Lincoln the Lawyer
By Brian Dirck

The Papers of Abraham Lincoln: Legal Documents and Cases
Edited by Daniel W. Stowell
University of Virginia Press, Charlottesville, VA, 2007. 4 volumes, $300.00.

Reviewed by Henry S. Cohn

In 2000, the University of Illinois published a DVD containing nearly 96,000 documents gathered from the surviving record of Abraham Lincoln’s 25 years as a practicing attorney. Now, two excellent works have drawn on the DVD to capture the essence of Lincoln’s legal career. First, in Lincoln the Lawyer, Brian Dirck of Anderson University in Indiana shows that Lincoln did not meet the Hollywood image of a lawyer as portrayed by Henry Fonda in the 1939 movie, “Young Mr. Lincoln,” or by Gregory Peck, who played Atticus Finch in the 1962 movie, “To Kill a Mockingbird.” The second work to draw on the DVD is a four-volume selection of legal cases and other documents edited by Daniel Stowell (as well as several predecessors) and published by the University of Virginia Press in association with the Illinois Historic Preservation Agency.

In Lincoln the Lawyer, Brian Dirck portrays Lincoln in a more mundane light than Hollywood generally portrays lawyers. Lincoln, after all, chose the law as a profession because he needed his assistance to lobby the Illinois bar. Among these documents is his famous letter to a farmer, listing the law books that he considers essential for the beginning student (“Begin with Blackstone’s Commentaries, and after reading it carefully through, say twice ...”), and then concluding, “Work, work, work, is the main thing.”

Dirck declares more than once that Lincoln was a “pretty ordinary attorney,” although he acknowledges that Lincoln was adroit in his presentations in court. As an example of the latter, Dirck describes Lincoln’s representation of a defendant who, upset by a news story, had attacked an editor with his cane and was now being sued for $10,000. Lincoln couldn’t deny the facts, so, when the time came for him to address the jury, “Lincoln slowly stood, picked up a copy of [the plaintiff’s] motion, and then suddenly burst out into a ‘long loud laugh accompanied by his most wonderfully grotesque facial expression.’” This sight caused several members of the jury to snicker, and Lincoln apologized. He explained that the plaintiff had written a demand for $1,000 but had crossed out the figure and replaced it with $10,000. Lincoln joked that the plaintiff must have had second thoughts and “concluded that the wounds to his honor were worth an additional nine thousand dollars.” Dirck writes that Lincoln robbed the case and the plaintiff of dignity, and the jury returned a verdict of only $300.

Lincoln was at root a collection lawyer. The West in the 19th century was the scene of both easy lending and frequent defaults, and Lincoln was in the center of this process. As Dirck states, “Lincoln practiced law in a veritable shower of [promissory notes]. They rained down on him, year in and year out, for his entire 25-year practice. ... Insofar as Lincoln specialized in any area of the law, he was a debt-collection attorney.” Most of these cases were straightforward—just a matter of turning to the appropriate page in Chitty’s Pleading.

Lincoln’s law practice also included probating estates and handling family matters such as dower and child support, and he took on a few controversial criminal cases as well. He also represented the Illinois Central Railroad on various matters, including collecting from investors who failed to pay their pledges on subscriptions and representing the railroad when persons claimed property damages resulting from railroad construction.

The more than 50 cases included in the four volumes are remarkable in the way they present a cultural picture of pre-Civil War America. The cases show the nation encouraging inventions, expanding capital markets, and making internal improvements. One invention that brought clients to Lincoln was the “atmospheric churn”—supposedly a great improvement—that made butter in 15 minutes. Lincoln defended the patent holder against salesmen who sought commissions on their sales of the device. Lincoln’s clients also included several railroad entrepreneurs who needed his assistance to lobby the Illinois legislature for additional routes, to collect on subscriptions for stock, and to perform other legal tasks.

Lincoln also represented a poor soul...
who tried to venture to California for the
gold rush, only to quit before he reached
the West Coast. Lincoln had to work out
a settlement with the failed prospec-
tor’s backers, who demanded that the
would-be prospector repay the seed
money they had given him. Lincoln also
handled bankruptcy cases, taking ad-
antage of an 1841 federal bankruptcy
act, repealed by Congress in 1843, to file
several petitions in bankruptcy for his
clients. The inventory listed in a bank-
rupency case included in the first volume
describes home furnishings that would
interest historians of that era.

The documents in these volumes,
which are reproduced with few dele-
tions, allow details of Lincoln’s life to
emerge. In one letter related to a pend-
ing case, Lincoln comments to the ad-
dresssee, a fellow attorney, on the status
of a current Whig political campaign.
In another letter, he apologizes to co-
counsel for failing to reply sooner on a
matter, because he had just gotten mar-
rried. Indeed, the state of marriage is
one of “profound wonder” to Lincoln.
In a chapter involving a claim that a
testator had been unduly influenced,
the editor notes that Lincoln, like many
people at the time, never wrote a will;
this caused Mary Lincoln much grief in
settling Lincoln’s affairs after his assas-
sination. One case shows the economic
side of Lincoln’s legal practice: he sued
the Illinois Central Railroad for services
rendered and received his largest fee
—$5,000. The fee became a matter of
contention in Lincoln’s 1858 debate with
Stephen Douglas when Lincoln
claimed that he had not taken large
sums from railroad companies.

Of course, most of the cases in
these volumes support Dirck’s observa-
tion as to the nature of Lincoln’s law
practice—the cases involve collections,
probate, support, and minor criminal
offenses. The books, however, include
several more important cases. Lincoln
argued one case before the U.S. Su-
preme Court, Lewis v. Lewis, 48 U.S.
776 (1849), concerning the applicabil-
ity of one statute of limitations versus
another. Chief Justice Taney wrote an
opinion against Lincoln that all but one
of the justices joined. Most remarkable
is a full reproduction of Lincoln’s notes
for his oral argument, including case
summaries and points to emphasize.

The notes show how he prepared for a
difficult assignment and reveal that he
had the intellect to understand a com-
plex matter.

In 1852, in Grubb v. John Frink &
Co., Lincoln filed suit in an Illinois trial
court on behalf of a plaintiff who had
been injured when his hired coach
overturned. Lincoln gathered evidence
of the coach driver’s negligence, and
the record includes notes of Lincoln’s
depositions of the plaintiff’s physician
and of a friend of the plaintiff’s who
cared for him after he was injured. The
case was settled just as the trial com-
nenced, based on Lincoln’s pre-trial
preparation.

In 1853, in People v. Loe, Lincoln
represented a young man charged with
murder for allegedly knifing another
younger to death during a brawl. Lin-
coln’s friend, David Davis, was the trial
judge, and he wrote to his father-in-law
that the case looked hopeless for Lin-
coln, but Lincoln was able to convince
the jury to convict Loe only of man-
slaughter. Loe was sentenced to eight
years but was released after four years,
when Lincoln and people in Loe’s town
asked the governor to reduce his sen-
tence. (Pardons were routinely given so
that the town would not have to sup-
port the inmate or the inmate’s family.)
Loe returned to his community, mar-
rried a woman who was 16 years old,
and fathered two children. He died in
1864 from wounds that he received on
the battlefield as a Union soldier.

In 1855, in Dungey v. Spencer, Lin-
coln brought a suit on behalf of a
dark-completed man from Portugal
whose brother-in-law, out of spite, had
spread rumors that the Portuguese man
was black. Lincoln told the jury that it
was “no crime to be born with a black
skin,” but, in 1855, it was a crime for
a white woman to marry a black man,
and therefore the defendant’s accusa-
tions amounted to slander. Lincoln
won $600 in damages for his client,
who, apparently for the sake of family
harmony, remitted $400 of the award,
and Lincoln reduced his fee to $50. The
case records include a charming—but
not completely accurate—reminiscence

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NAT HENTOFF
Syndicated Columnist, Village Voice

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written in 1895 by one of the brother-in-law’s attorneys. The attorney related that Lincoln used quaint phrases—telling opposing counsel, “Now, by jing, I will beat you boys!”—and praised Lincoln for the dramatic effect he gave to the word “gabbling,” when, in his summation to the jury, Lincoln described the defendant as going “from house to house, gabbling, yes, gabbling” about the plaintiff’s being black. A humorous incident arose when Lincoln said that his client was not black, but may be a Moor. Judge Davis looked at one of the defense attorneys named Moore, started to laugh, and said to Lincoln, “You mean a Moor, not Moore.”

Two cases in the University of Virginia volumes show Lincoln in the latter stages of his legal career. The first case—*Hurd v. Rock Island Bridge Company*—was tried in the federal district court in Chicago in 1856 and 1857. The case concerned a claim for loss of property made by the owner of the barge “Effie Afton” against owners of a newly constructed railroad bridge across the Mississippi River. Lincoln, who represented the bridge owners, argued that the bridge was not an impediment to navigation. The case ended in a hung jury; Lincoln’s participation ended at this point, although the claims continued to be litigated into the 1870s, and the case was fully reported in the Chicago press as an important trial of the day. A letter that Lincoln wrote in 1857 during the trial also illustrates his political activities: “You can scarcely be more anxious than I, that the next election in Iowa shall result in favor of the Republicans. I lost nearly all the working part of last year, giving my time to the canvass; and I am altogether too poor to lose two years together.”

The second case from late in Lincoln’s legal career, *People v. Armstrong* (1857–1858), was the basis for the movie, “Young Mr. Lincoln,” and several other films and stories. Lincoln defended Armstrong, who had apparently joined a fight in which a man died from a head wound. Lincoln impeached the state’s witness and won an acquittal for his client by using an almanac to demonstrate that, at the time of the assault, the moon had not yet risen and the witness could not have had a clear view of the incident. A question about this incident lingers among historians to this day: Was the almanac from the year of the death or was it from the previous year? In other words, did Lincoln trick the witness into an admission that the scene had not been clearly visible? Lincoln also engaged in a tearful summation in the case, noting that the defendant, like Lincoln, had lived in New Salem and recalling how the defendant’s mother had helped out Lincoln when he was a poor, friendless boy.

The two works under review, Dirck’s study and the set edited by Stowell, agree on one thing: When Lincoln was President, he spoke lovingly of his days of being a lawyer and riding the circuit. As Dirck relates, when Lincoln’s son Robert told him that he intended to enter Harvard Law School, Lincoln replied, “If you do, you should learn more than I ever did, but you will never have so good a time.”

*Henry S. Cohen is a judge of the Connecticut Superior Court.*

**Trial of Modernity: Judicial Reform in Early Twentieth-Century China, 1901–1937**

By Xiaouqun Xu


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**Reviewed by Christopher C. Faille**

This book treats of the legal history of China from the aftermath of the Boxer Rebellion until Japan’s invasion of China’s central coastal region in 1937. In June 1900, the Boxers, who believed that foreigners and their ways were ruining China, invaded Beijing and laid siege to the legation compound there. As a result, an eight-nation alliance sent a relief force of 54,000 troops; six of the eight nations were European (Russia, Italy, Austria-Hungary, Germany, France, and Great Britain), and the other two were the United States and Japan.

These troops had lifted the Boxers’ siege by mid-August 1900. The eight-nation alliance thereafter demanded—and the Qing dynasty (embodied at this time by the Dowager Empress Cixi) agreed—that China had to become Westernized. In January 1901, the dowager empress issued an edict calling upon the members of her council and other dignitaries at home and abroad “to reflect carefully on our present sad state of affairs, and to scrutinize Chinese and Western governmental systems with regard to all gymnastic regulations, national administration, official affairs, matters related to people’s livelihood, modern schools, systems of examination, military organization, and financial administration.” She said that China must adopt what was best in the foreign ways and retain what was best in the old Chinese ways.

This edict marks the beginning of what is known to historians as the “new policy decade,” which was the final stage in the long history of the Qing dynasty. On her deathbed in 1908, the empress designated a nephew, a two-year-old boy, Puyi, as the next emperor. He was also to be the last in the Qing line—the end of a dynasty that had begun with the Manchu conquest of China in the 17th century. The timing of Puyi’s ascension to the throne made little difference to the course of events in law reform or otherwise, but the abdication of a six-year-old boy in the face of the Xinhua revolution of 1911–1912 adds a dramatic poignancy to the history of that time—a poignancy exploited by Bernardo Bertolucci in his 1987 film, “The Last Emperor.”

The newly established republic relied on a decentralized military known as the Beiyang (literally, “Northern Ocean”). This was a bottom-up system, in which loyalties were personal rather than institutional, and, therefore, it was somewhat akin to classic feudalism. The conventional wisdom is that the decentralized Beiyang military caused civil as well as military authority to slip from the hands of the Republic of China and into the hands of local warlords. In *Trial of Modernity*, Xiaouqun Xu challenges this view in some respects, finding that the central authority was more efficacious than many have thought.

Nonetheless, the new policy decade came to an end by the beginning of 1912, and the first period in the history of the Republic of China—the Beiyang era—was under way. In judicial and

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legal matters, there was a great deal of continuity between the two periods, with policy-making elites continuing to press the program of Westernization of the judiciary that had been adopted in 1901.

Prison reform was one part of the Westernization program. The International Penitentiary Congress held its eighth congress in Washington, D.C., in 1910, while Puyi still reigned, and his court sent a distinguished delegation—including the chief of the Beijing high procuracy (in Anglo-American terms, the office of the chief criminal prosecutor). This delegation visited European prisons on the way to the congress and American prisons before returning home.

What they saw and heard made a powerful impression, and later that year, in recognition of Japan’s success at Westernizing itself, the Chinese government invited a Japanese scholar to prepare a new draft penal code for China. The draft, says Xu, “emphasized a humanitarian spirit of prison management, providing sanitation standards and medical care for the sick in penal institutions.” The dynastic rulers didn’t enact this draft, but it did influence reforms later adopted by the republic. Perhaps the United States could use some Westernization.

The Beiyang period came to an end in the mid-1920s. Sun Yat-sen, the leader of the Republic of China, died in 1925, and, by April 1927, matters seemed to be spiraling downward quickly into chaos. The country had three capital cities, as the internationally recognized government remained in Beijing, the Communists and the left-wing faction of the Nationalist (Guomindang or GMD) Party established a new capital in Wuhan, and the pro-capitalist portion of the GMD Party established itself in Nanjing. Under the leadership of Chiang Kai-shek, however, the leaders based in Nanjing eliminated the competition located in Beijing, drove the Communists in Wuhan into hiding, and established its own credentials as the government of China in the eyes of much of the rest of the world.

Xu refers to the period 1927–1937 as the “Nanjing decade,” the third and final of the chronological divisions under discussion. Throughout this period, the Westernized Asians of Japan posed an ever-approaching danger to the very existence of an independent China. In 1931, the Japanese army occupied Manchuria, which the new bosses renamed Manchukuo. They invited the deposed emperor of China, Puyi, to move there (after all, the territory was the ancestral home of the Qing dynasty) and to act as the ceremonial head of state—an invitation that Puyi accepted. His formal installation as emperor the following year gave the Japanese occupation a veneer of legitimacy in a territory that was to serve as a staging ground for further plans to dismember its neighbor.

Such developments enhanced the feeling within China—at least among the nation’s elites—that Westernization, also known as modernization, was an imperative for national survival. A legal scholar writing that year in a Beijing publication put it thus: “Right now a violent Japan is peddling its propaganda that China is a ‘nonmodern’ state to the world in an attempt to deceive foreign powers and accomplish its design ... what our country needs is the aid of international public opinion; and what international public opinion will aid are ‘modern’ states.”

Xu has made a particularly careful study of the records in Jiangsu province, an area that serves as a microcosm of the vast country for his purposes. He notes that during the Nanjing decade the Jiangsu High Court decided to appoint four permanent public defenders. Until this time, at least in that province, judges had appointed public defenders from members of the local bar on a case-by-case basis, and the defenders would often simply fail to show up on behalf of their impoverished clients. Accordingly, the Jiangsu High Court created a stipend for the four permanent public defenders, half of which came from the court’s own judicial revenues and half from the local bar. The Nanjing Ministry of Justice approved this measure but pointedly required that the name of the office be changed; the attorneys involved were thereafter called “designated defenders” rather than “public defenders.”

*Trial of Modernity*’s coverage comes to an end in 1937 for an obvious reason: that was the year Japan extended the war to the heart of coastal China, emphatically including Jiangsu. Even for the portions of China that never came under Japanese occupation, concerns over prison reform, the proper provision of a right to counsel to criminal defendants, and other modernizing issues became rather insignificant given the hurricane of a nation’s and a world’s tumult.

Xu’s overall view is that the reformers who worked to improve China’s bench and bar throughout the period from 1901 to 1937 did a very creditable job, and they did so against severe financial constraints. He asks rhetorically, “Why would county jail guards from local society care about improving confinement conditions for presumed bad guys in jail while they did not see a rise in their own wages?” Indeed, where the local society consisted of an impoverished peasantry, the guards couldn’t help but notice that the living standard of confined individuals was a step up from their own and that of their families. Nor were the guards going to see a rise in their own wages commensurate with the improved life of their prisoners, because none of the three governments of China that come within the ambit of this study had the money necessary to pull that off.

Against that background, Xu cites with some vicarious pride the progress that reformers made, quoting, for example, a story that appeared in the *North China Herald* in 1928: “Less and less is heard about ‘graft’ or squeeze in the local courts with the passing of time. It cannot be gainsaid that in this direction there has been a marked improvement.”

*Trial of Modernity* succeeds in what seems to be its chief goal, which is simply to fill a significant gap in the scholarship on early 20th-century history available to the English-speaking portion of the world.

Christopher Faille, the managing editor of Hedge Fund Law Report, www.hflawreport.com, has written on a variety of legal and historical issues. He is the author of *The Decline and Fall of the Supreme Court*. 
The Challenge: Hamdan v. Rumsfeld and the Fight Over Presidential Power

By Jonathan Mahler

Reviewed by Carol A. Sigmund

The Challenge is both informing and frustrating. It is informing in its interesting insights into Salim Hamdan, his mistreatment in captivity, and the weakness of the government’s case against him in his trial before a military commission. It is frustrating because too much of the book deals with the personal stories of Lt. Cmdr. Charles Swift and Georgetown University Law Professor Neal Katyal.

Salim Hamdan was born about 1970, in West Hadramawt, a village in southwestern South Yemen. His parents were farmers and shopkeepers. By age 11, Hamdan was an orphan, and, when he finished school, he was sent to live with relatives in Mukalla on the southern coast of South Yemen. Later, Hamdan lived on his own in Mukalla, working at odd jobs. In 1990, the previously Marxist South Yemen and the Islamist North Yemen were united and became the Republic of Yemen. Hamdan, like many others in the former South Yemen, migrated north to Sana, the new capital of the Republic of Yemen, in the hope of finding a better life.

However, Hamdan’s economic circumstances did not improve in Sana, which was not the boom town that Hamdan had anticipated, and his limited skills and education were a handicap. He lived in a crowded boarding house and worked as a part-time da-bab driver. The center of his life in Sana was the Martyr’s Mosque.

In or about 1996, Hamdan’s life changed. He was recruited to the jihad by Nasser al-Bahri, an educated, upper class Yemeni who had grown up in Jidda, Saudi Arabia. Jihad (striving in the cause of Islam) had a certain nobility in Yemen, not only because of Yemen’s jihad tradition dating back to the prophet Muhammad but also because of the roles that Yemeni jihadists had played in defeating the Soviet Union in Afghanistan and overthrowing the South Yemeni Marxist government.

In 1996, Nasser al-Bahri led Hamdan and 35 others to Jalalabad, Afghanistan, where they intended to join Islamists who were fighting the Russian-backed government in Tajikistan. They were denied access to Tajikistan, however, and went to see Osama bin Laden, who preached to the recruits for three days, inspiring some of them—including Hamdan—to join him. For the next few years, Hamdan worked as a driver and bodyguard for bin Laden. His status with bin Laden was enhanced over time, especially after he subdued a turbulent Sudanese. Hamdan was known as the “Hawk” in Al Qaeda circles.

In Sana, speaking to Charles Swift, al-Bahri described Hamdan as apolitical, ill-informed about Islam, naive, and cheerful—ineffectual as a jihadi, but a likable young man. Hamdan came from the same part of Yemen as bin Laden’s father, which may help explain why bin Laden accepted al-Bahri’s suggestion to hire Hamdan as his driver.

In 1999, bin Laden provided Hamdan and al-Bahri with funds to marry a pair of Yemeni sisters, who were moved to the Tarnak Farms compound to set up housekeeping. Hamdan’s wife, Um Fatima, was shocked at the primitive living conditions at the compound, particularly after she gave birth to their first child. She and Hamdan lived in a mud hut with a mud floor, but she saw little of him, as Hamdan drove bin Laden around Afghanistan and repaired Al Qaeda vehicles.

In summer 2000, Hamdan and al-Bahri and their families traveled to Sana for a wedding. The USS Cole was attacked at about the same time, and al-Bahri was arrested by Yemeni police in connection with the incident. The Yemeni police also visited Hamdan’s in-laws, seeking him, but Hamdan and Um Fatima had gone on a pilgrimage to Mecca, eventually making their way back to bin Laden in Afghanistan.

Before the 9/11 attacks, bin Laden and his immediate entourage had moved to Khost, Afghanistan, with Hamdan driving bin Laden. Following the 9/11 attacks, bin Laden ordered his entourage to evacuate their families from Tarnak Farms. Hamdan picked up his family in Kandahar, and drove his very pregnant wife and young daughter to Pakistan, where he dropped them off and returned to bin Laden.

Um Fatima and her daughter made their way through Pakistan in the back of a pickup truck that was transporting families of Al Qaeda members. When they finally reached Karachi, Um Fatima became so hysterical that strangers provided her with funds to pay for tickets for her and her daughter to return to Sana. Once in Sana, the Yemeni police questioned Um Fatima about Hamdan, and she told them that he was dead, which is what she believed until she received word through the International Red Cross that Hamdan was alive.

Shortly after he had dropped off his wife and daughter in the Pakistani mountains, Hamdan was captured by Northern Alliance forces. They tied him up with electric wire after they found two surface-to-air missiles in the trunk of his car. For a month or so, Hamdan claimed that he was a Muslim charity worker, but then he was identified as bin Laden’s driver and turned over to the Americans. Hamdan was held at Bagram Air Base for six months, then transferred to Camp Delta at Guantanamo Bay, Cuba, where he was one of the first prisoners.

The United States public is not well-informed about the treatment of prisoners held at Guantanamo Bay. Mahler paints a disturbing picture in a matter-of-fact way. Hamdan was periodically held in solitary confinement for months at a time, only because the prison authorities did not want him to tell other detainees that he had lawyers or that his lawyers were mounting a vigorous defense on his behalf. Hamdan was often depressed and occasionally suicidal. Mahler’s account of Hamdan’s treatment at Guantanamo Bay makes The Challenge an important book.

Mahler also provides a service in highlighting the work of both military and civilian defense attorneys working on behalf of Guantanamo Bay detainees. Mahler describes the skepticism of military attorneys about the military commissions that would try the prisoners at Guantanamo Bay. Military lawyers, mindful of the need to adhere to

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international protocols so as to protect American service members who might be captured, objected to the use of military commissions. In response, the Bush administration gradually cut the military lawyers out of the planning process.

As I read The Challenge, I wondered if assigning Lt. Cmdr. Charles Swift to the military commission defense team was the military’s idea of an appropriate response to the Bush administration’s thoughtlessness in creating the commissions and forcing the military to take on the prosecution of the terrorist suspects in a manner that is contrary to the best interests of captured U.S. service members. Assigning Swift seems an appropriate response, because Swift is a combative defense attorney, who is generally not willing to plead out a weak case. Even though Swift is not particularly competent in preparing motions and briefs, he is effective on his feet and with his clients. Swift, recognizing his own limitations (he suffers from attention deficit hyperactivity disorder and the associated organizational problems), invited Professor Neal Katyal to join Hamdan’s defense team. Katyal, an intensely intellectual lawyer, agreed to join Swift and to allow Swift to be the media spokesperson for the defense team and to control client contact. Katyal got what he wanted from the partnership: primacy on the motion practice.

Hamdan’s defense team consisted of not only Swift and Katyal but also partners and associates of the Seattle-based law firm of Perkins Coie, as well as students from both Yale Law School and Georgetown Law School. Katyal contacted Perkins Coie when the initial action and associated motions were filed, because Katyal recognized that he needed help—specifically in the Western District of Washington and the Ninth Circuit, where Hamdan’s legal battle commenced. Mahler realistically depicts the conflicts and tensions between Katyal and Swift and between Katyal and the Perkins Coie team in preparing the various motions and briefs in Hamdan’s epic battle with Secretary of Defense Donald Rumsfeld and later his successor, Robert Gates.

According to Mahler, Katyal immersed himself fully in Hamdan’s case, working continuously, writing briefs while on family vacations, and postponing a final visit to his ailing father. Perkins Coie’s commitment was every bit as deep as Katyal’s—the firm’s lawyers spent thousands of hours in a valiant pro bono effort to obtain some measure of due process for Hamdan. These lawyers’ focus on their client will be familiar to the spouses, children, siblings, and parents of trial lawyers.

Mahler also examines the prosecution’s theory of the case. He provides a full account of the interrogation of Hamdan by the FBI agents whose evidence was at the heart of the government’s case and gives a fair portrayal of the lead prosecutor, Cmdr. Scott M. Lang.

Charles Swift stayed with the case until the end, but he left the military afterward, because he was passed over for promotion, perhaps—as Mahler speculates—because he was such a vigorous advocate for Hamdan. Mahler does not discuss Hamdan’s military commission trial or the verdict, but, apart from discussing Swift’s leaving the service, he ends the book at the point when the trial was about to begin. The verdict surely gave some comfort to Swift, Katyal, and Perkins Coie, with the military judges finding Hamdan guilty of aiding Al Qaeda by driving and guarding bin Laden but not guilty of the more serious charges. Based on the information that Mahler provides in the book, the verdict seems appropriate. Hamdan’s sentence of 66 months, reduced by nearly 61 months of time served, must have seemed like a victory to Hamdan’s defense team. Swift, Katyal, and Perkins Coie brought some measure of due process and fundamental fairness to the military commission.

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