

Book Review

STANDARD OPERATING PROCEDURE¹

REVIEWED BY MAJOR KENNETH BACSO²

I. Introduction

Based primarily on interviews with Soldiers and other personnel with direct knowledge and involvement at Abu Ghraib, *Standard Operating Procedure* examines the context surrounding the infamous photographs that emerged from the American-run prison in Iraq. The authors of *Standard Operating Procedure* look beyond the photographs; there are not even any pictures in the book.³ Instead, the point is to “see the story afresh” and “describe the experience of the American soldiers at the prison.”⁴

The story of Abu Ghraib in *Standard Operating Procedure* is every bit as troubling as the photographs, but it is different than the story told by the photographs alone. In *Standard Operating Procedure*, the reader learns that some of the most disturbing photographs are simply of Soldiers doing their jobs. Of course, other photos also depict Soldiers engaging in shocking acts that are simply criminal. However, even these acts did not occur in a vacuum. The incidents the photographs portrayed happened in the context of a surreal environment, void of adequate rules, void of courageous leadership, and void of discipline.

This review first examines the research and documentation in *Standard Operating Procedure*. It assesses the authors’ knowledge of the military, and how they address the military. Then, this review discusses the central thesis of the book with respect to Abu Ghraib, that “photographs cannot tell stories. They can only provide evidence of stories, and evidence is mute; it demands investigation and interpretation.”⁵ Finally, this review examines the legal context of what happened at Abu Ghraib and discusses lessons it contains for Judge Advocates (JAs).

Standard Operating Procedure offers a unique perspective on what happened at Abu Ghraib beyond the photographs, and it successfully induces the reader into interpretation and self-reflection concerning the events before, during, and after the moments in time the photographs represent.

II. Documentation and Sourcing

Standard Operating Procedure is primarily based on interviews with approximately twenty-six individuals who had personal experiences of Abu Ghraib in 2003 and 2004.⁶ One of the authors conducted the interviews himself, thereby significantly adding to the body of information available about the prison.⁷ The interviews were also the basis for a documentary film bearing the same name.⁸

In addition to their own source material, the authors attempted to “corroborate individual accounts against one another and against external documents.”⁹ These documents include those that have become publically available, such as an investigation conducted by Major General (MG) Antonio Taguba into activities of the 800th Military Police Brigade in

¹ PHILIP GOUREVITCH & ERROL MORRIS, *STANDARD OPERATING PROCEDURE* (2008).

² Presently assigned as Senior Defense Counsel, Grafenwoehr, F.R.G. Written while assigned as a student, 57th Judge Advocate Officer Graduate Course, The Judge Advocate General’s Legal Ctr. & Sch., U.S. Army, Charlottesville, Va.

³ Many of the photographs are widely available on the internet. See, e.g., Joan Walsh, *The Abu Ghraib Files*, SALON, Mar. 15, 2006, http://www.salon.com/news/abu_ghraib/2006/03/14/introduction/ (containing 279 photographs and 19 videos).

⁴ GOUREVITCH & MORRIS, *supra* note 1, at 283.

⁵ *Id.* at 148.

⁶ *Id.* at 284.

⁷ *Id.*

⁸ *STANDARD OPERATING PROCEDURE* (Sony Pictures Classics 2008).

⁹ GOUREVITCH & MORRIS, *supra* note 1, at 284.

Iraq.¹⁰ Although written for a different purpose, the narrative in *Standard Operating Procedure* seems largely consistent with that investigation and those that followed.¹¹ Although it could be argued that the interviews given for this book are self-serving, the authors' efforts to corroborate the facts enhance the plausibility of the narrative.

The authors also gained access to transcripts of U.S. Army Criminal Investigation Division interviews with several other individuals whom the authors did not interview directly, including the Staff Judge Advocate for Combined Task Force 7.¹² The most interesting documents the authors cite are the letters written by Specialist (SPC) Sabrina Harman while she was at Abu Ghraib.¹³ The authors quote these letters at length throughout the book. Assuming these letters are authentic, they provide a unique, contemporaneous account of what occurred that lends particular credibility to the subsequent interviews that are the primary sources for the book.

Although *Standard Operating Procedure* is well sourced, the research itself is not well documented. The book lacks an index and footnotes. This needlessly limits the credibility of the book and makes it more difficult for readers to build upon the research conducted by the authors. Although the authors succeed in telling the story of Abu Ghraib, their journalism could have produced a record of much greater historical value had it been thoroughly documented.¹⁴

III. Perspective on the Military

The credibility of the authors is diminished when on a few occasions they demonstrate an incomplete understanding of the military. For example, they note that one of the key figures at Abu Ghraib, Corporal (CPL) Charles Graner, had a "Military Occupational Structure" of "71L, a low rating, which meant he lacked the basic security clearance to wear an MP armband."¹⁵ One Military Occupational *Specialty* is not lower than another.¹⁶ On other occasions, the authors refer to noncommissioned officers simply as officers, such as when they describe Staff Sergeant Frederick as "more of a go-along-and-get-along officer than a natural leader."¹⁷ Although not particularly serious, such mistakes open the authors up to criticism that they do not possess a working knowledge of the military. This could affect their analysis of the relationships between the Soldiers in the book, and their understanding of command responsibility. At the very least, the authors should have sought editorial review from somebody with a military background.

Although the authors may not have a strong knowledge of the military, their tone toward the military was appropriate and fair. Certainly, they criticized the military to the point of exasperation on a few occasions, such as when they note: "no soldier above the rank of sergeant ever served jail time."¹⁸ Nevertheless, they generally succeeded in focusing on simply telling the complete story of Abu Ghraib in a factual yet insightful way. As they say during a short interlude in the story: "There is a constant temptation, when rendering an account of history, to distort reality by making too much sense of it."¹⁹ The authors mostly tell the story without an overt agenda, and leave it to the reader to make sense of it.

IV. A Picture Is Not Worth A Thousand Words

Despite any minor weaknesses, the authors succeed at telling the story of Abu Ghraib in a captivating way. In particular, they shed light on several of the published photographs. For example, one of the most infamous photographs coming from

¹⁰ *Id.* at 251; see Major General Anthony Taguba, Army Regulation 15-6 Investigation of the 800th Military Police Brigade (3 Mar. 2004) [hereinafter MG Taguba, AR 15-6 Investigation], available at <http://news.findlaw.com/hdocs/docs/iraq/tagubarpt.html>.

¹¹ See, e.g., Major General George R. Fay, Army Regulation 15-6 Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade (23 Aug. 2004), available at <http://news.findlaw.com/hdocs/docs/dod/fay82504rpt.pdf>.

¹² GOUREVITCH & MORRIS, *supra* note 1, at 285.

¹³ See, e.g., *id.* at 71.

¹⁴ There is an abundance of raw material already available about Abu Ghraib. See, e.g., THE TORTURE PAPERS: THE ROAD TO ABU GHRAIB (Karen J. Greenberg & Joshua L. Dratel eds., 2006) (containing more than 1200 pages of documents).

¹⁵ GOUREVITCH & MORRIS, *supra* note 1, at 118.

¹⁶ See U.S. DEP'T OF ARMY, REG. 611-1, MILITARY OCCUPATIONAL CLASSIFICATION STRUCTURE DEVELOPMENT AND IMPLEMENTATION (30 Sept. 1997).

¹⁷ GOUREVITCH & MORRIS, *supra* note 1, at 119.

¹⁸ *Id.* at 270.

¹⁹ *Id.* at 159.

Abu Ghraib is of a female Soldier, Private (PVT) Lynndie England, leading an Iraqi detainee along by what appears to be a leash.²⁰ Although this photograph may retain importance as a symbol, the authors succeed in making it just a snapshot, a single moment in time. The real issue is what happened before and after the photo was taken.

As reported in *Standard Operating Procedure*, there is a context to the seemingly inexplicable photo of PVT England. The context does not excuse PVT England or any of the other Soldiers involved. However, in this particular instance, these Soldiers needed to move an uncooperative detainee who had open sores.²¹ The Soldiers lacked training for such a task, and they lacked equipment.²² Corporal Graner improvised with a cargo strap that looked like a leash.²³ As one witness, SPC Megan Ambuhl said: “That was an uncooperative detainee who needed to get out of that cell—a guy with sores and stuff. You’re not going to touch him. You get him out, and it may have been unorthodox, but he didn’t hurt anybody and he didn’t get hurt.”²⁴

No doubt, this was the wrong solution. At the same time, Soldiers faced with a real-world problem improvised to accomplish the mission. As *Standard Operating Procedure* makes clear throughout that incidents such as this happened at Abu Ghraib every day. When MG Geoffrey Miller visited Abu Ghraib, he reportedly said: “You have to treat the prisoners like dogs.”²⁵

In fact, most of the photographs that came from Abu Ghraib are merely fragments of the daily reality that was imposed upon the Soldiers there: the nakedness,²⁶ the detainees handcuffed in stress positions,²⁷ the female underwear.²⁸ This was apparently standard operating procedure, and widely known among the chain of command, at least according to the Soldiers at Abu Ghraib.²⁹ According to SPC Ambuhl, “our job was to stress out the detainees, and help facilitate information to the interrogators, and save the lives of other soldiers out there.”³⁰ Specialist Ambuhl also is quoted as saying that without the pressure from military intelligence, “the detainees would have been in their cells, and we would have been in the office watching a movie or drinking coffee.”³¹ That certainly would have been easier for the Soldiers.

This is not to say that *Standard Operating Procedure* is a defense of the Soldiers in the photographs. It is not. Clearly, there are occasions when the Soldiers sunk to new depths of immorality and indiscipline. For example, one photograph depicted detainees who were “stacked atop one another in a human pyramid, posed to simulate oral sex, lined up against a wall, and made to masturbate—and none of the MPs who took part in this unhinged variety show could come up with an excuse for it.”³² Even in this case, however, *Standard Operating Procedure* succeeds in providing a context for how such criminal activity could occur. This understanding is valuable to the reader, and is the essence of what makes this book fascinating and consequential. The authors sum it up nicely when they say that the stain of Abu Ghraib “is inescapable and irreversible, and it is ours, and if we have any hope of containing it and living it down it can only come from seeing it whole.”³³

²⁰ *Id.* at 138.

²¹ *Id.* at 141.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 142 (quoting SPC Ambuhl).

²⁵ *Id.* at 48 (according to a statement by Brigadier General Kapinski).

²⁶ *Id.* at 87 (describing the arrival of the unit to Abu Ghraib for the first time and seeing all the prisoners naked).

²⁷ *Id.* at 101.

²⁸ *Id.* at 97 (“There was a big cardboard carton of panties in the supply cell on Tier 1A, each pair in a plastic slip cover.”). The reader wonders how the supply personnel justified this purchase on paper.

²⁹ See *id.* at 165 (quoting SPC Ambuhl: “At the time, everyone in our chain of command said that was OK. The questions were asked and answered. So after that, what do you do?”).

³⁰ *Id.* at 92 (quoting SPC Ambuhl).

³¹ *Id.* at 157 (quoting SPC Ambuhl).

³² *Id.* at 187.

³³ *Id.* at 160.

V. A Legal Context for Abuse

The legal context for what happened at Abu Ghraib is one of many contexts explored by the authors in an effort to tell the whole story of Abu Ghraib. For the JA, this is one of the most important themes in the book. The authors identify at least three significant legal failures. First, the legal status of detainees in Iraq was unclear. Second, the approved techniques for interrogation were both inappropriate and constantly changing. Finally, there was no standard operating procedure for detention operations at Abu Ghraib.

The authors describe the confusion that existed concerning the status of detainees in Iraq. The Geneva Convention Relative to the Treatment of Prisoners of War (GC III) “presumes a conventional war between the armies of sovereign states.”³⁴ The counterinsurgency that the United States faced in Iraq after major combat operations had ended was not a conventional war. The prisoners of Abu Ghraib were considered security detainees, and fell instead under the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (GC IV), affording the detainees fewer rights than enemy prisoners of war.³⁵ Regardless of whether or not this was the appropriate status for the detainees, the perception among Soldiers and even senior leaders was that “the gloves [were] coming off.”³⁶

Facing pressure to obtain actionable intelligence, the legal standards at Abu Ghraib for interrogations were frequently shifting and excessively permissive.³⁷ The authors paint a good picture of the confusing scene. There were apparently “five different versions of the interrogation rules” that applied to Abu Ghraib in one month alone.³⁸

Whatever the rules actually were at Abu Ghraib, they were not in accordance with traditional Army doctrine for interrogation operations.³⁹ At the time, intelligence interrogation in the Army was governed by a Field Manual 34-52.⁴⁰ Published in 1993, it “builds upon existing doctrine and moves interrogation into the 21st century.”⁴¹ Yet instead of grounding rules in this Army doctrine, Abu Ghraib’s “interrogation rules were not really rules but a kind of guesswork.”⁴²

To make matters worse, there were no standard operating procedures for the military police responsible for handling the detainees.⁴³ The authors report that MG Geoffrey Miller provided a copy of the very detailed standard operating procedures used at Guantanamo Bay to the headquarters of Lieutenant General Ricardo Sanchez.⁴⁴ Apparently, nothing came of that.⁴⁵ Certainly, a leader at some level should have stepped forward and implemented basic standard operating procedures. In any case, as the authors quote SPC Ambuhl as saying: “They couldn’t say that we broke the rules because there were no rules.”⁴⁶

³⁴ *Id.* at 27; see Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.

³⁵ GOUREVITCH & MORRIS, *supra* note 1, at 33; see Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287. The authors criticize the determination that GC IV should apply to the detainees at Abu Ghraib. GOUREVITCH, *supra* note 1, at 33. However, the authors also seem to recognize the limitations of GC III in a counterinsurgency environment. See GOUREVITCH & MORRIS, *supra* note 1, at 27.

³⁶ GOUREVITCH & MORRIS, *supra* note 1, at 41 (quoting an e-mail sent from Captain William Ponce to military intelligence unit commanders in Iraq).

³⁷ *Id.* at 51.

³⁸ *Id.* at 53.

³⁹ *Id.* at 39.

⁴⁰ U.S. DEP’T OF ARMY, FIELD MANUAL 34-52, INTELLIGENCE INTERROGATION (28 Sept. 1992) [hereinafter FM 34-52]. Field Manual 34-52 once again became the standard for all Army interrogations upon the passage of the Detainee Treatment Act of 2005: “No person in the custody or under the effective control of the Department of Defense or under detention in a Department of Defense facility shall be subject to any treatment or technique of interrogation not authorized by and listed in the United States Army Field Manual on Intelligence Interrogation.” Pub L. No. 109-148, 119 Stat. 2680. Field Manual 34-52 has since been replaced by FM 2-22.3. U.S. DEP’T OF ARMY, FIELD MANUAL 2-22.3, HUMAN INTELLIGENCE COLLECTOR OPERATIONS (6 Sept. 2006).

⁴¹ FM 34-52, *supra* note 40, at iv.

⁴² GOUREVITCH & MORRIS, *supra* note 1, at 54.

⁴³ *Id.* at 92; MG Taguba AR 15-6 Investigation, *supra* note 10, at 43 (“Brigade and unit SOPs for dealing with detainees if they existed at all, were not read or understood by MP Soldiers assigned the difficult mission of detainee operations.”).

⁴⁴ GOUREVITCH & MORRIS, *supra* note 1, at 90.

⁴⁵ *Id.* at 91.

⁴⁶ *Id.* at 92 (quoting SPC Ambuhl).

VI. Lessons for the Judge Advocate

The JA reading *Standard Operating Procedure* faces some meaningful lessons and an opportunity for self-reflection. Of course, our work must be thorough and precise.⁴⁷ In this respect, if *Standard Operating Procedure* is accurate, the JAs serving Abu Ghraib failed to ensure that the multiple policies put out were accurate, clear, and understood.

More fundamentally, as legal professionals, we must stand up for the rules, even when it is not the easy thing to do.⁴⁸ Although he may have a motive to fabricate, CPL Graner claimed that there were two JAs at Abu Ghraib on nearly a daily basis and they saw naked detainees, “people out on the floor getting PT’d, prisoners hanging from the doors.”⁴⁹ According to Graner, they did not challenge what was happening.⁵⁰ Therefore, he believed “that this all was OK because here’s a JAG person, and he doesn’t seem to see that there’s anything wrong with this.”⁵¹ The JAs may or may not have seen as much as CPL Graner thinks. The lesson, however, is the same: Soldiers expect that JAs will not only know the rules, but also stand up for them.

VII. Conclusion

Standard Operating Procedure succeeds in its goal of telling the story of Abu Ghraib beyond the photographs that have made it one of the most significant events of the Iraq war. That was the goal of the authors, and in that respect, they succeed. However, they recognize that there is more to Abu Ghraib when they quote Sergeant Ken Davis: “Once you dig your hands into Abu Ghraib, you don’t come out the same. There’s a part of you that either died, or that is totally confused.”⁵²

The conscientious reader will hear a consequential story, but may also be confused. The reader will begin to ask questions: How would I have handled the situation? What lessons can I learn? How can we prevent this from happening again? Although *Standard Operating Procedure* does not provide the answers to those difficult questions, the fact that it causes one to consider these issues makes it a meaningful and worthwhile piece of reading.

⁴⁷ U.S. DEP’T OF ARMY, REG. 27-26, RULES OF PROFESSIONAL CONDUCT FOR LAWYERS para. 6.c (1 May 1992) (“In all professional functions, a lawyer should be competent, prompt, diligent, and honest.”).

⁴⁸ *Id.* para. 6d (“While it is a lawyer’s duty, when necessary, to challenge the rectitude of official action, it is also a lawyer’s duty to uphold legal process.”).

⁴⁹ GOUREVITCH & MORRIS, *supra* note 1, at 166.

⁵⁰ *Id.*

⁵¹ *Id.* at 167.

⁵² *Id.* at 159, back cover.