

THE SECRETS OF ABU GHRAIB REVEALED:
AMERICAN SOLDIERS ON TRIAL¹

REVIEWED BY FRED L. BORCH III*

This is an important book. Its authors—a former Army Judge Advocate (JA) and a retired military police investigator—insist that their “only purpose” in writing *The Secrets of Abu Ghraib Revealed* “is to set the record straight on what occurred at Abu Ghraib during the latter half of 2003.”² Since both men were part of the prosecution team that investigated and then court-martialed the American Soldiers who abused Iraqi detainees at Abu Ghraib,³ the book provides an inside look at what Major General (MG) Antonio Taguba later concluded was a violation “of the Geneva Convention . . . our own principles . . . the core of our military values.”⁴

The book’s organization is straightforward and simple: a chronological telling of the prosecution of the Abu Ghraib accuseds. It starts with the April 2004 *60 Minutes II* television news segment that shocked the world with its broadcast of graphic photographs.⁵ It then introduces the prosecution team⁶ and discusses how the Army attorneys and investigators gathered the evidence needed to prosecute the soldiers

* Presently assigned as Regimental Historian and Archivist, U.S. Army, Judge Advocate General’s Corps, The Judge Advocate General’s Legal Center and School (TJAGLCS), Charlottesville, Virginia; M.A., History, 2007, University of Virginia, Charlottesville, Virginia; M.A., National Security Studies, *highest distinction*, 2001, Naval War College, Newport, Rhode Island; LL.M., 1988, TJAGLCS, Charlottesville, Virginia; LL.M., *magna cum laude*, International and Comparative Law, 1980, University of Brussels, Belgium; J.D., 1979, University of North Carolina, Chapel Hill, North Carolina; A.B., 1976, Davidson College, Davidson, North Carolina. Fred Borch is the author of a number of books and articles on legal and non-legal topics. See, e.g., FRED L. BORCH, JUDGE ADVOCATES IN COMBAT: ARMY LAWYERS IN MILITARY OPERATIONS FROM VIETNAM TO HAITI (2001); FRED L. BORCH, JUDGE ADVOCATES IN VIETNAM: ARMY LAWYERS IN SOUTHEAST ASIA (2004). His latest book, *For Military Merit: Recipients of the Purple Heart* was published by Naval Institute Press in 2010.

¹ CHRISTOPHER GRAVELINE & MICHAEL CLEMENS, THE SECRETS OF ABU GHRAIB REVEALED: AMERICAN SOLDIERS ON TRIAL (2009).

² *Id.* at x.

³ Then-Captain Chris Graveline participated as a central member of the prosecution team. *Id.* at 14–26. Then-Master Sergeant Mike Clemens served as one of the lead investigators for the prosecution. *Id.*

⁴ Seymour M. Hersh, *The General’s Report*, NEW YORKER, June 25, 2007, at 69.

⁵ GRAVELINE & CLEMENS, *supra* note 1, at 8–16.

⁶ *Id.* at 14–26.

for assault, maltreatment, dereliction of duty and other offenses.⁷ The book then examines each of the cases against the twelve Soldiers ultimately court-martialed for their actions at Abu Ghraib: Lieutenant Colonel (LTC) Steven L. Jordan;⁸ Staff Sergeant Ivan “Chip” Frederick;⁹ Sergeants Santos Cardona,¹⁰ Javal Davis,¹¹ and Michael Smith;¹² Corporal Charles Graner;¹³ Specialists Megan Ambuhl,¹⁴ Armin Cruz,¹⁵

⁷ *Id.* at 103–16, 145–48.

⁸ On 28 August 2007, Jordan was found not guilty of all charges and specifications related to prisoner abuse, but found guilty of disobeying an order not to discuss with others any statements he made during the course of the investigation into abuse at Abu Ghraib. The court sentenced him to be reprimanded. The convening authority subsequently disapproved both the findings and sentence. GRAVELINE & CLEMENS, *supra* note 1, at 306; Michelle Tan, *Lt. Col. Is First Officer Charged for Abu Ghraib*, ARMY TIMES, May 15, 2006, at 12; Josh White, *Army Drops More Charges in Officer’s Abu Ghraib Case*, WASH. POST, Aug. 21, 2007, at A4; Josh White, *Abu Ghraib Officer Is Reprimanded*, WASH. POST, Aug. 30, 2007, at A10.

⁹ Frederick pleaded guilty to assault, indecent acts and dereliction of duty. He was sentenced to a dishonorable discharge, forfeiture of all pay and allowances, reduction to the grade of E-1, and ten years confinement. As a result of a pre-trial agreement, his term of imprisonment was reduced to eight years. GRAVELINE & CLEMENS, *supra* note 1, at 164–83, 306.

¹⁰ On 1 June 2006, a military court found Cardona guilty of dereliction of duty and aggravated assault. The court sentenced him to ninety days hard labor and reduction to the grade of specialist. After his court-martial, Cardona remained in the Army and was promoted to sergeant. He subsequently left active duty and took a job as a civilian contractor in Afghanistan. He was killed there by an improvised explosive device in 2009. GRAVELINE & CLEMENS, *supra* note 1, at 305; R. Jeffrey Smith & Josh White, *Abu Ghraib Dog Handler Is Found Guilty*, WASH. POST, June 2, 2006, at A5.

¹¹ Davis pleaded guilty to assault, dereliction of duty, and making a false official statement on 1 February 2005. The court sentenced him to be confined for six months imprisonment, to be reduced to the lowest enlisted grade, and to receive a bad conduct discharge. GRAVELINE & CLEMENS, *supra* note 1, at 305.

¹² On 21 March 2006, a court-martial convicted Smith of a variety of offenses, including assault, dereliction of duty, and committing an indecent act. He was sentenced to be confined for 179 days, a fine and reduction to the lowest enlisted grade, and a bad conduct discharge. *Id.* at 306.

¹³ A general court-martial convicted Graner of conspiracy, dereliction of duty, maltreatment of detainees, and committing an indecent act with trainees. On 14 January 2005, the court sentenced him to ten years confinement, total forfeiture of pay and allowances, reduction to the lowest enlisted grade, and a dishonorable discharge. *Id.* at 253–65, 305.

¹⁴ On 30 October 2004, Ambuhl pleaded guilty to dereliction of duty at a summary court-martial. She was reduced from SPC to the lowest enlisted grade. Ambuhl later married Graner. *Id.* at 193–96, 305.

¹⁵ Cruz pleaded guilty to conspiracy and maltreatment at a special court-martial. On 11 September 2004, the court sentenced him to be confined for eight months, reduced to the lowest enlisted grade and a bad conduct discharge. *Id.* at 148–49, 154–58, 305.

Sabrina Harman,¹⁶ Roman Krol,¹⁷ and Jeremy Sivits;¹⁸ and Private First Class Lynndie England.¹⁹ Finally, the book concludes with a very short three-page “epilogue”²⁰ that offers some concluding thoughts on the meaning of the Abu Ghraib cases.

The Secrets of Abu Ghraib Revealed is an important book because it tells a ‘good news story’ about the Army, Judge Advocates and the court-martial process—and consequently provides a much needed counter-weight to the seemingly never-ending ‘bad news’ reports about crime in the Army and the military justice system. First, and most importantly, the book shows that the Army lawyers involved in the Abu Ghraib cases used the military justice process as it was intended to be used. There were no shortcuts and no games and the process was never affected, much less harmed, by partisan politics, the media, or international outrage.

Second, Graveline and Clemens demonstrate conclusively that the abuse of the Iraqi detainees at Abu Ghraib resulted from the private actions of a small group of poorly led, poorly supervised, and poorly trained Soldiers. While the media suggested otherwise,²¹ there were no direct orders (or guidance) from military intelligence personnel or other superiors in the chain of command to humiliate these Iraqi detainees in order to facilitate upcoming interrogation sessions. On the contrary, *The*

¹⁶ The court convicted Harman of conspiracy, dereliction of duty and maltreatment. On 17 May 2005, she was sentenced to be confined for six months, to be reduced to the lowest enlisted grade, and to be discharged with a bad conduct discharge. *Id.* at 306.

¹⁷ On 1 February 2005, Krol pleaded guilty to conspiracy and maltreatment. A special court-martial sentenced him to ten months imprisonment, reduction to the lowest enlisted grade, and a bad conduct discharge. *Id.* at 256, 306.

¹⁸ On 19 May 2004, Sivits appeared before a special court-martial and pleaded guilty to conspiracy, maltreatment and dereliction of duty. The court sentenced him to twelve months confinement, reduction to the lowest enlisted grade and a bad conduct discharge. *Id.* at 306–07.

¹⁹ At a general court-martial convened at Fort Hood, Texas, on 22 September 2005, England was found guilty of conspiracy, maltreatment, and committing an indecent act. On 26 September, she was sentenced to be confined for three years, forfeiture of all pay and allowances, reduction to the lowest enlisted grade, and a dishonorable discharge. *Id.* at 254–65, 273–79, 305–06.

²⁰ *Id.* at 299–302.

²¹ See, e.g., Kelly Kennedy, *2-star’s Turn on the Stand*, ARMY TIMES, June 5, 2006, at 8; Eric Schmitt, *Iraq Abuse Trial Is Again Limited to Lower Ranks*, N.Y. TIMES, Mar. 23, 2006, at A1; Josh White, *Conflicting Portraits of Officer Charged Over Abu Ghraib*, WASH. POST, July 31, 2007, at A3; Josh White, *Top Officer Ordered to Testify on Abuse*, WASH. POST, Aug. 19, 2006, at A14..

Secrets of Abu Ghraib Revealed shows that, because none of the abused Iraqis was ever interrogated at any time by any U.S. personnel,²² this means that the Iraqi victims had no intelligence value. It follows that there was no reason for any person in authority to instruct Frederick, Graner and their fellow Soldiers to maltreat Iraqis under their control for any official purpose.

Why then did the abuse occur? Clemens decided in the course of his investigation that it was mostly for entertainment value,²³ a conclusion with which this reviewer concurs. Graner, for example, in talking about abusing Iraqis said: “The Christian in me knows this is wrong, but the corrections officer in me can’t help but love making a grown man piss himself.”²⁴ But, while Graner apparently got a thrill from what he did, the motivations of the other accuseds were more ambivalent. Specialist Harman, for example, took the photograph of a hooded Iraqi, barefoot atop a box, arms outstretched, wires trailing from his fingers—an image that has become “the icon of Abu Ghraib and possibly the most recognized emblem of the war on terror after the World Trade towers.”²⁵ But Harman could not understand the power of the photograph, much less why anyone would find it objectionable: “There’s so many worse photos out there. I mean, nothing negative happened to him really. I think they thought he was being tortured, which he wasn’t.”²⁶ Ultimately, however, why the Soldiers did what they did, while important, is not as important as the fact that their behavior constituted a crime that merited court-martial.

The Secrets of Abu Ghraib Revealed also destroys myths and misconceptions that have persisted in the story’s retelling. First, the Army knew about the abuse and had been investigating it months before CBS news showed the photographs on *60 Minutes II*. The Army opened its investigation in January 2004, after a compact disc containing hundreds of photographs of Iraqi detainee abuse was “anonymously slipped under CID’s door at Abu Ghraib.”²⁷ Since CBS did not broadcast the photographs until April 2004, those who claim that the Army was ‘doing nothing’ until CBS revealed the abuse are incorrect.

²² GRAVELINE & CLEMENS, *supra* note 1, at 122 (emphasis added).

²³ *Id.* at 188.

²⁴ *Id.* at 226.

²⁵ Philip Gourevitch & Errol Morris, *Exposure: The Woman Behind the Camera at Abu Ghraib*, NEW YORKER, Mar. 24, 2008, at 56.

²⁶ *Id.*

²⁷ GRAVELINE & CLEMENS, *supra* note 1, at 53–54.

Second, Graveline and Clemens show persuasively that, regardless of what sort of coercive interrogation was being conducted at the behest of MG Geoffrey Miller at Guantanamo Bay, or what questioning techniques were being authorized by Secretary of Defense Donald Rumsfeld and his subordinates in the Pentagon, the Soldiers at Abu Ghraib were not affected by the practices in Cuba or decisions in Washington, D.C. because they knew nothing about them. Consequently, those who suggest that what occurred in Abu Ghraib was connected to events elsewhere are wrong.

For all its good points, *The Secrets of Abu Ghraib Revealed* is not without its shortcomings. First, it does not address the question of whether the fact that the two ‘ringleaders’ in the abuse scandal (Frederick and Graner) — and other high-profile accuseds (e.g. England and Harman) — were Reservists is part of the explanation for what occurred at Abu Ghraib. Stated differently: Would an active duty military police unit of Soldiers have abused Iraqi detainees in way that part-time citizen-Soldiers like England, Frederick, Graner and Harman did? Perhaps the explanation is that the Reserve unit to which most of the accuseds belonged, the 372d Military Police Company, out of Cresaptown, Maryland, was dysfunctional, and its status as a Reserve unit had nothing to do with what its members did at Abu Ghraib. Perhaps the explanation is that poor Reserve officer leadership (e.g., LTC Steven L. Jordan) —or the absence of leadership—had a role in what happened at Abu Ghraib. But Graveline and Clemens should have addressed these Army Reserve-related questions, especially as it seems unlikely that Soldiers with character flaws like Graner or Frederick could have succeeded in an active duty, full-time military police unit.

Second, and more importantly, the book ultimately reaches an inconsistent conclusion that undercuts its message. The principal theme of the book is that misconduct of the Abu Ghraib accuseds was not ordered by any superior, was not done in furtherance of some military intelligence objective, was not the result of some Pentagon directive. On the contrary, the prosecution theory of the case was that the accuseds assaulted, humiliated, and mistreated the Iraqis for their own personal entertainment and gratification, and that they alone are to blame for what they did. Yet Graveline writes the following at the end of the book:

Quite a winding and convoluted road. If one thing is clear from the entire mess that was Abu Ghraib, it's that neither the theory of a few bad apples nor that it was all

*ordered from the administration is correct ... as always,
the truth lies somewhere in between.*²⁸

But this isn't a true statement. The truth was not "somewhere in between"—at least Graveline and Clemens found no evidence that what occurred was anything other than what they argued at every court-martial: that each accused was guilty as charged and had no legal justification or excuse for his or her criminal acts. Why *The Secrets of Abu Ghraib Revealed* suggests otherwise is a mystery.²⁹

A third and final criticism, albeit minor, is the book's use of descriptive language for individuals appearing in the pages. These references are distracting and sometimes irritating. For example, one senior Judge Advocate is described as "a spark plug of a man . . . short, sturdily built . . . with an endless store of energy. Raised in the 82d Airborne Division, he bore the telltale signs of an Airborne soldier."³⁰ Another attorney is "[a] tan, muscular man with slicked-back, jet-black hair and a mustache," and "donning expensive clothes."³¹ Still another is "a block of a man whose graying crew cut accentuated his square facial features."³² These descriptions are unnecessary and add little to the narrative; they are surplusage.

Two final points: Conversations that occurred between judge advocates and commanders, and which are arguably protected by attorney-client privilege, are divulged in these pages.³³ Some may argue that allowing Graveline and Clemens to reveal the substance of these conversations will cause commanders to be less than frank in their discussions with their legal counsel—because these commanders may see their words in print. While such concerns are valid, on balance, it was both wise and proper for the Army to waive any confidentiality concerns so that this accurate, insightful, and valuable story about Abu Ghraib

²⁸ *Id.* at 298 (emphasis and omission in original).

²⁹ See, e.g., JANIS KARPINSKI, *ONE WOMAN'S ARMY: THE COMMANDING GENERAL OF ABU GHRAIB TELLS HER STORY* (2006) (providing a commander's perspective of the incidents at Abu Ghraib); GARY S. WINKLER, *TORTURED: LYNNDIE ENGLAND, ABU GHRAIB AND THE PHOTOGRAPHS THAT SHOCKED THE WORLD* (2009) (recounting the events from England's perspective).

³⁰ GRAVELINE & CLEMENS, *supra* note 1, at 43.

³¹ *Id.* at 29.

³² *Id.* at 74.

³³ *Id.* at iv. See also U.S. DEP'T OF ARMY, REG. 27-26, RULES OF PROFESSIONAL CONDUCT FOR LAWYERS r. 1.6, r. 1.13 (1 May 1992) (providing information on "Confidentiality of Information" and "Army as Client").

reaches the widest public audience. Finally, the fifteen black-and-white photographs in the book are a plus, and the authors and publisher are to be commended for including them.

Since virtually all the investigative work, and most of the prosecutions, occurred in a deployed environment, *The Secrets of Abu Ghraib Revealed* proves that high-profile courts-martial can be conducted in a combat zone—and that the Uniform Code of Military Justice works in wartime. The book also shows that Judge Advocates involved in the Abu Ghraib cases never lost sight of the fact that ensuring that the military justice process worked the way it was designed to work was more important than any results at trial.