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THE CENTERPIECE of the government's case against Hamdan was a seven-page interrogation report, known as a 302, written by the bureau's foremost expert on al Qaeda, a Lebanese-American FBI agent named Ali Soufan.

One of only a handful of agents who spoke perfect Arabic, Soufan had been handpicked for the al Qaeda squad in the wake of the 1998 embassy bombings by the FBI's head of counterterrorism, John O'Neill. In 2000, Soufan had been dispatched to Yemen to serve as the lead case agent on the *Cole* bombing. He was still there a year later, when the two hijacked commercial airplanes slammed into the World Trade Center.* Rather than return to New York, Soufan stayed in Yemen to investigate some leads. One took him to a Yemeni prison and to Abu Jandal—or Nasser al-Bahri—the man who had introduced Hamdan to jihad and subsequently been taken into custody after the *Cole* attack. Their interview lasted nearly two weeks and yielded an ex-

* O'Neill was among those killed in the 9/11 attacks.

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traordinary amount of intelligence; among other things, al-Bahri confirmed the identities of every one of the 9/11 hijackers.

It was also the first time that the name Salim Hamdan had come to the attention of the U.S. government. Having studied al Qaeda for years, Soufan had accumulated dozens of names—some real, some aliases of people he suspected of being operatives for the organization. During one of their many conversations, Soufan asked al-Bahri if he'd ever heard of a man named Saqr al-Jedawi. Al-Bahri responded instantly. "That's Salim Hamdan," he said. "Bin Laden's driver and my brother-in-law."

His interest piqued, Soufan questioned al-Bahri a little further about Hamdan, and al-Bahri told him the story of their arranged marriages to Yemeni sisters. Soufan asked if Hamdan had sworn a *bayat*, or oath of allegiance, to bin Laden. Al-Bahri said he had.

About a year and a half later, when Soufan learned that Hamdan was in U.S. custody and on Guantánamo Bay, he got on the first plane that he could to Cuba. Knowing the kind of proximity Hamdan had had to bin Laden, Soufan figured he could be a huge intelligence asset.

During their first few meetings, Hamdan was intransigent and arrogant. He made fun of his previous interrogators' ignorance of al Qaeda and insisted that he had already divulged everything he knew. Soufan was sure he was lying. He told Hamdan about his lengthy interview with al-Bahri and mentioned a few details about al Qaeda to display his knowledge of the organization. "If you're smart, you'll tell me the truth about everything," Soufan said, "because I'm going to know when you're lying."

Soufan and his partner, George Crouch, gradually built a relationship with Hamdan, exploiting the same void in the prisoner's life that had led him to jihad—the orphan's yearning for connection. Whenever they visited Hamdan on Guantánamo they brought him food—usually pizza or a Filet-O-Fish sandwich—as well as the American car and truck magazines that he loved. Soufan once even arranged for Hamdan to speak with his wife on a satellite phone.

Hamdan eventually started talking. He detailed his rise from untrained recruit to bin Laden's personal driver, and admitted to having

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trained at al Qaeda–sponsored camps in Afghanistan and transporting weapons for bin Laden. He told Soufan and Crouch that he had helped evacuate bin Laden’s compound in Afghanistan before the 1998 embassy attacks, and acknowledged that he had been returning to bin Laden at the time of his capture in November 2001. Hamdan offered useful information about al Qaeda as well. Among other things, he identified mug shots of other bodyguards who were being held on Guantánamo, told Soufan about the leaders of the *Cole* bombing, and helped fill in the map of bin Laden’s post-9/11 whereabouts.

Soufan thought he had plenty of evidence to prosecute Hamdan in federal court, but he was eager to have him testify against more significant terrorists instead. After all, Hamdan knew all of the al Qaeda leadership and had even been with bin Laden and Zawahiri on September 11, when Khalid Sheikh Mohammed, the mastermind of the attacks, briefed them on the success of the operation.

Soufan wasn’t sure, but he thought he might be able to persuade Hamdan to plead guilty and cooperate with the government in exchange for a lighter sentence. He had several conversations with David Kelley, the deputy U.S. Attorney in Manhattan, about the possibility of offering the detainee a deal. Kelley said he was talking to the Pentagon and Justice Department about working something out.

So it came as an unpleasant surprise to Soufan when, several months into his interrogation of Hamdan, the Bush administration designated him for trial before a military commission. Soufan’s access to Hamdan was immediately cut off, and the FBI lost a crucial source of information, as well as a potential key witness in other al Qaeda trials.

THE DAY AFTER being assigned to the *Hamdan* case, Swift went to see the lead prosecutor, Lt. Comdr. Scott Lang, about what kind of deal the government had in mind.

Lang had joined the commissions in November 2002, a year after the president’s military order. Shortly after moving into the Pentagon, he and his fellow prosecutors were presented with files on about six hundred detainees and told to choose the most suitable defendants. It was an inversion of how the process of meting out justice typically

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works. “Normally, you have the crime first and then you find the criminals,” Lang later recalled. “When we showed up, they already had the criminals. We were tasked with finding the crimes.”

Within a matter of months, Lang had zeroed in on Hamdan. In a sense, he was a surprising choice. He wasn’t a high-ranking officer of al Qaeda, nor had he participated in any specific terrorist operations. But because the military commission system was brand-new, Lang thought it made sense to try some lower-ranking operatives first, in case anything went wrong. He also liked the fact that Hamdan had been in U.S. custody since his capture and hadn’t been rendered to any foreign countries for interrogation, which might open the door for his defense attorney to raise questions about his treatment.

Hamdan’s story certainly had narrative appeal. Many jihadis had never even met bin Laden, but Hamdan had admitted to working directly for him. Better still, unlike the cresting wave of jihadis who went to Afghanistan after 1999, once bin Laden had already established himself, Hamdan had been with him between 1996 and 2001, a stretch of time that spanned not just 9/11 but also the 1998 embassy attacks and the 2000 USS *Cole* bombing. If Hamdan didn’t plead guilty, Lang figured he could turn his trial into a history of al Qaeda’s long-standing jihad against America.

Building a case against Hamdan proved unexpectedly arduous. It took months to sift through the evidence from the field, primarily Afghanistan, all of which had been logged in to an enormous and poorly organized database. What’s more, the FBI and CIA were anything but forthcoming with interrogation reports and the names of the agents who’d conducted the interviews. Requests that should have taken days wound up taking months.

Nevertheless, Lang’s case gradually started coming together. In addition to Soufan’s interrogation report, he had compelling corroborating evidence. There were photographs and videotapes of Hamdan standing beside bin Laden, including one taken at a news conference for the Pakistani media in Afghanistan in 1997 in which Hamdan is wearing military fatigues and clutching what looks like a semiautomatic weapon. There were incriminating documents too, such as a written request for Hamdan to deliver Pika machine-gun belts and

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magazines to al Qaeda fighters. In addition, there was photographic evidence of the surface-to-air missiles that had allegedly been found in the trunk of the car he was driving at the time of his capture: the U.S. Army major who took Hamdan into custody snapped pictures of the missiles before destroying them.

Lang eventually managed to speak with almost every officer and agent who had come into contact with Hamdan since his capture, including one intelligence agent who said that Hamdan admitted to feeling “uncontrollable enthusiasm” when he was in bin Laden’s company. Once he was satisfied with his case, Lang passed Hamdan’s file up the chain of command for approval. It went first to the Pentagon’s adviser for the commissions, then to the deputy defense secretary, Paul D. Wolfowitz, and finally to the president himself.

A former cross-country runner, Lang was reed thin, with close-cropped blond hair. He had been in the Reserve Officer Training Corps as an undergraduate at Villanova and had gone on to become the navigator on a Norfolk-based destroyer before the Navy sent him to law school. Like Swift, he loved being in the courtroom, though Lang had stuck almost exclusively to prosecuting and had excelled, racking up one of the best conviction rates in the Navy.

Lang and Swift had known each other for years, ever since 1993, when Lang was an instructor at the Naval Justice School in Newport, Rhode Island, and Swift did a nine-week JAG training course there after law school. Lang’s first impression had not been favorable. “Charlie Swift was the unanimous winner of the Spring Bud award,” Lang remembered, “which goes to the student who’s constantly springing up out of his seat to make pain-in-the-ass comments. In the three years I taught at Naval Justice, no one got more votes than Swift.”

The moment Lang heard that Swift had been assigned to represent Hamdan, he was sure that the government had made a mistake. The JAG community is relatively small—there are about seven hundred Navy JAGs on active duty—and while he and Swift had never squared off in the courtroom, Lang was well aware of his tendency to showboat on behalf of his client. “I knew that Swift was going to go to the media and make Charlie Swift a major focus of the case,” Lang recalled. “If

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the senior leadership of the JAG Corps didn't realize that, they made a major miscalculation."

For his part, Swift considered Lang uptight and ungenerous, too prone to divide the world into good and evil. "Lang would have hanged the innkeeper in the Lincoln conspiracy case," says Swift.

Their first meeting about the Hamdan case was brief. Lang told Swift he wasn't authorized to make a binding deal, but that he was thinking twenty years for full cooperation, including testifying at the military commissions of other detainees.

"What happens if we don't plead guilty?" Swift asked.

Lang wasn't surprised. The civilian lawyers at the Pentagon were confident that the JAGs on the defense team would all fall in line and push their clients to take pleas. Lang didn't agree. He was sure that Swift and the other JAGs were planning to fight.

SWIFT WAS EAGER to get down to Guantánamo to meet Hamdan, but before he could go, he needed a translator. His first choice was Anna Wuerth, a visiting professor of religion at the University of Richmond. ("I liked the idea of the jury watching my client whisper in the ear of a Western woman," Swift later recalled. "Would that fit your image of an Islamic terrorist?") But because Wuerth was a German national, she couldn't get the necessary security clearance for Guantánamo and instead recommended Charles Schmitz, a professor of geography and Arabic studies at Towson University in Baltimore. Swift called Schmitz in mid-January to introduce himself and gauge his interest.

It was limited, to say the least. Schmitz didn't know much about the military, but his impressions were not positive. As a student at the University of California at Santa Cruz and Berkeley in the late 1970s and early 1980s, he had been active in several left-wing student groups dedicated to supporting national liberation movements in Latin America. To his mind, the U.S. military trained the torturers of freedom fighters. If he needed another reason to be wary, Schmitz had read recently about the arrest of a civilian translator on Guantánamo Bay for espionage.

Swift proved to be a hard guy to shake, though, and Schmitz even-

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tually agreed to at least hear his pitch in person. They made plans to meet at a Metro station in suburban Maryland, roughly halfway between them.

Swift was late, leaving Schmitz, a tall, ruggedly handsome man with shaggy, sand-colored hair, waiting warily on the outdoor platform in the bitter cold. Swift finally stepped off an arriving train thirty minutes after the appointed time. He had a meeting at the Pentagon later that afternoon and was wearing starched dress whites beneath a dark blue overcoat. He looked to Schmitz like an advertisement for the Navy, with his round officer's hat and earnest blue eyes. Swift pumped Schmitz's hand vigorously, apologized profusely for his tardiness, and launched into a monologue about how he was going to take down the military commission system and bring justice to Guantánamo Bay on behalf of "*Sah-LEEM*."

Fifteen minutes later, Swift was still talking and Schmitz was freezing. "Okay, I'll do it," he said, believing it was the only way to shut Swift up. Schmitz never actually thought he'd end up with the job; he had a lot of Arab friends and had written a number of scholarly articles critical of the U.S. government. How would he ever get the necessary security clearance?

Before they parted, Schmitz handed Swift an academic book on Yemeni history that he had brought for him. Swift asked Schmitz if he had any advice for him with respect to his client. "Well," Schmitz answered, "you could start by pronouncing his name correctly. It's not *Sah-LEEM*, it's *SAH-lem*."

A week later Schmitz got another call from Swift. His security clearance had been granted. They were going to Guantánamo.

IN THE PREDAWN DARKNESS of a raw, gray Friday morning in late January 2004, a taxi pulled up in front of the Hilton in Norfolk, Virginia, to take Swift, Schmitz, and Swift's paralegal, Jason Kreinhop, to Norfolk Naval Station to catch a military charter to Guantánamo Bay. The plane was about half full with military personnel, their families, and private military contractors. Swift and Schmitz took seats next to each other; Kreinhop opted to sit alone several rows behind them.

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Schmitz had brought a book and was just settling in for a long flight of uninterrupted reading when Swift began to talk. After a few minutes it became clear that he wasn't interested in having a conversation so much as an audience, and the topic at hand was the battle of Gettysburg and how it applied to this great mission they were on. Full of hot purpose, Swift lectured Schmitz on the details of the battle, growing increasingly emotional as he arrived at the story of the fight for Little Round Top and his boyhood hero, Col. Joshua Lawrence Chamberlain.

"Here was this math teacher from Bowdoin College who had never been given a command," Swift began, his words ripe with incredulity. "He stands there at the top of Little Round Top and makes an audacious decision. It's four in the afternoon, and he's out of ammunition. He's outnumbered four to one. The South is getting ready for one last push, and he doesn't have the ammunition to fight it. So he orders his troops to fix their bayonets, says to his brother next to him, 'I want you to stay behind me because Mother will be sorely vexed if we both die today,' leads his charge down the hill, shatters the morale of the Southern troops and drives them back across the wheat field. He wins one of the first Congressional Medals of Honor for this, and then goes on to become governor of Maine. No one saw him coming, but at that moment in time he simply said, 'I will make a difference. I will change history.'"

As the story came to its conclusion, Schmitz noticed that Swift had moved himself to tears.

Guantánamo is just four hundred miles south of Miami, but because of a lengthy layover and a circuitous route to avoid Cuban airspace, it was eight hours before they finally touched down. Schmitz's book was still sitting unopened in his lap. Out on the tarmac, while their bags were being sniffed by German shepherds, Kreinhop gave Schmitz some unsolicited advice: "You've got to learn not to sit next to the commander, sir."

GUANTÁNAMO BAY NAVAL BASE is divided into two areas—windward and leeward—by the two-and-a-half-mile-wide bay for which it is named. The airport is on the leeward side; nearly everything else is

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a short ferry ride away on the windward side. There are housing subdivisions, a few fast-food restaurants, a strip mall, a bowling alley, a drive-in movie theater, and a neglected nine-hole golf course. The overall effect is small-town America, if a sad and somewhat dated version of it. The whole base is about forty-five square miles, or roughly the size of the island of Manhattan.

After disembarking from the ferry, Swift and Schmitz made their way to the headquarters of the joint task force that runs the base. They happened to arrive in the midst of a drill to prepare for a terrorist attack. Roadblocks had been erected everywhere, and the female soldier charged with preparing their access badges was made up to look like a casualty, theatrics that were hardly necessary to make this place one of the strangest either of them had ever been. Swift soon found his footing, though. Asked to sign a statement ensuring that he wouldn't say anything to the media about what they saw on Guantánamo, he insisted on amending the language to read that he wouldn't say anything "in violation of the National Security Act."

That evening he and Schmitz went to the Marine galley—even though it's officially a naval base, the joint task force that oversees Guantánamo includes all four armed services as well as the Coast Guard—which Swift had been told had decent food and a great view. It was surf and turf night, so they ate steak and lobster, followed by Ben & Jerry's Peace Pops, as they watched the sun drop down below the bay.

Thirty-six hours later they set out for Camp Delta in a rusty red van to meet Hamdan. From a distance, Swift could make out the plywood guard towers draped in American flags and, as they drew closer, the heavy chain-link fencing topped with concertina wire that ringed the camp. A four-by-eight-foot sign hung from the main entrance to Delta: **HONOR BOUND TO DEFEND FREEDOM**, the motto for the Joint Task Force–Guantánamo.

Swift wore a khaki uniform rather than his dress whites because he wanted to seem as accessible as possible. At the entrance gate, he declined to place a strip of black tape over his name tag, the custom among most soldiers and officers, who prefer to keep their identities hidden from the suspected terrorists inside.

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For the past several weeks, ever since the president had designated him for trial by military commission, Hamdan had been in solitary confinement—or, as the Defense Department called it, precommission confinement—in a separate area inside Delta known as Camp Echo. The administration didn't want the other detainees to know that he had been assigned a lawyer or, worse, give him the chance to report to the rest of the prison population on the substance of their conversations.

Swift and Schmitz were led down a long dirt path toward a cluster of eight cinder block huts with corrugated tin roofs that faced inward on a square. The sky was a hard blue. It hadn't rained on Guantánamo in weeks, and they kicked up small clouds of dust as they walked. The guards unlocked the door to Echo 3, and Swift got his first look at Hamdan, a small, frail-looking man—five feet six inches, 130 pounds, he estimated—in a baggy orange jumpsuit. He had a shaved head and a long beard. And he was smiling. As Swift would later learn, Hamdan always smiled when he was nervous.

The hut was divided in two by a heavy metal grate. On one side was a metal bed and stainless steel toilet. On the other were two abutting folding tables and three white plastic chairs. Salim Hamdan sat at the opposite end of the tables, beneath a bank of bright fluorescent lights. His hands and feet were bound to a chain around his waist, his ankles fastened to an eyebolt in the floor. An old air-conditioning unit labored noisily against the stifling heat.

"I want him released from those chains," Swift said.

"We can't do that," one of the guards answered. After some debate, they agreed at least to unchain his hands. They asked Swift if he wanted one of them to remain in the cell, and Swift said no. They showed him the red panic button marked **DURESS** on the wall and left him alone with his client.

"I'm a military attorney, and I've been appointed to represent you," Swift began. "I can understand if you don't trust me right now. I work for the same people who are holding you here." He proceeded to detail his educational background and military rank, which an Arab culture expert had told Swift would impress Hamdan. They didn't seem

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to. Hamdan was polite but curt, insisting on a civilian lawyer. He wasn't any happier with Schmitz; he wanted an Arab translator. Swift asked for a chance to earn his trust.

Whether Hamdan really believed that Swift was his lawyer or, more likely, just another interrogator, he was eager to rant about his mistreatment at the hands of the Americans. He told Swift that during his first several weeks in Bagram, he had been stashed away in a dark cell in the basement of the prison when representatives from the International Committee of the Red Cross came through. He also claimed to have seen a fellow detainee beaten to death by a prison guard in Afghanistan. Swift scribbled furiously onto a yellow legal pad as Hamdan spoke.

About an hour into their two-and-a-half-hour meeting, Swift told Hamdan about the government's offer: twenty years for a guilty plea and full cooperation. "What do they say I've done?" Hamdan asked.

"They haven't charged you yet," Swift answered. "They sent me here to negotiate a guilty plea."

"How can I plead guilty if I don't know what I've done?" Hamdan asked.

After a long pause, Hamdan asked Swift if he thought he should take the deal. Swift gave him his advice: "These military commissions are presidential policy, and sooner or later the president is going to change. A different president may want to pursue a different foreign policy. If you plead guilty to something, no president is going to argue for your release. On the other hand, if you plead not guilty, there's a very real possibility that someone in the future may release you."

Swift then outlined for Hamdan the alternative to a guilty plea. He listed some of the rights under the Geneva Conventions and Uniform Code of Military Justice that he believed Hamdan was entitled to but had thus far been denied. It was unclear how much, if anything, Hamdan was grasping, yet Swift pressed on. "The only way to get you these rights is to sue the Bush administration," he said. "That's what I'd like to do. Sue President Bush."

Another long pause followed. "This lawsuit, will it make you rich?" Hamdan finally asked.

"No," Swift answered. "But it might make me famous."

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Then he added, "It might make you famous too."

"I don't want to be famous," Hamdan replied. "I just want to get out of here."

That night Swift and Schmitz watched the Super Bowl on Armed Forces Television, poking fun at the military network's commercials, which promoted safe sex and the importance of maintaining strong, healthy bodies. The following day, they returned to Camp Echo. At the end of the meeting, Swift told Hamdan they'd be back soon and encouraged him to think about the government's offer in the interim.

"Do you believe we're here to help you?" Swift asked, standing up to leave.

"A drowning man will grab onto any hand that's extended to him," Hamdan replied.