

# ***The Invisible War* Comments on Removing Disposition Authority from Commanders**

## **I. Perspectives on Commanders' Case Disposition Authority**

- A. Rear Admiral Anthony Kurta:** Now in our system of military justice it is the commander in the chain of command who is responsible to determine how the investigation proceeds. *THE INVISIBLE WAR* at 52:33 (Chain Camera Pictures 2012).
- B. Ben Klay:** This is an organization that gives commanders an unbelievable amount of power. And I felt it, as a lieutenant in Iraq, it's scary. You appoint the prosecution, you appoint the defense, you appoint the investigator, you're in charge of the police force, you're in charge of the community. You own everything. You are judge, you are jury, you are executioner. *THE INVISIBLE WAR* at 51:51 (Chain Camera Pictures 2012).
- C. Susan Burke:** Most Americans assume there is access to a system of justice, so that, for example if you're a civilian and you're raped, you can call the police and then you have prosecutors, either federal prosecutors, state prosecutors, local prosecutors, that bring the perpetrator to justice. The problem with the military is that they instead have to go to their chain of command. *THE INVISIBLE WAR* at 51:51 (Chain Camera Pictures 2012).
- D. Stace Nelson:** I know that there's been numerous times over my career that I regretted that an individual commander had the total say so over a case. Most of them don't have the training or the education to determine what's appropriate and in serious felony investigations. *THE INVISIBLE WAR* at 52:33 (Chain Camera Pictures 2012).
- E. Captain Greg Rinckey:** The problem in the military is the convening authority who is not legally trained, makes the final decision. *THE INVISIBLE WAR* at 52:33 (Chain Camera Pictures 2012).
- F. Jessica Hives:** They had a chain of command at my old squadron where the guy that raped me was still stationed. He had only been in command for four days, and he made a decision over legal to stop the case. *THE INVISIBLE WAR* at 53:13 (Chain Camera Pictures 2012).
- G. Rep. Jackie Speier:** The GAO, General Accounting Office, just did a study, a report and guess what, not one, not one case, of more than 2500 has been reviewed and investigated by the inspector general, and when asked about that the inspector general said, well we have other higher priorities. *THE INVISIBLE WAR* at 1:24:14 (Chain Camera Pictures 2012).
- H. Card:** Many of our closest NATO allies no longer allow commanders to determine the prosecution of sexual assault cases. *THE INVISIBLE WAR* at 1:26:00 (Chain Camera Pictures 2012).

## **II. Responsiveness of Commanders to Reports of Sexual Assault**

- A. Susan Burke:** The military hides behind this notion that it is really really hard, almost impossible to prosecute rape. But when you look at prosecution rates in the 2010 Department of Defense reports, you begin with 2,410 unrestricted reports and 748 restricted. What this means is they've already funneled 748 sexual assault victims into a system that has absolutely no adjudication whatsoever. Then you take the 2410 that have been reported, of those they have identified 3,223 perpetrators. Now what happens once you send a perpetrator over to command? Well, the command has just completely unfettered discretion to do whatever it is they want. And what is it that they do do? First off, they drop 910 of them, they just don't do anything. Then of the 1,025 that they actually take some action, do they court martial them? No. Only half of them, 529, actually got court martialed. The rest, 256 were subjected to article 15 punishments, 109 to administrative discharges, and 131 to quote other adverse administrative actions, whatever the heck that means. And then of the convictions where they actually get jail time, when you work your way all the way through the numbers, what you're looking at, is that out of 3,223 perpetrators, only 175 end up doing any jail time whatsoever. THE INVISIBLE WAR at 54:10 (Chain Camera Pictures 2012).
- B. Susan Burke:** And so there's this notion that essentially anyone can be a rapist and we all have to be alert. It misses an opportunity to take real steps towards preventing rape. If they actually had systems of accountability that prosecuted and imprisoned perpetrators, you would get rid of a lot of the rapes right away. THE INVISIBLE WAR at 58:40 (Chain Camera Pictures 2012).
- C. Anu Bhagwati:** Today I stand in solidarity with the courageous women and men who have served in our armed forces. The inspirational plaintiffs you see before you are a small handful of the tens of thousands of troops and veterans who have been sexually brutalized by their fellow service members while defending our nation. It is time to finally acknowledge that our military's judicial system is broken when it comes to these cases. THE INVISIBLE WAR at 1:12:58 (Chain Camera Pictures 2012).
- D. Card:** The filmmakers contacted five female marines who were each assaulted by an officer while serving at Marine Barracks Washington. Four of the women were investigated or punished after they reported. No officer was punished for any assault. THE INVISIBLE WAR at 51:24 (Chain Camera Pictures 2012).
- E. Kori Cioca:** My name is Kori Cioca and in my case, my command was unwilling to help me. I went for help many times with my petty officers and I was denied help, even with other men saying please get her away from him, and it was still allowed. THE INVISIBLE WAR at 1:12:58 (Chain Camera Pictures 2012).
- F. Myla Haider:** Almost none of the cases made it to court-marshal, and out of the ones that do, almost none of them result in conviction. THE INVISIBLE WAR at 1:14:49 (Chain Camera Pictures 2012).
- G. Loretta Sanchez:** It seems to me all the times that I've looked at these things that the command is the one who has such much discretion. THE INVISIBLE WAR at 1:14:49 (Chain Camera Pictures 2012).
- H. Elle Helmer:** The colonel at one point said, you know, Lieutenant Helmer, boys girls and alcohol just don't mix. We'll never really know what happened inside that office—only you and the major know and he's not talking. So, at this point, the investigation is closed

for a lack of evidence and we've reopened a new investigation against you for conduct unbecoming of an officer and public intoxication. THE INVISIBLE WAR at 48:11 (Chain Camera Pictures 2012).

- I. **Hidden Soldier:** This officer bragged to his fellow officer friends that he had 'bagged' me. I got called up to a major's office and he charged me with fraternization and adultery. He was married, I wasn't, and I was charged with adultery. THE INVISIBLE WAR at 49:02 (Chain Camera Pictures 2012).
- J. **Ariana Klay:** I told the battalion XO about the humiliation and the comments, and he said you know you should do what a marine officer should do and that's to ignore it and move on. THE INVISIBLE WAR at 49:27 (Chain Camera Pictures 2012).
- K. **Stace Nelson:** Sometimes you would see a guy get four or five years for selling a minor amount of drugs, and then you would have one guy get 2 weeks extra duty for rape. THE INVISIBLE WAR at 53:40 (Chain Camera Pictures 2012).

### III. Impartiality of Commanders

- A. **Card:** 33% of female soldiers didn't report their rape because the person to report to was a friend of the rapist. THE INVISIBLE WAR at 1:25:17 (Chain Camera Pictures 2012).
- B. **Susan Burke:** What you really want is you want there to be a system akin to a civilian system where you go to the police and the crime is prosecuted by an impartial judicial system. THE INVISIBLE WAR at 1:24:14 (Chain Camera Pictures 2012).
- C. **Susan Burke:** These are human beings just like everyone else. You cannot be impartial when you are involved with people in other settings. THE INVISIBLE WAR at 1:24:50 (Chain Camera Pictures 2012).
- D. **Anu Bhagwati:** What I saw was commanders field grade officers, lieutenant colonels, colonels, who have been in 20, 25 years, they are career officers, and they sweep cases under the rug. THE INVISIBLE WAR at 53:13 (Chain Camera Pictures 2012).
- E. **Ariana Klay:** I think the thing that makes me the most angry is not even the rape in itself, it's the commanders that were complicit in covering everything up that happened. THE INVISIBLE WAR at 51:14 (Chain Camera Pictures 2012).
- F. **Myla Haider:** As a CID agent, I found it tremendously frustrating when I would demonstrate that an offender had committed an offense, and taking it to a commander and having a commander being the deciding authority. You know, I don't think commanders are capable of making an objective decision. I do not think it should be in their hands. THE INVISIBLE WAR at 1:15:47 (Chain Camera Pictures 2012).
- G. **Kori Cioca:** I think the advocate should actually be civilians. Not ones that work in the military. I think we should have actual units, civilian units. THE INVISIBLE WAR at 1:14:49 (Chain Camera Pictures 2012).
- H. **Major General Dennis Laich:** The last thing a company commander in the army wants to do, is make the phone call to his or her battalion commander that I have had an

allegation of a rape in my unit. This is viewed in many cases as a failure to command that will adversely then affect their career. THE INVISIBLE WAR at 53:40 (Chain Camera Pictures 2012).

- I. **Rear Admiral Anthony Kurta:** I would take exception with your characterization that the disposition of the case is based on the relationship between the commander and the alleged perpetrator. THE INVISIBLE WAR at 1:24:50 (Chain Camera Pictures 2012).
- J. **Major General Mary Kay Hertog:** I'm going to speak to you with my former commanders hat on. There is absolutely no conflict of interest, you do what the right thing is to do. THE INVISIBLE WAR at 1:25:17 (Chain Camera Pictures 2012).
- K. **Major General Mary Kay Hertog:** As a commander you have no favorites, you are equally take care of every single person in your organization, that's what command is all about. THE INVISIBLE WAR at 1:24:50 (Chain Camera Pictures 2012).