeda, especially given the senior role Maghribi had.

HARRY:
Do you know where Maghribi is today?

THOMAS SANDERS:
I do not.

HARRY:
You don’t. Do you know that he was at Guantánamo?

THOMAS SANDERS:
I did not.

Special Agent Sanders turns to the prosecutors with a quizzical look on his face before returning to look at Harry.

THOMAS SANDERS:
At this Naval Base?

HARRY:
Yes, here. You are unaware that in 2006 he was released from Camp Delta, never having been charged, and that he’s back home in Morocco, a free man?

THOMAS SANDERS:
(steeled his face before answering)
Didn’t know that.

HARRY:
Fair enough.

Harry turns to the jury before he returns to his seat.

HARRY:
No further questions.

CLOSE ON: Lt. Cmndr. Stone tightens his face and indignantly breathes through his nostrils while he strokes his chin with his left hand.
INT. CAMP 4 DETENTION FACILITY VISITING ROOM

The members of the defense team are sitting with Salim. The windows show that the sky is darkening outside. Harry, Joe, and Chuck are wearing the suits they wore to court a few hours earlier; Brian is wearing his dress whites.

Salim is eating a McDonald’s hamburger. He finishes chewing and speaks.

SALIM:
My only reason to be in this trial is so I can see my family again. My wife and my two daughters. The young one, I’ve never even met her.

Chuck finishes translating and then asks a question on Salim’s behalf.

CHUCK:
(to the lawyers)
Salim wants to know whether he will be able to call them soon. No chance of that happening, right?

JOE:
No, he’ll be in closed custody until sentencing.

Salim pauses before taking another bite, listens to Chuck’s translation of what Joe said, and begins eating once Chuck is done.

BRIAN:
Can you ask him whether he will come to court tomorrow for the final presentation of evidence?

Brian waits while Chuck translates.

SALIM:
What will it be?

CHUCK:
The videotape of your interrogation at Taktapol.

Salim nods, swipes his tongue along the inside of his cheek, nods again.

JOE:
Salim, we appreciate your participation and we are doing the best we can for you.
Joe pauses to wait for a reaction from Salim that doesn’t come.

**JOE:**
Given the circumstances, we actually fared pretty well today. Tomorrow will be hard, though, and it will really help if you appear in court when they present the evidence or else you may appear guilty.

Salim waits a beat before speaking.

**SALIM:**
I know I am not guilty. I know I had the missiles. Is it the same?....Will they see that I was not using the missiles?

Salim pauses and rubs the inside of his eye sockets with his index and forefingers.

**SALIM:**
All I want is to see my family. If you tell me this trial is my only way then I must do it. But I am not believing in it. You understand, I have no choice.

**INT. COURTROOM AT CAMP IGUANA**


**LT. CMDR. STONE:**
Why did you arrest Mr. Hamdan on November 24, 2001 at the Taktapol checkpoint?


**HANK SMITH:**
I was not the first to arrest him. The Pashtun tribesmen working with us initially arrested him once they discovered the missiles in the trunk of his car.
LT. CMDR. STONE:  
But am I right in thinking you 
arrived shortly after his initial 
capture and took charge of his 
detainment?

HANK SMITH:  
You are correct.

LT. CMDR. STONE:  
And did you interrogate the 
prisoner?

HANK SMITH:  
(nodding)  
Yes. I conducted an interrogation 
with the help of Afghani soldiers 
who translated for me.

LT. CMDR. STONE:  
What did you ask Mr. Hamdan?

HANK SMITH:  
I asked him about the two missiles 
that were found in the trunk of his 
car. I asked him who they belonged 
to.

LT. CMDR. STONE:  
What kind of missile tubes were 
they?

HANK SMITH:  
SA-7 surface-to-air missiles 
designed to shoot down helicopters 
and other aircraft.

LT. CMDR. STONE:  
Did they belong to Mr. Hamdan?

HANK SMITH:  
He said that they were his, but the 
translator was confused by his 
Yemeni dialect. It was unclear 
whether he owned them or was 
transporting them for someone else.

LT. CMDR. STONE:  
(looking to Judge Allred)  
I believe we have a videotape of 
the interrogation. Can we please 
play the selected portion from 
videotape A, Exhibit 24?
JUDGE ALLRED:
(speaking to the electronics operator at the back of the room)
Can we play the tape please?

The lights dim, and grainy black and white footage appears on a large screen placed on the wall opposite the jury box.

CLOSE ON: As the footage plays, a muffled audio recording of the Arabic interrogation is broadcast while English subtitles appear on-screen. The video shows the scene that occurred when Salim was captured at the opening of the film. It is a single continuous shot of Salim sitting on the floor between two Pashtun militiamen holding AK-47 rifles pointed at his head. Hamdan is shown with a black bag over his head and his hands zip-tied behind his back.

HANK SMITH (VIDEO):
(off-screen)
Ask him if the missile are his.

The translating guard begins speaking in broken Arabic. Salim struggles to respond, but as he does, something about his response frustrates the translator. The guard pulls the hood off of Salim’s head and repeats his question more forcefully. Salim looks frightened repeats his answer in a pleading tone.

TRANSLATING GUARD (VIDEO):
(off-screen)
He says they were with him, but they do not belong to him.

HANK SMITH (VIDEO):
What?

CLOSE ON: Salim sitting in the courtroom. His face is turned away from the video so that he cannot see himself being interrogated.

TRANSLATING GUARD (VIDEO):
He says the rockets are his, but he doesn’t own them.

CLOSE ON: Interrogation footage showing Hamdan.

HANK SMITH (VIDEO):
Then whose are they? Ask him why he carried them.

The translating guard repeats the question to Hamdan, who responds, is asked again more forcefully, and responds again at length.
 TRANSLATING GUARD (VIDEO):
He says he did not know about them, he does not know who owns them. He says the car is not his, it is the car of a comrade in Kandahar.

Footage of the interrogation lingers in grainy silence for a long moment and then the screen goes blue. The courtroom lights come up and Lt. Cmdr. Stone resumes his examination.

LT. CMDR. STONE:
Based on this interrogation, did you believe that Mr. Hamdan was the owner of the missiles?

HANK SMITH:
Yes. I thought he was confused by my questions but I believed the missiles were his since he had said they were.

LT. CMDR. STONE:
He said the missiles were his?

HANK SMITH:
Yes. As the video showed, Mr. Hamdan said the missiles were with him.

LT. CMDR. STONE:
What do you think he was doing with the missiles?

HANK SMITH:
I couldn’t be sure, but I thought he was bringing them back to Kandahar.

LT. CMDR. STONE:
And your Afghani colleagues agreed?

HANK SMITH:
Yes, even more so. Al-Qaeda recruits and trains individuals like Hamdan to join in jihad. The Afghani soldiers in my command were convinced Hamdan was an al-Qaeda conspirator because of the way he looked.

LT. CMDR. STONE:
The way he looked?
HANK SMITH:
He’s Arab. Not Afghan. Any Arabs in that part of Afghanistan were assumed to be foreign fighters working for the Taliban. At the time of Hamdan’s arrest, the checkpoint guards had just shot and killed four Arab mercenaries. It was only upon their discovery of the missiles in his car that they decided to refrain from shooting Hamdan as well. Instead, they called me in the village and told me to come quick.

Lt. Cmdr. Stone turns away from Lt. Smith and strides toward the jury box before asking his next question.

LT. CMDR. STONE:
(facing the jury)
So you arrested a man that you believed was transporting missiles intended to kill American soldiers?

HANK SMITH:
At the time I was not sure, but I believed that it was a definite possibility. The only aircraft in the sky were American planes, and Mr. Hamdan’s answers were too confused to be conclusive. The only conclusion I could come up with was that the missiles were headed to Kandahar, to be used in battle.

LT. CMDR. STONE:
(still facing the jury box)
I see. In battle against American men and women.


LT. CMDR. STONE:
(with feigned gravitas)
Well done, soldier.

EXT. DIRT ROAD AT GUANTÁNAMO NAVAL BASE - SUNSET

In the fading light of sunset, Harry and Chuck jog along a dirt road high above Guantánamo Bay. Chuck wears sleek athletic gear and Harry wears a gray shirt with the word "NAVY" in block print across the chest. Harry’s shirt is damp, Chuck’s is not.
HARRY:
Yeah, I forgot my running stuff so
I got the shirt and shoes at the
canteen.

Harry kicks out his foot to show off his running shoes.

HARRY:
Special order military colors.

CHUCK:
Very nice, but your left one’s
untied.

The two pull up at a bluff overlooking the ocean. Harry
hoists his left foot up onto a rock and begins tying his
shoelaces.

CHUCK:
What’d you think about Stone’s
performance today?

HARRY:
(still tying his shoes)
It was what I expected.

Harry wipes the sweat from his brow with the back of his
right forearm and continues tying.

HARRY:
I think he’s smart to play the
military card with the "well done
soldier" line...But we gotta hope
the jury sees through that. Hank
Smith said that he was sure Salim
was bringing those missiles to the
battlefield, and if the jury is
doing their job that’s the only
part that mattered. Stone may not
realize it, but the veteran jurors
know that transporting weapons in a
war zone is not a war crime and
definitely isn’t terrorism. As long
as they remember that, Stone can
chum up to them all he wants.

Harry finishes tying his shoes and they begin running again.

HARRY:
Once we start the defense in a few
days, we’ll get the chance to
present our case and we’ll have a
couple of things to say. I just
(MORE)
HARRY: (cont’d)
hope Salim stays with us, or we’re
going to end up dead in the water.

CHUCK:
Salim’s been good so far; I’m
hopeful he’ll see it through. The
prosecution finishes their evidence
presentation tomorrow, right?

HARRY:
Yeah, it’s their star
witness--Jerome Stett, the FBI
agent.

Harry gestures towards the right side of an oncoming fork in
the road.

HARRY:
Let’s take this and double back to
the barracks.

INT. COURTROOM AT CAMP IGUANA

Clay Trivett is standing before Judge Allred.

CLAY TRIVETT:
Yesterday the testimony of Lt.
Smith made clear the connection
between Hamdan and al-Qaeda by
telling us that Mr. Hamdan was
arrested with al-Qaeda missiles in
his car. Regardless of whether he
had intended to use the missiles,
Mr. Hamdan admitted to having them,
and therefore is clearly guilty.

Mr. Trivett turns to the jury box and continues talking.

CLAY TRIVETT:
Today, we call forth our final
witness, FBI Special Agent Jerome
Stett.

Mr. Trivett turns toward the witness box to face JEROME
STETT: a stout 40 year-old man with a wearied face that
shows age beyond his years. He is wearing a dark suit and a
red tie. His black hair is sharply gelled into a crest that
rises above a widow’s peak centering his receding hairline.
His skin is tan and his brown eyes look out piercingly below
a set of thick dark eyebrows.
CLAY TRIVETT:
Special Agent Stett is an al-Qaeda expert. He spent several years embedded in the Middle East prior to the September 11th attacks. Special Agent Stett conducted a series of interviews with Salim Hamdan during the two-week period directly following his arrival at Guantánamo Bay Detention Camp. Is this correct, Mr. Stett?

JEROME STETT:
Yes, that is correct.

CLAY TRIVETT:
Would you say that you were in charge of the interrogations?

JEROME STETT:
Yes, I conducted the interrogations on my own.

CLAY TRIVETT:
In what language did you conduct the interrogations?

JEROME STETT:
Arabic. As part of my training, I learned several Arabic dialects including the Yemeni one that allowed me to converse with Hamdan.

CLAY TRIVETT:
Ok. I believe we have a 20-page transcription of the interrogation here?

Lt. Cmdr. Stone lifts a stack of papers that he hands to Clay Trivett, who brings them up to the bench and places them in front of Judge Allred.

CLAY TRIVETT:
The prosecution wishes to offer into evidence the transcription of this interrogation as Exhibit 25.

Judge Allred examines the stack of papers and then sets them down on the left side of his desk.

JUDGE ALLRED:
Let it be known that the prosecution has submitted evidence (MORE)
JUDGE ALLRED: (cont’d)

exhibit 25. I would also like to
include a note that the
transcription of the interrogation
is in Arabic, not English.

The court stenographer—a petty officer dressed in
uniform—nods in regard to the judge and continues typing. Clay Trivett returns to his questioning.

CLAY TRIVETT:
Mr. Stett, at the time of your
interrogation, how long had it been
since Salim Hamdan had been
captured?

JEROME STETT:
It had been nearly two months.

CLAY TRIVETT:
And where had he been during the
intervening period?

JEROME STETT:
After his capture at Taktapol, the
prisoner was brought to a
classified destination for a period
of time before being transported to
Bagram Air Force base prior to his
arrival at Guantánamo in January.

Judge Allred interrupts.

JUDGE ALLRED:
Agent Stett, would you mind telling
us the exact location of Mr.
Hamdan’s detainment during the
month of December 2001?

CLAY TRIVETT:
(answering on behalf of Jerome
Stett)
I’m sorry your Honor, but that
information remains classified.

Clay Trivett looks towards a security officer sitting at a
control panel along the left wall of the courtroom. The
security officer nods in agreement with Mr. Trivett’s
statement.

CLAY TRIVETT:
The Defense Department has decided
that information concerning Mr.

(MORE)
CLAY TRIVETT: (cont’d)
Hamdan’s whereabouts during that period are irrelevant to the proceedings of this trial and contains classified information.

JUDGE ALLRED:
(looking from Mr. Trivett to the security officer)
Do you mean to tell me that we will just never know where he was for that thirty-day period, Mr. Trivett? (turning to the security officer) It’s just a black hole?

Clay Trivett goes to the prosecution table to retrieve a document that he places on the bench.

CLAY TRIVETT:
Yes, sir, your Honor, the information concerns an issue of national security and this file contains the order prohibiting its disclosure in this trial.

Judge Allred takes a deep breath while paging through the file. He finishes, glances towards the defense table and begins speaking again.

JUDGE ALLRED:
(towards the security officer)
Mr. Security Officer, is this in accordance with directives issued by the Defense Department?

SECURITY OFFICER:
Indeed, your Honor.

JUDGE ALLRED:
Very well, Mr. Prosecutor. Please continue your examination of the witness.

CLAY TRIVETT:
(somewhat smugly)
Special Agent Stett, would you say that Hamdan was knowledgeable about the al-Qaeda terrorist organization?

JEROME STETT:
Extremely. My interrogation of the prisoner generated a wealth of (MORE)
JEROME STETT: (cont’d)
intelligence about the al-Qaeda organization.

CLAY TRIVETT:
Would you say that Mr. Hamdan was a member of al-Qaeda?

Joe rises.

JOE:
Objection your Honor, that is a leading question. It also neglects the distinction between working for Osama bin-Laden as a civilian employee and being an al-Qaeda terrorist.

Clay Trivett responds before Judge Allred can speak.

CLAY TRIVETT:
(nodding in agreement to Joe’s objection)
Just a little redirect your Honor, I apologize. Mr. Stett, based on your interrogation, would you say that Mr. Hamdan was a terrorist carrying out jihad in the name of the al-Qaeda organization?

JEROME STETT:
Absolutely.

CLAY TRIVETT:
How would you characterize Mr. Hamdan’s role within the al-Qaeda organization?

JEROME STETT:
Al-Qaeda is an organized hierarchy of jihadists. At the top is Osama bin-Laden, who rules the organization like the emir, the prince. Whatever is his will becomes the will of al-Qaeda. Below him are several ranks of employees who are all devoutly faithful to bin-Laden. Salim Hamdan told me that his role was to be a member of Osama bin-Laden’s personal security detail.
CLAY TRIVETT:
Do you think that Mr. Hamdan’s participation constituted terrorist activity?

JEROME STETT:
Yes, absolutely. Mr. Hamdan interacted with Osama daily and was one of his most trusted employees in al-Qaeda. Mr. Hamdan even told me that he was driving him the moment Osama received the phone call telling him that the second tower had fallen. The people who are allowed to be that close to bin-Laden have to be trusted, true believers in the cause.

CLAY TRIVETT:
Would you say that Salim Hamdan was a true believer in the cause?

JEROME STETT:
Certainly. During my interrogations Mr. Hamdan clearly told me that he had pledged bayat to bin-Laden.

CLAY TRIVETT:
A what?

JEROME STETT:
Bayat is an oath of allegiance that all al-Qaeda members must take to join the organization. Taking the oath means that a member has sworn to willingly sacrifice his own life for the cause of Osama bin Laden and al-Qaeda.

CLAY TRIVETT:
And Mr. Hamdan admitted to having pledged bayat?

JEROME STETT:
Yes, he did. The prisoner told me in no uncertain terms that he had pledged bayat to Osama bin-Laden.
INT. COURTROOM LOBBY

Joe, Harry, Chuck and Brian are talking during a recess.

JOE:
Yeah, I agree, he’s got our number with the bayat testimony. But we can counter with Salim’s willingness to cooperate when he was captured.

CHUCK:
About the oath. I was looking over the transcript during Trivett’s examination and I noticed that a lot of the references in the English translation aren’t in Stett’s Arabic notes, the ones he submitted for evidence. It could be a difference in dialect since Stett was using some different Arabic words, but I’m not sure.

BRIAN:
Which references?

CHUCK:
In Stett’s notes, I can’t find anywhere when Salim says he took an oath, but it’s mentioned in the English translation at least twice.

HARRY:
Really? Show me.

Chuck pulls a document out of his briefcase and points to a place on the folded page.

CHUCK:
Right here, I don’t see anything in Stett’s notes. It doesn’t even mention the word “bayat”.

INT. COURTROOM AT CAMP IGUANA

Judge Allred brings the busy courtroom to order.

JUDGE ALLRED:
(bangs gavel)
Let us resume the examination of Special Agent Stett. If the government has no further questions
(MORE)
JUDGE ALLRED: (cont’d)
for the witness, the defense is free to cross examine.

HARRY:
(stepping up from his seat)
Thank you, your Honor.

Harry walks towards the witness and positions himself in the space between the witness box and the jury box.

HARRY:
(speaking to Jerome Stett)
Special Agent Stett, besides Mr. Hamdan, have you ever interrogated any other suspects regarding the 9/11 crimes, the U.S. embassy bombings, and the USS COLE bombing?

JEROME STETT:
Yes. Several times. Working as a special agent I have encountered numerous terrorists and suspected criminals.

HARRY:
Did you give all of them Miranda warnings?

JEROME STETT:
Not always.

HARRY:
Can you tell me when you did Mirandize as opposed to when you did not, generally speaking?

JEROME STETT:
(speaking matter-of-factly)
Generally speaking, it depends on the sourcing of the information that we initially received. So I can talk to people that have been in custody, but we didn’t read them their rights. Similar to Mr. Hamdan, since it was a military environment, I was given instructions that were relatively obscure until recently, to not read him his rights.
HARRY:
Sorry, I don’t quite understand...When you have interrogated suspects in the continental United States as opposed to in Cuba, did you read them Miranda rights?

JEROME STETT:
Yes.

HARRY:
And how about overseas?

JEROME STETT:
Yes, unless it was a military environment, such as at Guantánamo.

HARRY:
So did you read my client, Mr. Hamdan, his rights?

JEROME STETT:
No.

HARRY:
Why not?

JEROME STETT:
The Department of Defense told us not to.

HARRY:
If you had interrogated Mr. Hamdan in Florida, would you have given him his rights?

JEROME STETT:
I would not have asked him a single question before reading him his rights to remain silent and seek legal counsel.

HARRY:
I see. When you interrogated Mr. Hamdan did he provide you with information?

JEROME STETT:
Yes.
HARRY
And was it reliable information?

JEROME STETT:
Yes, his answers were always right on the money. They always checked out and were always later corroborated by other intelligence we gathered.

HARRY:
Can you give us an example of information Mr. Hamdan provided?

JEROME STETT:
Yes. Does it have to be from my interrogation at Guantánamo?

HARRY:
No.

JEROME STETT:
Ok. Well, during his interrogation at Taktapol, he drew a map of several safe houses used by bin-Laden in Kandahar, as well as the route he would drive when transporting bin-Laden to and from the airport.

HARRY:
When Hamdan provided this information, did he know he might later be charged as a conspirator of bin-Laden?

JEROME STETT:
No.

HARRY:
It seems that he provided the U.S. military with a tremendous amount of information at a time when we needed it most, is that correct?

JEROME STETT:
Yes, our interrogations of the prisoner provided us with information that was critical to our ongoing missions in Afghanistan.
HARRY:
Yet, you told us this morning that Mr. Hamdan is a hardcore al-Qaeda terrorist. How could that be if he was so forthcoming with such critical intelligence?

JEROME STETT:
Mr. Hamdan’s decision to provide us with information is typical of any captured prisoner who feels the pressure to appease his captors. Just because he decided to play nice with us doesn’t mean he hadn’t committed terrorist acts prior to his capture. In fact, a willingness to divulge information is often indicative of a prisoner’s guilt.

HARRY:
True, that may make sense, but this morning you emphasized Mr. Hamdan’s devout allegiance to al-Qaeda by describing the oath he had taken. Am I right?

JEROME STETT:
Yes, Mr. Hamdan had sworn his life to Osama bin-Laden. He had sworn bayat.

HARRY:
Right. So can you understand why it seems odd that he would be so willing to cooperate with the American military?

JEROME STETT:
It was a momentary lapse. Mr. Hamdan is a committed terrorist, but the stress of the situation caused him to neglect his sworn oath.

HARRY:
Ok, understood.

Harry strides across in front of the witness box to stand in front of Judge Allred.

HARRY:
Could I please have Exhibit 25, your Honor?
Judge Allred hands Harry the Arabic transcript of Stett’s interrogation. Harry brings it to the witness box and gives it to Jerome Stett.

HARRY:
Mr. Stett, this is the Arabic transcription of your interrogation of Mr. Hamdan. You tried your best to be complete and truthful, right?

JEROME STETT:
Yes.

HARRY:
(pointing to the screen)
Would you show me where he pledged bayat, allegiance to bin-Laden?

JEROME STETT:
Sure.

Harry strides back towards the defense table to watch Jerome Stett scan the document. Chuck beckons Harry to the far side of the defense table and whispers something in his ear, Harry raises his eyebrows and turns to look at Chuck. Meanwhile, Jerome Stett is flipping through the pages in desperation trying to find the quotation.

JEROME STETT:
Well, my Arabic’s a little rusty this morning....

Harry walks back to the witness box.

HARRY:
Maybe I can help. Aren’t you reading your notes upside down?

Jerome Stett looks up from the document looking stunned and embarrassed. He flips the paper and his face settles into a venomous look that he directs towards Harry. For his part Harry remains relatively expressionless and returns Stett’s glare with a steady gaze.

CLOSE ON: Salim, listening to his headphones. Salim cracks the slightest smile upon the delayed translation of Harry’s statement and turns to nod at Chuck.

CLOSE ON: The jurors look skeptically at Stett, trying to make sense of his unexpected ineptitude.
EXT. CANTEEN, BASE HEADQUARTERS, GUANTÁNAMO - NIGHT

Harry stands at a payphone on the outdoor wall of the canteen. It is evening and moths flutter around the light emanating from the phone booth. Chirping crickets can be heard as a constant hum and bats dart around the lights of the building. Harry’s brow is lightly beaded with sweat, an indication that the heat of the day has yet to dissipate.

HARRY:
Yeah, I’m on a secure payphone so I can hear that buzz too...could be, but I’m not sure.

I/E. INTERBAY SPORT FIELDS, SEATTLE - AFTERNOON

Gail is sitting in the driver’s seat of a red Volvo SUV, waiting for her son Remi to finish soccer practice. It is pouring. The car’s windshield wipers push rain aside so that she can get a glimpse of the soccer field. On the field, Remi and his teammates are covered in mud, but continue to kick the ball around the field.

GAIL:
Yeah, I’m at practice waiting for it to end, he’s getting drenched...I’m in the car...Yeah.

CUT TO:

EXT. CANTEEN

GAIL (ON PHONE):
...How did the cross-examination go today? Will I see it in the newspaper tomorrow?

HARRY:
Yeah, there was a lot of press in the gallery. It went pretty well, Stett was saying some pretty damaging stuff about Salim pledging an oath to Osama, but when we asked him to show us where it was in the interrogation transcript, he couldn’t find it because he was holding it upside-down.

GAIL (ON PHONE):
Upside-down? Wow.
Harry turns his head to the side and pinches his lips together for a moment.

HARRY:

...But they did a good job with the missiles. It’s been really difficult to defend the fact that Salim had those missiles in the car.

GAIL (ON PHONE):

But they weren’t his, right, and you guys thought you could show that pretty clearly. How did that go?

HARRY:

Um, well, ok, kind of. The problem is they showed the video they have of the interrogation at Taktapol. Salim’s pretty scared in it, and the makes him look guilty.

I/E. INTERBAY SPORT FIELDS

HARRY (ON PHONE):

...In the part they showed the jury, Salim clearly says he has the missiles.

GAIL:

But he also says they aren’t his, and that he grabbed the car randomly from a motor pool.

HARRY (ON PHONE):

Yeah, yeah, he does, in a way. But is the jury going to believe Osama bin-Laden’s personal driver when he says he doesn’t know who owns the missiles?

GAIL:

Well that’s up to them, right?

A whistle is heard outside the car and Gail looks to see Remi’s team gathering for a huddle at the end of practice. They cheer loudly once and then the players start walking off to different cars where their parents are waiting to drive them home.
GAIL:
You just gotta do what you can and hope it plays out. Remember, it’s likely that you won’t win down there. Try your best and then you can win the appeal when the case gets heard in a real courtroom.

EXT. GUANTÁNAMO CANTEEN

GAIL (ON PHONE):
...Besides, Salim got you to believe him, who’s to say the jury won’t believe him as well.

A Humvee pulls up next to the canteen and the petty officer driving it waves to people off-screen inside the canteen.

HARRY:
Yeah, ok, right. Allred approved the KSM and bin Attash testimony so hopefully that will help us out.

GAIL (ON PHONE):
Are they appearing in court?

HARRY:
No, it’s only written testimony. We got the responses back a few days ago...

I/E. INTERBAY SPORT FIELDS

HARRY (ON PHONE):
...I got a chance to look them over. I think it’s really going to help us out when we present them.

A drenched Remi opens the car door and gets into the passenger’s side seat while Gail is talking on the phone.

GAIL:
That’s great. Your son just got in the car. You wanna talk to him?

Gail hands the phone to Remi.

REMI:
Hi Dad.

Gail turns on the ignition and starts reversing out of a parking spot.
HARRY (ON PHONE):
Hi Rem, good practice?

GAIL:
(to Remi)
Tell him to call me tomorrow if he gets the chance.

EXT. CANTEEN

Joe, Brian, and Chuck walk out from the canteen and pile into the Humvee. Harry turns to notice them.

REMI (ON PHONE):
Yeah, it was good. Did you hear what mom said?

HARRY:
Yeah, I’ll try. Ok Rem, I gotta go, but take care of your mom and tell your brothers I say hi.

REMI (ON PHONE):
Bye dad.

Harry hangs up the phone and walks over to the Humvee. He climbs into the passenger’s seat and the vehicle begins driving away.

INT. HARRY’S BEDROOM, DEFENSE BARRACKS

Harry is sitting at the desk in his darkened bedroom, looking over documents by the light of a small desk lamp. He looks up from his reading as if he remembers something. He goes to his closet and pulls out the yellow plastic bag containing the book he purchased at the airport in Miami. He puts the plastic bag in his briefcase for tomorrow and returns to the desk. He picks up a document and quickly glances at it before putting it inside the book at a chosen page and turning off the lamp. The only light left in the room is a small bedside lamp that softly illuminates Harry as he walks into the bathroom to brush his teeth.

EXT. ROAD OUTSIDE CAMP IGUANA - MORNING

A Humvee weaves side-to-side in order avoid hitting the iguanas sunning themselves in the middle of the road leading to the courtroom complex at Camp Iguana.
INT. COURTROOM AT CAMP IGUANA

CLOSE ON: A bank of air conditioners running along the side of the courtroom, softly whirring in unison.

PAN WIDE ANGLE: Harry, dressed in a dark beige suit and light green tie, is beginning the defense's presentation of evidence in front of a packed courtroom.

HARRY:
A few days ago we heard Lieutenant Hank Smith speak about Mr. Hamdan’s transportation of missiles. To begin our presentation of evidence, I’d like to return to that notion of transportation...Now ordinarily, a person transporting munitions to a conventional battle is not guilty of a war crime. This is the position taken by the Geneva Conventions—

Lt. Cmdr. Stone jumps up from his seat.

LT. CMDR. STONE:
Objection, your Honor! As the defense knows, the Geneva Conventions have no bearing on this trial.

HARRY:
True, but I would add that the Military Commissions Act contains no description of a war criminal that voids the definition provided by the Geneva Conventions; therefore I use it as a point of reference instead of as a legal mandate.

JUDGE ALLRED:
That’s understood, Mr. Schneider, and I will allow it, but from this point forward it would be best to not reference the Geneva Conventions in any form whatsoever, given that their mention has become a point of contention during these proceedings. Please continue.

HARRY:
Ok. Returning to the notion of a conventional battle. For Lt. Smith, (MORE)
HARRY: (cont’d)
the question became, was Mr. Hamdan
a soldier or not? Given his casual
dress, he appeared to be a
civilian, but that was at odds with
the missiles in the trunk of the
car he was driving...and under
standard laws of war, it is
unlawful for a soldier to dress in
civilian clothes while
participating in battle. However,
as we know, the War on Terror is an
unconventional war.

CLOSE ON: The prosecution team, listening with skeptical
looks on their faces. Clay Trivett leans over to Lt. Cmdr.
Stone and whispers something in his ear. Lt. Cmdr. Stone
raises his eyebrows and shakes his head as if to say "I’m
not sure", then returns to listening.

HARRY:
On both sides of the fighting,
soldiers have taken to wearing
civilian dress as a military
tactic.

Harry looks towards the jury box.

HARRY:
Given that many of you have fought
on the frontlines yourselves, I’m
sure you are aware that al-Qaeda
fighters often dress in civilian
clothes. However, I’m not so sure
you are aware that our own forces,
including our intelligence
operatives, have employed the same
tactic....How else would Special
Agent Jerome Stett have been able
to travel in the Middle East while
infiltrating the depths of
al-Qaeda?

Lt. Cmdr. Stone excitedly jumps up from his seat.

LT. CMDR. STONE:
Objection, your Honor! Mr.
Schneider has no proof for these
allegations.

JUDGE ALLRED:
Upheld. Mr. Schneider, you had
better provide evidence for these
allegations immediately.
HARRY:
Certainly, your Honor.

Harry returns to the defense table and pulls the yellow plastic bag out of his briefcase.

HARRY:
If the prosecution doesn’t mind, I’d like to read a quote from a speech President Bush gave in November, 2001.

As he pulls a book out of the plastic bag, a security officer sitting near Judge Allred presses a toggle switch and begins speaking into a microphone. His voice is heard broadcast over the speakers.

SECURITY OFFICER:
Come up here. What do you wish to present?

CLOSE ON: Harry has pulled a copy of The 9/11 Commission Report from the yellow bag. A document is sticking up from the middle of the book. Harry opens it to that page and hands it to the security officer.

HARRY:
There’s a quote right here from President Bush concerning the concealment of special ops in Afghanistan during combat.

CLOSE ON: The SECURITY OFFICER, a man with a severe appearance and stern face. He is dressed in a dark suit with an American flag pinned to his lapel. He quickly reads the quote.

SECURITY OFFICER:
(speaking in low tones so that the jury cannot hear)
This quote is classified and impermissible as evidence.

CLOSE ON: Harry, surprised and frustrated.

HARRY:
What? This is The 9/11 Report; It’s a bestseller! Anyone can buy this.

SECURITY OFFICER:
You introduce that and you’ll be prosecuted for violation of national security.
HARRY:
I bought this at a newsstand in the Miami airport! How can it contain classified information?

CLOSE ON: The security officer gives Harry a stony glare, looks toward Judge Allred to make sure his decision is understood, and returns to his control panel.

Harry raises his eyebrows in frustration. He looks toward the judge pleadingly and then back at the Security Officer with a look of conviction. Judge Allred says nothing. Harry picks up the book and strides across the floor with the book in hand. He pauses ever so slightly before speaking to the jury.

HARRY:
(holding the book up with his right hand to show the jury)
You know, I’m told I can’t talk to you about this. So... I guess I’m not going to, but I sure would like to.

JUDGE ALLRED:
Mr. Schneider, please bring that book up to the bench.

Harry brings the book to the bench. Judge Allred quickly turns to the page indicated, glances at the quote, and hands it back to Mr. Schneider.

JUDGE ALLRED:
(facing the jury)
Members of the jury, given the reliability of his source material, Mr. Schneider had a reasonable expectation that this book would be permissible evidence. However, given the strict security classifications of this court he has not been allowed to introduce it into evidence.

The judge pauses to think for a second before moving on.

JUDGE ALLRED:
Nothing you have said, Mr. Schneider, will be stricken from the record. But, given the classified restriction on your evidence, I ask that you abandon this line of reasoning and move your argument in a new direction.
HARRY:
(frustrated)
It would appear that I have no choice, your Honor.

Harry looks to the defense table and nods at Joe.

HARRY:
Mr. McMillan will continue the defense’s presentation of evidence....Given this unexpected interruption, would your Honor allow us an early recess before we resume this afternoon?

JUDGE ALLRED:
Granted. Court is adjourned until we resume at 1 o’clock this afternoon. (bangs gavel)

INT. COURTROOM LOBBY

The defense team is walking out of the courtroom down the hallway towards the lobby. Brian and Joe are conversing. Chuck follows behind.

JOE:
I can’t believe that. Harry bought the 9/11 Commission’s report in an airport bookstore, and it’s classified? What bullshit.

BRIAN:
At least he still waved it around in there. He got lucky that Allred kept it in the record, too...You know, it might have been a good thing for us. The notion of treating it as classified material makes the government seem pretty ridiculous.

JOE:
Hope so, but it better not be a trend. I’m presenting the testimony from KSM and bin-Attash this afternoon and they might try to stonewall that too.

Harry walks up behind them with a cup of McDonald’s coffee in his hand.
HARRY:
Can you believe that?

CHUCK:
(turning to notice Harry)
Harry, how do you always manage to get a cup of coffee in here?

HARRY:
(looking sheepish)
Oh, yeah. Well, I worked out a deal with my friend Andy.

Harry gestures towards a guard standing by the door, who acknowledges him with a nod.

HARRY:
Andy takes a Humvee to McDonald’s just before we go to recess and picks me up a coffee. You want one too?

CHUCK:
You think I don’t like coffee?

HARRY:
Ok, Andy will take care of you too, right?

ANDY:
No problem. I’ll take any excuse not to stand here for eight hours straight every day.

JOE:
Can we make that three coffees?

BRIAN:
Four.

ANDY:
No problem.

HARRY:
Great. Thanks, Andy.

Harry begins ushering the group out of the lobby.

HARRY:
Let’s hurry over to the canteen so we can beat the line and go over the KSM testimony one more time.
The defense team walks out of the lobby into the sunshine outside.

INT. COURTROOM AT CAMP IGUANA

CLOSE ON: Three courtroom sketch artists, each working on portraits of Salim watching the proceedings. The artists sit in a gallery specially reserved for them in the back of the courtroom.

WIDE ANGLE: Joe steps to the front of the courtroom with two folders.

JOE:
I would like to offer these as evidence, your Honor. They contain the written testimony of Guantánamo detainees Khalid Sheikh Mohamed and Walid bin-Attash. Per your decision during pre-trial hearings a few weeks ago, the defense team wrote a questionnaire that was given to these detainees.

Joe swings around to look towards the prosecution table.

JOE:
I believe copies were also given to the prosecution team?


JOE:
Good.

Joe turns to Judge Allred and places two folders on the bench.

JUDGE ALLRED:
Fine. The testimony of the detainees will be entered as defense exhibits 26 and 27. I understand Mr. Schmitz will be translating the responses for the jury?

JOE:
Yes, your Honor.

Joe turns toward the defense table and nods at Chuck, who stands up and begins to walk towards the witness box. Chuck is wearing a tan suit.
JOE:
(while Chuck is walking)
Mr. Schmitz will be reading from
the English translation he prepared
before coming to court. The
document has been verified by the
State Department and each of the
jury members has been given a copy
if they would like to follow along.

CLOSE ON: Chuck enters the witness box while the bailiff
holds the door open for him.

CLOSE ON: The jurors opening red folders in front of them to
find the translations provided by the defense team.

CLOSE ON: The bailiff walks to the jury box and lifts the
Bible sitting on the railing. Chuck places his right hand on
the Bible and raises his left.

BAILIFF:
Do you swear to tell the truth, the
whole truth, and nothing but the
truth, so help you God?

CHUCK:
I do.

Chuck sits.

JUDGE ALLRED
Please continue, Mr. McMillan.

JOE:
As Mr. Schneider mentioned during
our opening statement, there are
individuals on this island who know
for sure whether Mr. Hamdan had any
involvement in the planning or
execution of terrorist attacks
committed by al-Qaeda. They are the
high-value detainees who admit
their own involvement in the
attacks and are proud of it. They
are happy to tell us who else was
involved. Why hasn’t the government
called them to testify?

Joe waits a beat.

JOE:
The prosecution has vigorously
objected to the defense calling
(MORE)
JOE: (cont’d) these two individuals to testify in this trial, and over the last nine months the C.I.A. has gone to great lengths to prevent the defense from having access to them for interviews. Today, in lieu of a live appearance, we are presenting their testimony in the form of answers they wrote in response to a questionnaire we gave them a few weeks ago.

Joe turns to face the jury.

JOE: Let’s hear what they have to say. On page two we asked Khalid Sheikh Mohamed how he knew our client Salim Hamdan. Mr. Schmitz, can you please read his response?

CHUCK: Khalid Sheikh Mohamed wrote, quote "I knew Salim Hamdan as a driver and mechanic. He had no involvement in any military operations. Due to my work as a military official in al-Qaeda and as a member of The Shoura--the highest executive committee in al-Qaeda. I am certain of all who work in the field."

JOE: The question of Hamdan’s employment has become a key issue in this trial. Essentially the question is whether he was employed by Osama bin-Laden personally or by the al-Qaeda terrorist organization. Mr. Schmitz, will you please read Mr. Mohamed’s response to the question on page 11?

CHUCK: Quote, "Hamdan was not a member of al-Qaeda; instead, he was an employee who received salary from Osama bin-Laden’s personal budget, not from the al-Qaeda budget."
JOE:
Although both prisoners are isolated from one another and held in solitary confinement, the responses written by Walid bin-Attash are nearly identical to those given by Khalid Sheikh Mohamed. The two prisoners have not seen each other in over six years, yet they gave the same answers to our questions. (looks to Chuck) Would you read the response of Mr. bin-Attash to the question of Mr. Hamdan’s involvement?

CHUCK:
(opening the other file)
Walid bin-Attash wrote, quote, "Salim Hamdan was not involved in any planning for attacks against the United States. As I was close to Sheikh Osama bin-Laden, I am certain that Salim Hamdan was not involved."

JOE:
Some of the responses we received were downright condescending. Mr. Schmitz, will you please read your translation on page six of Mr. Mohamed’s questionnaire regarding Mr. Hamdan’s employment?

CHUCK:
Khalid Sheikh Mohamed wrote, quote: "The drivers were illiterate, and it disqualified them from outside operations involving military attack."

CLOSE ON: The members of the jury, who are intently reading along with Chuck’s translation.

CHUCK:
..."He was not a soldier, he was a driver. His nature was to be more primitive, a Bedouin person and far from civilization."

CLOSE ON: Salim, listening to the translation through his headphones while looking relatively expressionless.
CHUCK:
"...He was not fit to plan or execute outside operations. But he is fit to change trucks' tires, change oil filters, wash and clean cars."

WIDE ANGLE: Courtroom in full, journalists in the gallery busily scribbling notes.

JOE:
As the witnesses explain in these written responses, Salim Hamdan was nothing more than a mechanic. Who would know better than Khalid Sheikh Mohamed and Walid bin-Attash? What do they have to hide? They boast about their involvement in terrorist activities, taking pride in the destruction they have caused. As for Hamdan, they clearly say he had no role in the planning or execution of terrorist attacks. Instead, he cleaned their cars.

Joe pauses and lets his words hang in the air for a moment.

JOE:
I encourage the jurors to read the rest of their packets. If you have any questions, please bring them to our attention. Otherwise, the defense rests.

JUDGE ALLRED:
Alright. Tomorrow we will begin with the prosecution’s closing argument, followed by the closing argument from the defense. Court is adjourned. (bangs gavel)

INT. DEFENSE TEAM TRAILER - NIGHT

Harry, Joe, Brian, and Chuck sit around a table in their trailer at the defense team barracks, surrounded by files, papers, boxes, coffee cups, etc.

JOE:
So who’s the guy the Defense Department sent down?
BRIAN:
John Murphy, an Assistant U.S. Attorney on loan to the Department of Justice.

HARRY:
What do you know about him?

BRIAN:
Not much, just that he was handpicked to give the closing argument tomorrow.

JOE:
Well, don’t be too worried.

BRIAN:
(cracking a smile to Joe)
Who said we were worried?

JOE:
(smiling back)
Well, I am.

BRIAN:
(smirking)
Then it’s a good thing I’m the one giving the closing argument.

The three share a short chuckle.

HARRY:
(speaking to Brian)
So tomorrow, when you give the closing argument, remember to proceed slowly. So far we’ve been doing great. Joe, your presentation of the testimony today was concise and powerful. Brian, I’m sure you’ll carry that momentum all the way through your argument tomorrow. Is there anything Joe or I can do to help you prepare?

BRIAN:
I don’t think so. We’ve gone over this argument in mock sessions so many times I think I have it down pat.

HARRY:
Yeah, I agree.
BRIAN:
I was worried something might come up during the trial that would throw things off, but there haven’t been too many surprises.

JOE:
Yeah, that’s right. Make sure you bring the focus back to the points Harry structured his opening statement around: the distinction between Salim working for Osama instead of al-Qaeda, and the lack of evidence establishing that Hamdan was a member of the conspiracy. All the missile evidence showed was that he had them in the car, but I don’t think the jury is convinced he was going to do anything with them. Let’s keep it that way.

BRIAN:
Right. And let’s not forget, my military background is an asset that we have yet to play up.

JOE:
That’s true, but be careful with that. The prosecution has gone a little overboard trying to build up the idea of a military fraternity....This case is about prosecuting the enemy just as much as it is about making sure he gets a fair trial, if not more so. Keep the commitment to the American justice at the forefront of the argument. They already know you are a military guy.

HARRY:
No doubt about it. We’re all behind you tomorrow...Salim, too.

Brian nods in gratitude.
EXT. DEFENSE TEAM TRAILER - NIGHT

Light emanates from inside the trailer. Waves can be heard crashing on the beach in the bay below. Crickets are humming.

FADE OUT

INT. COURTROOM AT CAMP IGUANA - 10 A.M.

CLOSE ON: John Murphy, a tall man with a shock of white hair topping his imposing figure. He stands at the center of the courtroom floor in a crisp black suit. Silently, he scans the courtroom, gathering the drama of the moment before he begins speaking. The courtroom is quiet, everyone is waiting in expectation. Finally, he settles his gaze on the jury box and begins speaking.

JOHN MURPHY:
What do we know about Salim Hamdan?...We know that he is an ally of Osama bin-Laden. We also know that he transports weapons for al-Qaeda....Is he an important member of al-Qaeda? Khalid Sheikh Mohamed and Walid bin-Attash have said that no, he isn’t. But is that really the case? How can it be? In an organization tightly structured around a single individual, Osama bin-Laden, how could his personal assistant, his own driver, not be an important member?...Certainly he is.

John Murphy begins moving along the jury box while looking at the jurors one by one.

JOHN MURPHY:
Mr. Hamdan has was introduced to al-Qaeda in 1996 and began participating in operations shortly thereafter....eight years of service for bin-Laden...nearly a decade. Not a member? Not a terrorist?...Salim Hamdan rose through the ranks in a system that rewards ruthlessness and a commitment to destruction. There should be no doubt that Salim Hamdan is a terrorist....Surely he is....As Special Agent Jerome Stett (MORE)
JOHN MURPHY: (cont’d) testified, he’s even admitted as much....

John Murphy pauses.

JOHN MURPHY:
So far, not one criminal has been convicted for the crimes perpetrated on September 11th. Almost seven years later, not one...Here is a chance to do that. A chance to catch the guys responsible and punish them for what they did.

John Murphy reaches the end of the juror box and pauses before continuing.

JOHN MURPHY:
....Salim Hamdan was one of the last in a line of warriors who protected and promoted the cause of al-Qaeda, and I urge you to convict him for the deeds he has admitted to doing. The evidence is conclusive. The decision is yours.

John Murphy moves to the center of the courtroom.

JOHN MURPHY:
Convict. Convict on both accounts. He is a terrorist who plotted to kill and who provided support to other terrorists like him. Just like Mr. Hamdan, all of you have pledged an oath. But, unlike Salim Hamdan, your oath pledges that you will protect the causes of freedom and justice.

John Murphy pauses before his last words.

JOHN MURPHY:
Today is your chance to honor that pledge. In light of the evidence presented, there is one clear decision to be made in this case, and I trust that you will make it.

John Murphy waits, letting his words hang in the air while he looks at the jury. Then he turns on his heels and takes long strides back to his chair where he firmly plants himself behind the prosecution table.
CLOSE ON: Brian, sitting at the defense table. He closes his eyes, takes a deep breath in, and turns to nod at Harry, Joe, Salim, and Chuck. He rises from his chair, dressed in his full dress whites as always, and confronts the jury box.

BRIAN:
Mr. Murphy has just said that Salim Hamdan is a terrorist. Maybe not the one pulling the trigger, but a terrorist nonetheless. In the eyes of the prosecution, Mr. Hamdan’s decision to work as a driver for Osama bin-Laden was a definitive decision to participate in terrorist attacks against the United States. Never mind that he never fought in any battlefield. Never mind that Khalid Sheikh Mohamed says he was, quote, "only fit to clean our cars."...The prosecution would have you believe that cleaning cars is enough to be guilty of a criminal conspiracy.

Brian pauses for emphasis.

BRIAN:
If you agree with them, then embrace their theory whole-heartedly. If they are right, then every teacher, every cook, every farmer, every goat herder associated with Osama bin-Laden is a co-conspirator. And all of them are guilty of planning the murder of American citizens...Is that really the case? Does that make sense?...Does driving the war criminal make the driver one too? No. No, it doesn’t.

CLOSE ON: Salim, listening intently.

BRIAN:
Adolf Hitler, leader of the Nazis and planner of the Holocaust, had a driver too. Was he charged at Nuremberg? No. He was not.

Brian begins walking along the jury box, just like Mr. Murphy had done, but he walks in the opposite direction.
BRIAN:
When making your decision, I ask that you consider nothing but the evidence presented. What does it tell you? What has been proven? Mr. Hamdan admitted that there were missiles in the car he was driving, but what did he say about them? He said, quote, "they were with me, but not mine". Is it not possible that he pulled a random car from the motor pool without checking the contents of its trunk first? I think it is possible, indeed probable, especially given the urgency of the situation, when my client was trying to covertly help his pregnant wife and daughter escape an oncoming war. The government believes that this was no accident, that Salim knowingly transported the missiles and that he had a clear intent to use them. Even if this were the case, and I'm convinced that it is not, does that make him a war criminal?

Brian reaches the far side of the jury box and continues talking.

BRIAN:
As Lieutenant Hank Smith noted during his testimony, he believed Mr. Hamdan was transporting the weapons to the battlefield in Kandahar. Quote, "a conventional battlefield." As was made clear earlier in these proceedings, transport of weapons to a conventional battlefield does not constitute terrorist action. So, even if the prosecution is correct, it would still be a stretch of logic to conclude that my client was a terrorist conspirator. Even more so given that they have provided nothing, not one piece of evidence, that shows my client participated in a military conflict...Not one piece. On the other hand, they have made it abundantly clear that Salim Hamdan provided the U.S. military with a (MORE)
BRIAN: (cont’d)
wealth of information concerning
the secret tactics of al-Qaeda.
That he gave us intelligence when
we needed it most. You’ve heard the
testimony; there can be no question
of that. Is that the behavior of
what Mr. Murphy would have you
believe is a hardcore terrorist?

Brian waits a minute, glances back at Salim, and then
gathers himself for his last words.

BRIAN:
Mr. Murphy did say one thing I can
agree with. When Mr. Murphy
mentioned that you have taken a
pledge on behalf of the United
States, he was right. You have
taken a pledge. A pledge to uphold
the values for which this nation
stands, a pledge to honor our
commitment to liberty and justice
for all, no exceptions...Has this
trial been about justice? Is it
fair to interrogate Mr. Hamdan for
three years without ever having
read him his rights? Is it justice
to deprive him of sleep for a week
straight and then interrogate him
for testimony that will later be
used against him?

Brian pauses for dramatic emphasis.

BRIAN:
When I was assigned as defense
counsel to the military
commissions, I wanted to ensure
that, 50 years from now, we would
talk about how justice was
delivered down here, and we would
be proud. How we treat our
prisoners sets the standard for how
Americans will be treated by our
enemies. Is convicting Salim Hamdan
the standard we seek to uphold?

Brian pauses before finishing.

BRIAN:
Based on the evidence presented,
all that has been proven is that
(MORE)
BRIAN: (cont’d)
Salim Hamdan has been among some very bad people. What the evidence didn’t prove was that he was one of them...The proof fell short of establishing that he was a member of their conspiracy. He was around them, yes, but he was not one of them...Given the evidence, there are no grounds for convicting Salim Hamdan as a terrorist. I believe my client to be innocent of the charges. I believe him to be sincerely sorry for the decisions he has made, and I believe he is entitled to a fair verdict. Therefore, he is entitled to an acquittal...Mr. Hamdan’s life has been fraught with misfortune and ill-advised decisions, but in the end I hope you see him for the man he is....The defense rests, your Honor.

Brian silently walks back to the defense table and re-takes his seat.

CLOSE ON: Salim, leaning back in his chair and tugging on Brian’s shirtsleeve to get his attention.

SALIM:
(in English)
Thank you.

BRIAN:
You’re welcome.

JUDGE ALLRED:
Formal arguments are now closed. The jury will begin deliberations tomorrow morning and continue until a verdict has been reached, at which point we will reconvene. Between then and now, court is adjourned. (bangs gavel)

EXT. THE JERK HOUSE RESTAURANT – SUNSET, JULY 19, 2008

The defense team is gathered around their usual dining table. Dr. Emily Keram has joined them for the occasion and she sits between Harry and Chuck. The remains of dinner—dirty plates and empty serving bowls—lay strewn
across the aluminum picnic table. Everyone holds a beer, and
Joe is leading them in an impromptu toast.

JOE:
Well, I think we deserve this.

The team clinks their bottles together and everyone takes a
long sip. Emily finishes her sip first and begins speaking
while everyone else still has his bottle raised.

EMILY:
If the verdict comes out tomorrow,
how long do we get until
sentencing?

HARRY:
(finishing his sip first)
If we’re lucky we’ll get the
verdict sometime late tomorrow or
early the next day. If not, it
could take a few days for the jury
to deliberate. Whenever they reach
a verdict, we will have one or two
days before the sentence is
delivered. Everyone here is anxious
to leave, not just the prisoners.

JOE:
Remember we are expecting a guilty
verdict for the material support
charge because of the missile
evidence. The deliberations for
that charge will be quick, so the
one that might take them a while is
the conspiracy charge.

EMILY:
Ok. You need to make sure that
Salim stays in Camp 4 between
verdict and sentencing. If you can,
make sure he stays out of solitary.
Regardless of the verdict, Salim is
going to be in a fragile state and
transferring him to Camp 5 would be
like unplugging his oxygen. There’s
no one there for him to talk to and
no fresh air to keep him sane.

JOE:
You really think they’ll transfer
him to Camp 5?
EMILY:
I’m sure they will. They know what it does to Salim and they’ll want to do whatever they can to make him unhinged.

JOE:
Alright, well, let’s take a reactionary stance on that. If they do transfer him, we’ll say something, but not before. We don’t want to press our luck before the sentence gets released. It might have an adverse affect on the sentence itself. But, if he gets transferred like you think he will then we’ll make sure to appeal it with Allred.

EMILY:
Salim’s also developing unrealistic fantasies about what it will be like if he ever returns home to Yemen. In my role as a psychiatrist, it’s going to be important that I prepare him for re-entry to society as best I can.

CHUCK:
Yeah, I think Emily is right about this. Salim’s most pressing concern has always been seeing his wife and two daughters, especially the daughter who was born after his capture. I’ll do what I can to encourage him to talk to you, but I expect he’ll be more open than you might think. He might not always want to talk about the trial, but he’s pretty enthusiastic when it comes to talking about his family and his home in Yemen.

HARRY:
(speaking to Emily)
Certainly, that’s a good thing to put on our radars. You won’t mind presenting during the sentencing hearings, right?

EMILY:
No. I think my psychiatric evaluations of Salim will be a (MORE)
EMILY: (cont’d)
critical tool for understanding his mental state. If I don’t get up there then Hamdan’s not going to have a medical doctor speaking on his behalf, and given his level of mental health, that would be an outrage.

WIDE ANGLE: Harry, Joe, Brian, and Chuck casually sip beer at the table. Emily walks out from under the awning of the restaurant and lights a cigarette while watching the sun set over the bay.

INT. COURTROOM AT CAMP IGUANA

The courtroom is full, but silent and the jury box is empty. While everyone watches, Salim is brought in by two guards and placed in his usual seat at the defense table. Once Salim is seated there is a moment of patient waiting, then a door in the back right corner of the room opens and the jury files into the room. One by one, they enter the jury box and take their normal seats. As always, each of the nine jurors is dressed in full military uniform. Judge Allred begins speaking.

JUDGE ALLRED:
Has the jury reached a verdict?

The lead juror is a middle-aged female wearing the green uniform of an Army general.

LEAD JUROR:
(facing Judge Allred)
We have, your Honor.

JUDGE ALLRED:
On the count of providing material support to criminals engaged in acts of terrorism, how do you find the defendant?

LEAD JUROR:
We find the defendant guilty.

CLOSE ON: The defense table. Harry, Joe, and Brian sternly nod upon receiving the news they expected. Meanwhile Salim is listening to the translation of the verdict. As he hears the word "guilty", he begins crying. Slowly at first, restraining his tears so that his body is convulsing ever so slightly. But then it builds and he begins openly crying and shoving his face into his hands.
JUDGE ALLRED:
On the count of conspiracy to commit acts of terrorism?

LEAD JUROR:
We find the defendant...not guilty.

CLOSE ON: The prosecution, stunned. Lt. Cmdr. Stone works hard to restrain his disappointment, but it’s easy to tell that he is fuming. He breathes hard through his nose, clenches his jaw, and looks from the jurors to Judge Allred in thinly veiled disguised disgust.

The defense table erupts in silent joy. Harry, Joe, Brian, and Chuck are beaming, looking to one another to make sure they heard the verdict correctly.

Meanwhile, Salim continues weeping. His head in his hands, oblivious to his lawyers’ celebration. Chuck tries to calm him and get his attention, but Salim is inconsolable and he keeps his head in his hands.

In the gallery, journalists furiously scribble down notes and the sketch artists work hard to capture the various reactions of the participants. Eventually everyone—including the jurors—focus their attention on Salim, who remains crying at the defense table.

Salim denies Chuck’s entreaties and motions for the guards to take him out of the courtroom. Two guards step forward and escort him out the prisoners’ exit while he continues to weep.

The defense team watches him go, exhibiting a rare mix of joy and frustration. The courtroom silently stands while Judge Allred leaves the bench, then pandemonium breaks out as people are allowed to speak out loud.

INT. HOLDING CELL, COURTHOUSE AT CAMP IGUANA

Harry and Chuck visit Salim in the holding cell at the courthouse. They are standing outside the bars, not saying anything, looking at Salim. Salim is curled up in the fetal position, softly weeping. Salim has his headdress pulled over his face and is facing the wall.

HARRY:
Salim, you have not been in such a good position since before you were arrested. You were found not guilty of the conspiracy charge. You have never been so fortunate.
Chuck translates, waits, Salim says nothing. Chuck adds a few personal words in Arabic, still no response. Salim never looks up at his lawyers, he keeps his head buried in his hands.

EXT. CAMP IGUANA - LATE AFTERNOON

Harry and Chuck are exiting the courtroom. Joe and Brian are waiting for them by a Humvee.

JOE:
Anything?

HARRY:
Nothing.

CHUCK:
Salim heard the word "guilty" and he thinks that is it, that he'll never leave this place. Did you watch him listen to the verdict? It was horrible. I could see the bullets going through him as he heard the word "guilty".

HARRY:
Maybe we can get Emily to talk to him?

BRIAN:
Yeah. Also, we just heard they are sending him to Camp 5, just like she predicted.

Harry and Chuck start loading their bags into the back of the Humvee.

HARRY:
(hoisting his briefcase)
Really?

JOE:
Yeah, we just talked to the transport detail by the prisoner’s exit.

Harry holds the door open for Joe to climb in the backseat.

HARRY:
Damn.
INT. COURTROOM AT CAMP IGUANA

The courtroom is full except for the bench. Dr. Emily Keram sits in the witness box, wearing a tailored blouse and glasses: a departure from her usual blue jeans and tank top.

A door opens in the back left corner and Judge Allred walks into the room.

BAILIFF:
All rise.

Judge Allred takes his seat.

JUDGE ALLRED:
Please be seated. The defense counsel has submitted an appeal of detainment on behalf of Mr. Hamdan. That will be our first order on today’s docket, followed by arguments with respect to the appropriate sentence to be given to the defendant. I understand Dr. Keram is here to provide us with her medical expertise concerning Mr. Hamdan?

HARRY:
(from the defense table)
Yes, your Honor.

JUDGE ALLRED:
(looking to the bailiff)
Has Dr. Keram been sworn in?

BAILIFF:
Yes, your Honor.

JUDGE ALLRED:
Fine. Then defense counsel may proceed with the appeal of detainment.

Harry walks forward from behind the defense table and begins his argument.

HARRY:
Following the reading of yesterday’s verdict, Mr. Hamdan was transferred from Camp 4 Delta to Camp 5, a high security facility where he is isolated from all stimulation. In light of his

(MORE)
HARRY: (cont’d)
emotional reaction yesterday, and
his fairly recent decision to
resume participation in this trial,
it is of the utmost importance that
he be transferred back to the more
familiar environment in Camp 4. Is
that correct, Dr. Keram?

EMILY:
From a medical perspective, I would
add that Salim is exhibiting
symptoms typical of a patient
suffering from extreme levels of
stress. If he is not transferred
back soon, he might lose his grasp
on emotional reality and retreat
into an uncommunicative and
unreachable state. As well, Salim
appears to be genuinely apologetic
for his peripheral involvement in
any terrorist attacks. As you know,
Salim broke down in tears and
requested to leave the courtroom
upon watching video footage of the
September 11th attacks. Now,
everyday, he prays for the victims
of the attacks and is visibly
affected when I question him on the
topic. During my extensive
interviews with Mr. Hamdan, I have
been able to penetrate, at some
level, his deep emotional
complexities. Initially, he
disregarded my questioning and
limited his participation, a
decision that in my opinion was
primarily due to the fact that I am
a white Western woman and he comes
from a male dominated culture where
women are subjugated. Although it
may have been hard for him, he
learned to trust me at some level
and eventually opened up to the
mental evaluations I conducted.
Now, I fear that his transfer to
Camp 5 will nullify the progress we
have made and emotionally aggravate
Salim to a dangerous degree. I
suggest that Mr. Hamdan be
transferred out of Camp 5 solely
for the purpose of avoiding this
outcome. By no means do I purport
(MORE)
EMILY: (cont’d)
to have a bias in this case, and in
my role as psychiatric advisor I am
by law required to have none. I
only offer my opinion as that of a
medical expert hired to provide an
objective evaluation of the
defendant.

At the prosecution table, John Murphy leans forward and nods
to Clay Trivett. Mr. Trivett stands up from the table and
moves to the front of the courtroom. As he does so, Harry
turns towards him expectantly.

CLAY TRIVETT:
Your Honor, we have moved Mr.
Hamdan to Camp 5 Delta in accord
with international guidelines for
the detainment of prisoners during
the sentencing period.

JUDGE ALLRED:
In accordance with what guidelines,
Mr. Trivett?

CLAY TRIVETT:
Article 5 of the Third Geneva
Conventions concerning the
treatment of prisoners of war
dictates...

JUDGE ALLRED:
(interrupting Clay Trivett)
The Geneva what? Mr. Prosecutor,
surely you can’t be referencing
legal mandates under The Geneva
Conventions—a code of
international law whose
applicability you have repeatedly
sought to deny during these
proceedings.

Clay Trivett pauses, looks at Judge Allred, and continues.

CLAY TRIVETT:
Your Honor, I would respectfully
like to point out the difference
between the Conventions’ Articles.
Previously I was concerned about
the guidance of Article 5, but the
detainment of prisoners concerns an
entirely different article. Given
that they are separate articles,
(MORE)
CLAY TRIVETT: (cont’d)
there is no overlap between the two and therefore no incongruity in applying the 4th Article of the Conventions.

JUDGE ALLRED:
(pausing in frustration)
Mr. Prosecutor, you can’t be serious. Your denial of the Conventions has been robust and uncompromising. Claiming a Geneva mandate at this point is unreasonable and borders on the absurd. As I see it, you have no ground to stand on, as a result of your own determined actions!...I am denying your request and ordering that the prisoner be returned to Camp 4 Delta.

Clay Trivett looks back towards the prosecution table at John Murphy and Lt. Cmdr. Stone, whose stony faces indicate that they must concede this argument. Clay Trivett bites his tongue in frustration and returns to his seat. Harry also returns to his seat at the defense table.

JUDGE ALLRED:
Now, on to a different matter concerning the prosecution’s wish to include expert testimony during sentencing arguments.

At the prosecution table John Murphy nods to Lt. Cmdr. Stone, who rises and steps forward.

LT. CMDR. STONE: 
Yes, your Honor. The prosecution requests that it be allowed to include expert testimony from an agent of the Federal Bureau of Investigation as part of our sentencing presentation.

JUDGE ALLRED:
For what reason, Mr. Prosecutor?

LT. CMDR. STONE:
Given that the defendant has been convicted of providing material support for terrorist acts, the prosecution wishes to include testimony from a witness who

(MORE)
LT. CMDR. STONE: (cont’d)
experienced the agonizing outcome
of these attacks first hand.

JUDGE ALLRED:
I’m afraid I don’t understand. In
what capacity will the witness do
so?

LT. CMDR. STONE:
FBI Agent Walter Demcox was in New
York City on September 11th, 2001
and can testify about his
experience witnessing the attacks,
the devastation, and his personal
involvement searching for survivors
in the rubble of the World Trade
Center site.

Brian immediately stands from behind the defense table.

BRIAN:
Your Honor, the defense would—we
object to the prosecution’s
request. The conviction of material
support of a terrorist organization
permits the defendant to be
punished only for the acts that he
did personally and not for the
criminal acts of the organization
itself, such as the 9/11 terrorist
attacks. The jury may, of course,
make reference to the crimes for
which Mr. Hamdan has been
convicted, but not those crimes
committed by al Qaeda, particularly
when the members have acquitted Mr.
Hamdan of the broader conspiracy,
and of any responsibility for its
crimes, sir.

LT. CMDR. STONE:
Your Honor, the material support
the accused has been convicted of
providing has been found to be the
facilitation of transportation and
the planning of
terrorism—specifically, terrorist
acts adduced at trial, including
the 9/11 attacks. By convicting the
accused of providing material
support, the government showed that
before and after 9/11, he provided
(MORE)
LT. CMDR. STONE: (cont’d)
assistance to facilitate those attacks. The testimony of Special Agent Demcox is intended to demonstrate the perspective of those directly affected by the actions of Mr. Hamdan.

JUDGE ALLRED:
Mr. Prosecutor, I understand your argument, however I find it untenable. You can allude to--

LT. CMDR. STONE:
(interrupting)
Right.

JUDGE ALLRED:
You can allude to terrorist acts perpetrated by the organization that he is alleged to have supported. But, I don’t know that I’m going to let you go very far in asking the jury to consider any of those terrorist acts directly. You can, I think, fairly allude to three attacks: on the East African Embassies, the USS COLE, and the 9/11 attacks, as things that Al Qaeda did, but I’m going to instruct the members that the defendant is only to be sentenced for his acts and not for the illegal conduct of the organization as a whole. If you want him to be sentenced for the illegal conduct of the organization, you have to get a conspiracy conviction, and you failed to get one. Don’t you agree with that?

LT. CMDR. STONE:
I agree that he was not convicted as a conspirator, but his material support conviction proves that he provided services to al-Qaeda including facilitating and planning acts of terrorism.

JUDGE ALLRED:
Ok, well you can--
LT. CMDR. STONE:
(interrupting)
And that comes straight from the material support conviction written on the charge sheet!

JUDGE ALLRED:
Ok. You can make those arguments straight from the charge sheet because that’s what he’s been found guilty of. I think that’s fair. But, I mean, he was found guilty of--of providing support for acts of terrorism, vague though they may be. So, I’ll permit vague references to acts of terrorism and instruct the members that they are to sentence him only for his material support and not for the--

LT. CMDR. STONE:
Yes, Your Honor.

JUDGE ALLRED:
--illegal conduct.

LT. CMDR. STONE:
Right.

JUDGE ALLRED:
But, I am giving this instruction that the defense is requesting, which says, "Not for the illegal conduct of the international terrorist organization." Is that clear, Commander Stone?

LT. CMDR. STONE:
(nodding in agreement)
As long as the prosecution is allowed to allude to the attacks in place of their direct mention.

JUDGE ALLRED:
Fine. As for including the testimony of Special Agent Demcox I am not allowing it. It appears to be an emotional ploy that neglects to reference the issue at hand, that being the defendant’s direct participation in material support.
LT. CMDR. STONE:
But, your Honor--

JUDGE ALLRED:
(steamrolling his interruption)
My decision is final, Commander Stone....I would add that I’m close to formally reprimanding the prosecution for attempting to introduce such emotional and prejudicial evidence before the jury after the accused has explicitly been acquitted of being a co-conspirator in the 9/11 attacks.

Lt. Cmdr. Stone has a silent faceoff with the judge for a moment before speaking again.

LT. CMDR. STONE:
Understood, your Honor.

Lt. Cmdr. Stone returns to his seat at the prosecution table. While still looking at Judge Allred, John Murphy nods his head in approval of Lt. Cmdr. Stone’s argument.

JUDGE ALLRED:
Good...Now that that’s over, we can proceed to the important orders of the day, those being the sentencing arguments from the prosecution, followed by those from the defense. All members are present in the courtroom. Trial Counsel, you may make your argument with respect to a sentence.

John Murphy rises from behind the prosecution table and buttons his suit jacket.

JOHN MURPHY:
Thank you, your Honor.

John Murphy walks to the front of the courtroom and pauses before he begins to speak.

JOHN MURPHY:
(facing the jury)
We’re now turning to the argument on sentencing, a very important decision that you will make. The seriousness of the crime for which
(MORE)
JOHN MURPHY: (cont’d)
you have convicted the accused is
reflected in the fact that the
conviction carries a sentencing
possibility of life imprisonment. A
sentence we believe is not just
appropriate, but compelled here.

CLOSE ON: Salim, who closes his eyes and breathes deeply.

JOHN MURPHY:
(speaking deliberately)
You found that between the time of
February 1996 through and including
November 24, 2001, the accused
provided material support for
terrorism, all during a period in
which the United States was in
armed conflict with al-Qaeda. You
found that he became an actual
member of the al-Qaeda
organization. You found he served
as a driver for Osama bin-Laden,
the most wanted and dangerous
terrorist in the world today. You
found he provided transportation
services that directly facilitated
acts of terrorism. You have found
him guilty of offenses that have
made our world dangerous. Anyone
who provides material support for
terrorism is a serious war criminal
and a threat to our society.

John Murphy turns to look at Salim.

JOHN MURPHY:
He is here before you today as a
convicted war criminal.

John Murphy begins walking along the railing of the jury box
very slowly.

JOHN MURPHY:
His material support of terrorism
has changed our world as we knew
it. Al-Qaeda terrorists changed it
dramatically in our lifetime and
perhaps changed it forever.
Material support for terrorism is
never a victimless crime. The
magnitude of his offenses is
unfathomable, considering the
(MORE)
JOHN MURPHY: (cont’d)
victims, and the families of the victims. The government asks that you deliver a sentence that will absolutely keep our society safe from him and prevent him from further criminal conduct...A long time will be necessary, even if you think reform is even possible. And your sentence should send a message to all others that if anyone thinks of providing material support to the sword of terrorism, directed at our citizens and the citizens of the world, there will be painful consequences. His social condition, lack of opportunities, and life in Yemen cannot be seen as an acceptable excuse for providing material support for terrorism. And they should be summarily rejected out of hand as unworthy mitigation in this case....Once you see your boss killing people, you leave. You get another job. Period. He never abandoned bin-Laden or left the side of al-Qaeda.

John Murphy stops walking to add emphasis to his words.

JOHN MURPHY:
He only stopped when he was finally captured...Telling us, through Dr. Keram, (turns and briefly glances at Emily), that Mr. Hamdan is now praying for the victims of 9/11 after watching video of the attacks is as offensive as it is manipulative. He provided material support for terrorism not once, but again and again. And now he’s praying for the victims?

John Murphy turns and stares down Salim, then returns to the jury.

JOHN MURPHY:
Dr. Keram, although she denies it, is really an advocate for Mr. Hamdan. She wants the lowest possible sentence from you. She is paid by the defense. She has spent an astounding 120 hours just on

(MORE)
JOHN MURPHY: (cont’d)
this one case. And despite her
skills and academic expertise, she
has been manipulated by Hamdan
himself and his desire to escape
justice. I’m glad you got to hear
Dr. Keram just now, to see how
Hamdan is capable of manipulating
and duping others, even experts.
She is simply giving him a voice.
And most of what she told you about
Hamdan was information she gathered
during or after this trial—a time
when the statements of this accused
are entirely self-serving. The
accused has a family, and
understandably feels badly about
his separation from them. You
should feel badly for his family.
He has made them suffer. He should
have thought about them when he
became a trained member of
al-Qaeda, a driver for al-Qaeda, a
bayat pledged member of al Qaeda. A
person who looks at Osama bin-Laden
and his terror, looks at the
attacks on our East Africa
embassies, an attack, by the way,
that is exactly 10 years old today,
the attack on our destroyer and our
sailors on the USS COLE, and the
attacks on 9/11 that killed more
than 3,000 people, and says, as a
comrade of the men responsible,
that when he thinks of these
attacks and when he thinks of bin
Laden, he is filled with regret.
That is a lie. The truth is that he
is really a fervent al-Qaeda
member, a manipulative person who
may never change his true attitude
and his true desires in the future.
When you think of his family, you
should remember that he abandoned
them when he provided material
support for terrorism. As Agent
Jerome Stett said, "Without people
like Mr. Hamdan, bin Laden would
enjoy no support, enjoy no
protection, and would probably have
been unable to elude capture up
until this point." That’s a
chilling statement and reflects the
(MORE)
JOHN MURPHY: (cont’d)
consequences of the accused’s
criminal conduct. Your sentence
should properly reflect the
victims’ outrage at his conduct. He
should pay for what he did with an
appropriate punishment. We seek
retribution with this
sentence...Now punishment alone
isn’t the sole purpose of our
system of justice, but it is an
appropriate consideration. Our
society was wounded by the actions
of this man. He needs to be
incapacitated and disabled from
further criminal conduct. His
penalty should be so significant
that it forecloses any possibility
that he reestablishes his ties with
terrorists. Material support for
terrorism is not consequence-free.
Deprivation of liberty, removal
from family life is a painful
consequence. But the penalty must
sting significantly or the price
will not be high enough to deter
those who would be seduced by
radical and charismatic leaders.
The government comes to you with an
earnest and important sentencing
recommendation. The government asks
you to return a significant
sentence in this case. Before you
decide on the number of years for
sentence, take a moment to think
about the victims of Mr. Hamdan’s
actions. Think of them, consider
them, remember their families. That
number, your sentence, will be
their justice. Life imprisonment
may be the most appropriate
sentence. Life, but certainly not a
day less than 30 years.

John Murphy pauses to let his words ring in the silence.

JUDGE ALLRED:
Thank you, Mr. Murphy. And for the
defense?

Joe stands from behind the defense table and walks to the
front of the courtroom.
JOE:
(addressing the jury)
I’ll start by saying that one of the things that makes us, the United States, unique is that we don’t sentence based on passion. We sentence based on the law, and that lets us craft a punishment not for everyone, but for each individual accused. And so we must tailor every punishment to fit only the accused, to address what he actually was convicted of. We are not a vindictive society. That is what makes us great. When considering what might be an appropriate sentence for Salim Hamdan, I ask you to consider nothing more than the story you have been told...that of a man who took a job driving a car because it was the best job available to him. Mr. Hamdan’s choice to work as Osama bin-Laden’s driver was certainly regrettable, but it is also understandable. As an orphan who grew up in the rural Yemeni desert with nothing but a rudimentary education, Mr. Hamdan was a man with limited options. When al-Qaeda recruiters arrived in Yemen, he saw an opportunity, an opportunity to take a high paying job and maybe some day, if he was lucky, have a family... And all he had to do was drive a car. To him it was a job, a way to make money, and nothing more. Then, in 2001, he realized that his involvement with terrorists must come to an end, and what did he do? He tried to escape. He tried to leave Afghanistan and return to Yemen...In this trial we have talked a lot about justice. There will no doubt be other trials in the future, and at some point, we will bring the people who planned and conspired, the people who brought those buildings down, to justice, and that’s going to be a great day. A great day. But what’s important is that, on that (MORE)
JOE: (cont’d)

day, the world recognizes that it is justice and not revenge being served. The victims of 9/11 and other attacks will receive their justice, and it will be all the more meaningful because we got the guys who did it...not their driver. When the jury hands down sentencing we ask that you weigh the decision with due diligence. Your sentence will send a message to the rest of the world on behalf of America. You have an opportunity to deliver a fair judgment within an ad hoc imprisonment and trial structure that has hitherto lacked justice. Your sentence can be a message, one that affirms to the rest of the world that America has not strayed from the values that shaped our nation. You know what occurred and you know what Salim Hamdan has done. We ask that your sentence be a fair punishment for his involvement and not the judgment of an organization unfairly imposed on one man.

Joe waits a beat and turns to Judge Allred.

JOE:
At this time, your Honor, Mr. Hamdan would like to make an unsworn statement.

JUDGE ALLRED:
Very good. In what form does he wish to proceed?

JOE:
He will stand at the counsel’s table, sir.

JUDGE ALLRED:
Very well. Mr. Hamdan, please proceed.

Joe returns to the defense table, but remains standing. Salim stands up next to Joe, adjusts his headdress, and begins speaking. While he does so, he shifts his steady gaze between the judge and jury. The voice of an American translator is broadcast through the speakers when Salim pauses after every sentence.
SALIM:
I would like to first thank the members of the jury for taking my trial. I would like to thank the judge himself, and all the present people. I personally present my apologies if any think what I did has caused any pain. I would like to say that when I worked for Sheikh Osama bin-Laden I had never known about the attacks in New York. But then, a few days later, I found out it was Sheikh Osama. I thought, God Willing, this will never occur again. I was scared. It was a sad thing to see innocent people killed. I did not know what I could do because I had my family with me in Afghanistan. I felt between two fires--I could not stay, but I could not leave. Now I see, and I am sorry for the decision I made...My apologies. Thank you.

Reporters in the gallery scribble notes on memo pads while Salim sits down and politely listens to the final translation of his words. Once the voice on the loudspeaker has finished saying thank you, he bows his head once towards Judge Allred, once towards the jury box, and then leans back in his seat.

JOE:
(from the defense table)
We have nothing further to present at this time, your Honor.

JUDGE ALLRED:
Thank you, Mr. McMillan.

Judge Allred sits up in his seat to face the jury.

JUDGE ALLRED:
I will now read the sentencing instructions. Members of the jury, please rise.

The members of the military jury rise. The camera pans slowly across their faces as Judge Allred reads his instructions, each of them listening with an expression that indicates the great importance of their task.
JUDGE ALLRED:
The maximum punishment for the offense of which the accused has been found guilty is confinement for life. Bear in mind that the maximum punishment is a ceiling on your discretion. You are at liberty to arrive at any lesser sentence based upon your own evaluation of the evidence presented. In selecting a sentence, you should consider all of the evidence you’ve heard in this case. All evidence is relevant to the subject of sentencing, remembering, of course, only to sentence the accused for the offenses of which he has been convicted. You should also consider the duration of the accused’s pretrial confinement or detention. The law does not require that you use any specific formula in considering this pretrial detention, but it does require that you consider the detention and give it the weight you deem appropriate. If you sentence the accused to 61 months of confinement, in other words, time served, he will be released as a result of your sentence. If you sentence him to eight years; then 61 months will be subtracted from the eight year term and he will be serving the balance as a result. Is that understood?

LEAD JUROR:
Yes, sir.

JUDGE ALLRED:
Good. We’ll close for your deliberations now, and we’ll wait to hear from you when you’re ready to proceed. (bangs gavel)

INT. CONFERENCE ROOM, COURTHOUSE AT CAMP IGUANA

The defense team sits in a small conference room nervously sipping water from disposable plastic cups. A clock hangs on an otherwise bare wall.
HARRY:
They went out at 11 o’clock so it’s only been an hour.

CHUCK:
I thought Salim handled his presentation quite well, even though he didn’t talk about iguanas this time.

BRIAN:
For sure. Typically polite and respectful, and I thought it was pretty moving.

JOE:
I think so, too. I hope the jury feels the same way. Hard to imagine though, these guys got pulled off the battlefield last month to come hear this case. We have generals from Serbia, Iraq, and Afghanistan all sitting on our jury.

BRIAN:
Yeah. Their proximity to war could go both ways, though. Trying to read into that is probably a waste of our time. Whatever the sentence is going to be, we gotta be prepared for the worst. You remember how hard Salim took the verdict.

A petty officer swings open the door to the conference room.

PETTY OFFICER THREE:
They’re ready for you.

The defense team looks at one another.

HARRY:
Let’s hear what they got for us.

They stand up and walk out the door.

INT. COURTRoom AT CAMP IguANA

The courtroom is packed; everyone is silent. Salim sits with his headphones on. Salim’s elbows rest on the table in front of him and his hands are pressed together, with the thumbs supporting his chin. He lifts his chin up to stroke his
beard and then folds his forearms across his chest, ready for his judgment.

JUDGE ALLRED:
Has the jury agreed to a sentence for the defendant?

The lead juror stands.

LEAD JUROR:
We have, your Honor.

JUDGE ALLRED:
Okay. Will the defendant and counsel please rise?

Both the prosecution and defense rise, along with Salim.

JUDGE ALLRED:
You may announce the sentence of the court.

LEAD JUROR:
Thank you, your Honor.

The lead juror turns to face Salim.

LEAD JUROR:
Salim Ahmed Hamdan, it is my duty as president of this jury to inform you that this military commission sentences you...

The lead juror turns her gaze to face the prosecution, looking directly at John Murphy.

LEAD JUROR:
....to 66 months of detention, including credit for time served.

CLOSE ON: The defense team, shocked. Salim listens and his eyebrows perk up and he turns to smile at his lawyers, but they have yet to process the good news.

CLOSE ON: John Murphy, who grimaces in disgust. Lt. Cmdr. Stone and Clay Trivett look to him with puzzled looks on their faces.

JUDGE ALLRED:
Thank you, you may be seated.

Everyone sits down.
JUDGE ALLRED:
Members of the jury, you have now completed your service to this trial. I sincerely thank you for your service in this most significant and historic case, and I discharge you with my deepest gratitude. You are free to withdraw from the courtroom and go about your regular duties.

BAILIFF:
All rise.

Salim motions to the judge with his right hand.

JUDGE ALLRED:
Oh, wait a moment. It appears that Mr. Hamdan would like to speak. Am I right?

Harry turns to look at Salim, who nods in reaction upon hearing the translation.

JUDGE ALLRED:
Okay. If you’ll be seated once again, Mr. Hamdan would like to say something to you and I’ll give him that privilege.

Salim begins speaking into the microphone on the defense table. The translation is heard over the loudspeakers.

SALIM:
I would like to apologize one more time to all the members. And I would like to thank you for what you have done for me. And I would like also to say--to thank the judge, and I would like to thank everybody. And I apologize once again.

JUDGE ALLRED:
Thank you, Mr. Hamdan. That was very gracious. I wish you God speed, Mr. Hamdan. I hope the day comes soon when you return to your wife and your daughters and your country.
SALIM:
Inshallah. (not translated)

JUDGE ALLRED:
(directly to Salim)
Inshallah. (not translated)

INT. COURTROOM LOBBY

A gaggle of reporters are busily chatting as they wait in front of the closed doors of the courtroom.

Once they open, Harry, Brian and Joe walk out and are immediately swarmed by journalists.

JOURNALIST:
Mr. Schneider, how do you think this sentence will be received by the U.S. government?

HARRY:
(pausing before speaking)
I would have to think that, given the sentencing recommendation of the prosecution, it has to be an unwelcome outcome.

JOURNALIST 2:
How did your client react to the sentence?

BRIAN:
I imagine he was--or rather, we were, more surprised than he probably was. I don’t think anyone expected the sentence to be this short.

Chuck walks up and grabs Harry, whispers in his ear.

HARRY:
If you’ll excuse us, we’d like to visit our client before he is processed for detainment this afternoon. We are leaving Cuba tomorrow morning and it’s our only chance to see him before then.
INT. HOLDING CELL, COURTHOUSE AT CAMP IGUANA

Salim is sitting with his head in his hands. Chuck is sitting next to him. Harry, Brian, and Joe sit across the table.

Salim looks up with a beaming smile on his face and rubs the palms of his hands against his head. He then closes his eyes and winces with pain.

Salim says something in Arabic that Chuck translates.

CHUCK:
Salim says he is very happy, but the stress of the day has given him quite a headache, he can’t speak that easily.

JOE:
Tell him that’s no problem, we just wanted to say goodbye before we left. We’ll try to get down here one more time before they send him back to Yemen.

Chuck translates. Salim nods with his eyes closed in pain. He mumbles one more thing.

CHUCK:
He says, he can’t be too sure about that--that he’ll ever be sent home--but he’d better say goodbye now just in case. He also says he’s very grateful for what you have done for him and his family.

Muster the energy to do so, Salim lifts his head up and shakes each lawyer’s hand.

SALIM:
(whispered)
Thank you, Joe....Brian....Harry.

HARRY:
You’re welcome Salim, we’re happy to know you’re going home.
EXT. MCCALLA AIRFIELD, LATE AFTERNOON

The defense team, along with Dr. Keram, the prosecution team, Judge Allred, the entire jury, and all members of the media--each in separate groups--watch bags being loaded onto a military cargo plane.

Harry talks to Chuck.

CHUCK:
That was only the second time he ever said thanks.

HARRY:
When was the first?

Harry adjusts the strap of his briefcase on his left shoulder.

CHUCK:
After Brian gave the closing argument.

HARRY:
Oh, right. Keeping tabs?

CHUCK:
It’s not usual for a Yemeni man ever to say thanks, especially for Salim, because he knows he owes you a debt he can never repay.

They begin walking across the tarmac.

HARRY:
Well until he gets off this island we haven’t accomplished anything.

CHUCK:
You think there’s a chance he’ll stay?

HARRY:
Bush isn’t going to be happy with this outcome in his first Guantánamo trial. I bet they’ll try to find some way around it.
EXT. ROAD OUTSIDE FENCING AT MCCALLA AIRFIELD

CLOSE ON: An iguana lying in the foreground by the roadside. The military cargo plane takes off from the airstrip in the background.

EXT. WASHINGTON, D.C. - SUNSET

Shots of downtown Washington, D.C. at sunset: The Supreme Court, the Washington Monument, the Roosevelt Memorial, the Lincoln memorial and its reflecting pool.

EXT. REAGAN NATIONAL AIRPORT - SUNSET

The military cargo plane lands on the tarmac. The skyline of Washington D.C. can be seen in the background.

EXT. TARMAC AT REAGAN AIRPORT

Harry and Joe are walking across the tarmac together, both wearing suits and with their briefcases slung over their shoulders. Joe is reading his Blackberry, which he shows to Harry.

JOE:
Check this out. The Defense Department issued a press release suggesting that Salim will be held indefinitely as an unlawful enemy combatant, regardless of the sentence.

HARRY:
What? Can I see that? What’s the point of having the trial if the verdict can be negated on his classification as an enemy combatant?

Two generals, an Army general and a Marine general--both wearing full dress uniform and recognizable as members of the jury--are waiting for Harry and Joe by the door to enter the airport terminal.

ARMY GENERAL:
Excuse me, Mr. Schneider and Mr. McMillan?
HARRY:
Yes?

ARMY GENERAL:
Did you hear they might not let him go?

HARRY:
Yeah, Joe was just showing--

ARMY GENERAL:
(sternly interrupting)
You can’t let that happen. You have to go after them on this. It would make a mockery of our verdict.

MARINE GENERAL:
You know, the best thing that can happen is that Hamdan serves the sentence we imposed on him, for the crime we found he committed. Then he returns to Yemen, he returns to his family, his friends, his fellow citizens, so he can tell them, "Ultimately, I was treated fairly." That will go a long way to prevent his children from growing up to fight my children.

INT. SCHNEIDER HOUSEHOLD, KITCHEN

CAPTION (LOWER LEFT CORNER): THANKSGIVING DAY, 2008

CLOSE ON: TV showing a Thanksgiving Day football game. A phone rings.

Sebastian mutes the Thanksgiving football game on TV and answers the phone.

SEBASTIAN:
(into phone)
Hello?....Hold on.

Sebastian walks to the hallway and yells upstairs.

SEBASTIAN:
Dad!

HARRY (OFF SCREEN):
Yep?
SEBASTIAN:
Phone call.

Sebastian sets the phone down on the counter and returns to the drawing he working on. Harry walks into the room.

HARRY:
Hey Seb, where’s the phone?

SEBASTIAN:
(not looking up from his drawing)
On the counter.

HARRY:
(into phone)
Hello?

INT. MIZER HOUSEHOLD, LIVING ROOM

Same football game is playing on a TV in the background.

BRIAN:
Hey Harry, it’s Brian. I just got a call from Colonel David. Salim is leaving for Yemen on Sunday.

INT. SCHNEIDER HOUSEHOLD, KITCHEN

HARRY:
Sunday? Really? That’s a month before he’s served the full sentence.

BRIAN (ON PHONE):
Yeah, he’s going to finish the sentence in Yemen.

HARRY:
There’s no way we can make that.

BRIAN (ON PHONE):
No, of course we can’t. But we can get him on a conference call. It’s gonna be early. Can you be in the office at six a.m.? We’re sworn to secrecy, his release is very close-hold, we can tell no one.
Joe is walking down the unlit hallways of Perkins Coie with a coffee in each hand and his messenger bag slung over his shoulder. As he walks by, the fluorescent lights blink on overhead. Joe turns into Harry’s office to see Harry standing by the window watching the sun rise over Elliot Bay. Joe walks up to him and hands him his coffee.

The phone rings behind them.

HARRY:
There’s our guy.

Harry walks over to the telephone and depresses the speaker button.

HARRY:
Hello?

BRIAN (ON PHONE):
Hey Harry.

HARRY:
Hey Brian.

BRIAN (ON PHONE):
You got Joe there?

JOE:
Hey Brian.

BRIAN (ON PHONE):
Great, Chuck’s here with me.

CHUCK (ON PHONE):
Good morning fellas.

BRIAN (ON PHONE):
Alright, they said we could call at 9 a.m. eastern so let’s see if this goes through.

The phone starts ringing. The voice of a military officer answers.

PETTY OFFICER (ON PHONE):
Camp Delta detention facility.

BRIAN (ON PHONE):
This is Lieutenant Commander Brian Mizer, office of military commissions, we have an appointment to speak to Detainee 149, please.
There is a 20 second pause. Harry and Joe sip their coffee in anticipation, and then...

SALIM:
(in an upbeat voice and in English)
Hello?

FADE OUT

TITLE CARD: "On Nov. 30, 2008, just over seven years after being captured at the Taktapol roadblock in Afghanistan, the United States Government released Salim Ahmed Hamdan from the Camp Delta Detention Facility at Guantánamo Bay, Cuba."

TITLE CARD: "He departed in the middle of the night, the sole passenger on a military flight to Yemen. Upon his arrival, he served the last 30 days of his prison term in Yemeni Political Security Prison in Sana’a. Hamdan was released in January, 2009."

Title Card: "Four months later, in April, 2009, his trial team visited him in Sana’a."

EXT. EL RAHABA AIRPORT, SANA’A, YEMEN - MIDDAY

Chuck, Harry, Joe, and Brian walk out of the busy airport entrance. Being the only Westerners, they stick out like a sore thumb, seeming lost and confused by the hubbub.

CLOSE ON: The defense team, scanning the parking lot, looking nervous.

Chuck sees something and begins smiling and waving.

CLOSE ON: Salim, walking towards them with two girls bouncing along by his side. He is wearing the traditional ceremonial dress of a Yemeni man—including head dress, robe, and dagger slung through his waistband. He is smiling from ear to ear and waving to the lawyers. He appears confident and sure of himself.

The lawyers pick up their bags and walk across the parking lot to meet them.

The girls rush up and give the lawyers hugs, which surprises them and makes them laugh.

Hamdan strides up and gives them all a hug, finishing with Harry. He rests his right hand on Harry’s shoulder and smiles at all the lawyers.
SALIM:
Now, my friends, it is my turn to take care of you. My car is parked across the lot.

Salim pulls out his keys and gestures towards a parked mini van with an open palm.

SALIM:
Do not worry, you will be safe with me. As you know, I’m a very good driver.

Salim, satisfied with his joke, smiles while the lawyers shake their heads and start laughing.

WIDE OUT: The lawyers walk across the parking lot, get into the mini van and drive away.

FADE OUT

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