In a viral blog post published last summer, former airman Kayce Hagen lamented the injurious influence of social science-driven sexual assault prevention strategies on Air Force culture ... and how those strategies created irrational fear that every male airman should be regarded as a sex predator poised to strike. She worried in particular about dangerous politicization and bias in the commander-led disciplinary
system, which threatened to give one airman the power to ruin the life of another with four simple words: “he sexually assaulted me.”

The case of Maj. Michael Turpiano demonstrates just how horrifically valid that worry has proven to be ... and how a service struggling to show seriousness on those most serious of law enforcement challenges has cheapened and debased its own effort with radical and dangerous systemic overreaction.

In early 2013, Turpiano, previously a communications officer, found himself at Goodfellow Air Force Base, Texas, where he was cross-training into the intelligence career field. There he developed a reputation as something of a “ladies man” ... a “player” ... and struck up a few romantic relationships, including one with a civilian classmate. After a volatile few weeks of dating, the two parted ways. According to trial testimony, she threatened in the course of that contentious breakup that if Turpiano walked away from the relationship, she would accuse him of sexually assaulting her.

Soon thereafter, she made good on that threat.

In March, 2013, Turpiano learned he was under investigation. Two agents from the Air Force Office of Special Investigations (OSI) were pursuing a complaint lodged by his ex-girlfriend. Overnight, his life was transformed as the chain of command he relied upon to vindicate his right to fairness turned on him swiftly and viciously.

Not long after the inquiry opened, Lt. Col. Christopher Huisman, commander of the squadron to which Turpiano (as well as his accuser and virtually every other witness in the case) belonged, issued a broad no-contact order. The directive contained a list of 38 names, preventing Turpiano from enlisting witnesses in his defense. It also had the effect of knocking him out of training just a few days short of graduation and professionally damaging him long before a single charge had been filed.

Huisman’s order wasn’t the only obstacle erected between the accused Turpiano and his entitlement to due process.

According to trial testimony and sworn statements included in Turpiano’s post-trial request for clemency, OSI investigators intimidated witnesses, coercing statements implicating Turpiano in misconduct. Those summoned to interview with OSI who offered positive or supportive remarks about him were sometimes threatened with criminal charges themselves and warned they could be imprisoned for failure to cooperate. Rather than simply interview witnesses, agents told them Turpiano was a “rapist” and a “criminal” before demanding they write down anything negative they could recall. If they couldn’t come up with anything, one of the agents would stand over them and tell them exactly what to write down.

One officer said an agent “interrupted me and told me to stop lying to them and to tell the truth or that I would be charged with making a false official statement.” Another testified that the same agent “was screaming at and threatening me. He repeated over and over that I was in trouble.” A third said “[t]he agent questioning me threatened me with a charge of Obstruction of Justice if I did not talk to them and tell them exactly what they wanted to hear.”
One witness claimed in a sworn statement that most of her interrogation occurred before she was advised of her rights. She repeatedly requested counsel both before and after rights advisement and was denied access to counsel by the agents. At one point, in a truly bizarre development, squadron commander Huisman was brought into the interview room in uniform to assist with the interrogation.

The law requires that a custodial interview cease when counsel is requested, and that counsel be present for any further questioning. It’s also inappropriate for a commander who might be called upon as an objective decision maker in a criminal case to participate in an interrogation of a material witness.

Others provided similar accounts unofficially but refused to cooperate with Turpiano’s defense, citing fear of reprisal by the chain of command and fear of being placed under investigation by OSI. One witness, after capitulating to OSI and providing a statement, recanted his account and warned that it should be considered unreliable. The government neglected to inform Turpiano’s defense team of this potentially exculpatory piece of evidence. This is a serious ethical violation and possibly classifiable as prosecutorial misconduct.

The two agents working Turpiano’s case spent ten months compiling a 387-page report of investigation. They interviewed many witnesses and gathered many statements, some of which would later be impeached at trial while others would be recanted. What’s interesting is what agents did not do.

Neither Turpiano’s home nor his car were searched. Nor was his computer. Agents asked the original complainant for her cellphone to examine its contents, but she refused to surrender it and they backed off.

One of the charges Turpiano eventually faced involved an allegation of inappropriate touching while dancing with a female officer at a nightclub. Agents didn’t harvest the closed-circuit video from that club, interview the security guard on duty that night, or seek input from the dozens of potential witnesses who were there. These are odd investigative choices if OSI and Lt Col Huisman indeed considered Turpiano a sex predator so dangerous that he needed to be physically and professionally isolated from his teammates.

The final OSI report, filed in January of 2014, recommended Turpiano be charged with six counts of sexual misconduct against six different women. It also recommended more than 40 additional charges of varying severity based on the same alleged underlying conduct. The report made him sound like Satan incarnate.

But by the time an Article 32 hearing was held in September of that year, prosecutors had decided the evidence – much of it rumor and hearsay squeezed out of coerced witnesses – was too weak to sustain all but a handful of the recommended charges.

Turpiano would eventually face an inquiry on two counts of sexual misconduct and several separate counts of Conduct Unbecoming an Officer and a Gentleman. Those with a working familiarity of the Air Force justice process recognize this latter charge as a catch-all criminalizing disapproved acts that don’t specifically violate another article of the Uniform Code of Military Justice.
The story of that Article 32 process – at which the government called just four witnesses after spending 18 months investigating and preparing its case – is important. But just as important is the story of what happened to Turpiano in the time between the opening of the investigation and the moment he finally faced charges.

After Huisman’s gag order, which isolated Turpiano from his support system and inhibited his defense preparations, others in the chain of command took actions that damaged his standing and reputation in the community at Goodfellow. This all happened long before the government charged him with anything.

Col. Harris, the group commander overseeing Goodfellow’s intelligence school, discussed Turpiano’s case with each incoming class, according to trial testimony. Harris did so without calling Turpiano by name, but included references that made his identity obvious while labeling his conduct “criminal” and explicitly pre-judging his guilt before charges had even been fully investigated. Officers sitting through Harris’s discussions of the issue would later approach Turpiano and put him on notice that he was being maligned by the chain of command.

Turpiano was reassigned to the Force Support Squadron (FSS) while under investigation. While he was out of the office, his First Sergeant, MSgt. Welton, informed Turpiano’s co-workers of the nature of the investigation and the accusations made against him. Again, a conscientious co-worker approached Turpiano and informed him of the words being spoken against him, an action without which he’d have proceeded oblivious.

Not long after the investigation began, Turpiano was informed by the intelligence officer course director, Capt. Bizko, that his training report had been downgraded by Lt. Col. Huisman for “disciplinary reasons.” When Turpiano’s lawyers reached out to Bizko for a statement about the matter, Bizko responded that he’d been ordered by Wing Commander Col. Kimberly Joos to refrain from talking to Turpiano or his lawyers. The mind boggles to comprehend what military necessity could underpin the legality of such an order. Then again, Air Force command authority has long since slipped the surly bonds, escaping any measurable limit apart from that imposed by the power and privilege of superior rank. Many philosophers and historians have written many volumes about such systems. None have happy endings.

Turpiano could see how things were shaping up. His chain of command seemed set on actively denying his right to due process and was openly embracing a presumption of guilt before the facts were established. He grew concerned that if he didn’t raise the red flag immediately, he would be condemned without even the chance of basic fairness.

He did what airmen are told to do in such situations: he turned to the wing Inspector General (IG), filing a complaint against his commanders and First Sergeant. Unsurprisingly, that decision didn’t have much impact. As I’ve written previously, the IG isn’t a watchdog keeping an eye on the chain of command. The IG is a lap dog keeping an eye out for threats to the chain of command, and is controlled and directed by that same chain of command.
In this case, the Goodfellow IG initially made a good faith effort at curbing command abuse. The investigator assigned to Turpiano’s case found enough evidence to recommend to Col. Joos that a formal Command Directed Investigation (CDI) be undertaken. But, as tends to happen, this good faith effort was redirected to minimize potential discredit to the chain of command.

Joos declined to conduct a CDI, instead performing an “informal inquiry.” The inquiry substantiated Turpiano’s complaint that he was wrongly poormouthed by the First Sergeant, but did not find either his squadron or group commander culpable for their actions. In fact, the review interviewed no witnesses who might have testified about command prejudice or abuse of authority, seeming to deliberately avoid questions that might produce inconvenient answers. Whatever her initial intent, the approach taken by Joos ended up leaving untouched credible complaints that Turpiano’s commanders were pre-judging his case.

Before long, Joos’ actions made her intent more clear. She denied Turpiano’s repeated appeals for a CDI, and soon after removed the original investigator — a civil service employee — from the case, reassigning it to a major in the IG office. That major spent nearly two years cultivating a recommendation to deny Turpiano’s original complaint. That recommendation was submitted one month after Turpiano’s trial.

In conjunction with his IG complaint, Turpiano personally appealed to Maj. Gen. Patrick, commander of 2nd Air Force, asking him to rein in his deputies and restore an environment of fairness. This seemed to have some effect initially.

Goodfellow’s vice wing commander, Col. Schmidt, verbally counseled the involved commanders and First Sergeant, ordering them to stop publicly disparaging Turpiano. While indicative of a responsive chain of command, this is also a damning fact. If Schmidt felt it necessary – or was ordered – to correct prejudicial conduct by those exercising command authority in the case, this should have immediately triggered disciplinary inquires into those commanders and elevation of Turpiano’s IG complaint above wing level. The agents assigned to the case should have been replaced with others and the evidence they developed carefully reviewed by fresh eyes. Only if it could be demonstrated that the case was proceeding on credible evidence and without the taint of Unlawful Command Influence (UCI) should it have continued at all.

Remarkably, in a tacit acknowledgement that the case was riddled with issues of UCI and prejudice, Patrick ordered both Turpiano and his case transferred to Lackland Air Force Base in San Antonio. He did not, however, replace the original case agents, order a re-boot of the case, or censure any of the commanders involved at Goodfellow. This makes it less than shocking that the case remained problematic even after the transfer.

After relocating, Turpiano would spend seven more months under investigation and another eight months awaiting his first trial event. In that time, he struggled to get out from beneath a cloud of presumed guilt. Unfortunately for him and in a damning indictment of the Air Force, it wasn’t to be.

Around the time he moved, phones in San Antonio began ringing. Both Lt. Col. Huisman and Col. Harris took it upon themselves to call ahead and conduct
discussions with Turpiano’s new bosses at squadron and group level. No one knows the content of those calls, only that they happened. But from the moment Turpiano stepped foot on Lackland, he was ostracized. Rather than stepping into the position to which he was formally assigned, he remained essentially jobless for several weeks, a human paperweight holding down a desk without any responsibility. After lodging several requests to be put back to work, he was given a flight commander role created specifically for him. The job entailed less than his rank and experience argued for, but by all accounts, he did well with it.

Turpiano’s new group commander, Col. Krause, declined to meet with him and welcome him to the group – something Krause did for every other officer assigned to his command. Turpiano lobbied and eventually persuaded Krause to meet with him. Krause would later claim he declined to meet with Turpiano because he’d failed to follow proper protocol in requesting a meeting. This claim is petty, and it’s also specious. The record reflects Turpiano repeatedly requested a meeting in a proper manner, and that no other new officer had to make such a request.

Krause also intervened to prevent Turpiano from taking a counterintelligence polygraph required for him to reach full access to his new squadron’s facility. This prevented Turpiano from attending onsite commander’s calls, group picnics, hails and farewells, and other camaraderie-building events. Even civilian family members, with proper escort, were permitted to attend events Turpiano was barred by Krause from attending.

According to Turpiano, his new squadron commander, Lt. Col. Rabe, told him he wasn’t involved in his investigation and would not be the person deciding whether charges would go to trial. This revelation caused Turpiano to confide in Rabe about his case and to seek his confidence and mentorship on numerous occasions. But then, in July of 2014, Rabe met privately with Turpiano to inform him that he would indeed prefer charges against him the next day. Turpiano claims that when he reminded Rabe of his original assurance, Rabe apologized and professed that he didn’t want to do it, but that his hands were tied and the chain of command was forcing him. If accurate, this account clearly demonstrates unlawful command influence, and should be enough standing alone to nullify the legal consequences that followed.

After charges were preferred, Rabe sought to have Turpiano reassigned to a different unit, citing altered perceptions and the ubiquitous “good order and discipline.” It took some time for Rabe to find a commander in the San Antonio community willing to accept Turpiano given the charges against him. During the trial months later, a panel member was dismissed after admitting that he’d refused to accept Turpiano out of concern he would assault female members of the organization. This demonstrates the wide-scale damage to Turpiano’s reputation brought about by rumor-mongering that helped that damage metastasize long before any formal charges.

Eventually, Turpiano landed in a unit belonging to the 502nd Installation Support Group, where he worked on various projects for commanders. There he faced additional challenges.
His immediate supervisor, Lt. Col. Garay, gave him work to do, which he did well. This led to the oddity of Col. Smith, the group commander, directing Garay to stop setting Turpiano up for success. Smith would be involved in the ultimate recommendation as to whether Turpiano’s case would go to trial, and seemingly didn’t want his decision complicated by Turpiano turning in stellar performances on high-profile projects. Smith also ordered that Turpiano not talk to the women who worked in his office. These actions together left Turpiano with the feeling that Smith had already made up his mind about the case.

The Article 32 hearing to determine whether Maj. Turpiano should face a court martial on the basis of the OSI investigation report was remarkable in a number of ways.

The first of these was the contrast between the charges OSI recommended and those ultimately tested at the Article 32. As noted previously, prosecutors lacked the evidence to try him on the six counts of sexual misconduct and more than 40 other counts stacked into the OSI report. Instead, he would stand an Article 32 on two counts of sexual misconduct and four additional counts of Conduct Unbecoming an Officer.

The first sexual misconduct charge arose from the complaint originally filed by Turpiano’s ex-girlfriend. Another charge arose during the OSI investigation, lodged by his ex-girlfriend’s best friend. Neither woman testified in-person at the Article 32 hearing — both chose instead to submit written statements.

It’s worth noting that both women had reportedly made other sexual misconduct allegations against another Goodfellow officer, though it’s not clear what resulted from those separate allegations.

For his part, Turpiano maintained his innocence and even passed a polygraph on each allegation, though he neither testified nor submitted non-testimonial evidence for the Article 32.

The other charges, each advanced by the government under the rubric of “Conduct Unbecoming,” were the subject of direct witness testimony, giving Turpiano his first opportunity in 18 months to confront his accusers. Notably, two of the complaining witnesses were close friends of Turpiano’s ex-girlfriend, the original complainant.

One of those close friends, M.E., claimed that once, when she and Maj Turpiano hugged at a bar, he leaned toward her and seemed poised to give her a kiss. She also claimed that he “hit on” her and “attempted” to hug her two other times.

The other close friend, R.H., claimed that Turpiano had been exceedingly ungentlemanly … while engaging in consensual “dirty dancing” with her at a nightclub. Yes, you’re reading that correctly. R.H., by her own testimony, engaged in a consensual form of dancing with Turpiano whereby his groin was legitimately in contact with her behind … but later claimed he had overstepped his bounds during their dance session.

In her initial written statement to OSI, R.H. claimed that while “grinding” with Turpiano, she felt his hands move across her stomach and graze her breasts. She moved his hands away, placing them on her hips. That was the end of it. At the time
of the alleged incident, she made no report, writing in her sworn statement that she “blew it off” because it’s not uncommon for such touching to occur at dance clubs.

By the time of the Article 32, her story had evolved. Prosecutors were attempting to morph the grazing of her breasts during a dirty dancing session into an additional sexual misconduct charge. At the hearing (and later at court), she testified that Turpiano had “cupped” his hands around her breasts and “gripped” them. She further claimed that when she moved his hands back to her waist, he then moved his hands to her inner thighs. The judge asked why she kept dancing with him; she replied that she hadn’t wanted him to think she was uncomfortable.

Later, at trial, defense counsel would expose the glaring inconsistencies in her sworn testimony over time. An excerpt:

Q. And that your statement to OSI; isn’t it true that you stated that Major Turpiano moved his hands over your stomach and briefly grazed your breasts?
A. Yes.
Q. And you then removed his hands, put them back down; correct?
A. On my hips, yes.
Q. Correct. And then at that point isn’t it true that he decided to go elsewhere and left the dance floor?
A. That is what I wrote.

This is an example of impeached testimony. When a witness swears to different versions of the same story, and those differences bear directly on whether elements of a criminal charge are proven, the jury has (or should have) trouble deciding which version to believe. If having trouble deciding which story to believe sounds an awful lot like “reasonable doubt,” that’s because it is.

This particular charge underscores the difficulty of attempting to impose traditional consent norms on an activity that assumes consent to intimate conduct as an element of participation. It also demonstrates how quickly the law can descend into absurdity when prosecutors are politically pressured into bringing charges irrespective of the true character of the underlying conduct.

The third “Conduct Unbecoming” witness was actually a friend and former classmate of Turpiano’s. In her initial statement to OSI, C.E. claimed that Maj Turpiano came up behind her in a bar and gave her a hug. Similar to R.H., her story had changed by the time of the Article 32. There, she testified that he had grabbed her waist from behind pulled her towards him while he sat down on a bench, and that after she resisted, he attempted to embrace her repeatedly.

When C.E. was cross-examined later at trial, defense counsel clearly exposed the inconsistencies in her statements over time. Note this extract from the trial transcript, wherein defense counsel confronts C.E. on her addition of more detail at trial than previously provided in sworn statements:
Q. Okay. And then let me make sure I’m right; is it your testimony today that your memory today is better than it was two years ago about those events?

A. No, sir. I feel that I’m just understanding how detailed you would like the recollection to be.

Q. So today you’re providing more details than you did two years ago when it was closer in time to the event.

A. I gave the details verbally, just not in the written statement.

DC: Okay, thank you.

In addition, C.E. herself testified that she apologized to Turpiano’s girlfriend for the alleged hug. It’s fair to infer that in apologizing, C.E. took upon herself some culpability for inviting and/or participating in whatever physical contact actually occurred. The apology also calls into question the basic character of the alleged act, and her degree of victimization from it.

The final accuser, also a former classmate of Turpiano’s, was someone with whom he’d had personality clashes in the past. D.C. claimed that one night while out drinking she felt someone slap her on the behind as she was ordering tequila shots. When she turned around, according to her testimony, she saw Turpiano and another male officer standing behind her. That other officer later testified that he hadn’t seen anyone lay a hand on her. This account was corroborated by another witness, also an Air Force officer, who was sober and serving as the designated driver for his group.

Turpiano, in his role as class leader, had informally disciplined D.C. after she brought a cellphone into a classified facility in violation of Air Force Instructions. The incident led to antagonism between the two.

The Article 32 judge, Col. Milam, was apparently unimpressed with the evidence. Roughly one week after the hearing concluded, he recommended dismissal of all sexual misconduct charges. Notably, he did this without Turpiano testifying or submitting any evidence. Solely on the basis of the written statements submitted by the complaining witnesses, he concluded evidence was insufficient to proceed.

The judge also recommended dismissal of M.E.’s claim because none of her testimony indicated criminality. Moreover, he recommended R.H.’s complaint about supposedly unwelcome touching during “grind dancing” not be rewritten as an abusive sexual conduct charge, as the prosecution had requested. Finally, Milam was unmoved that anything presented at the Article 32 amounted to “Conduct Unbecoming an Officer and a Gentleman.” Instead, he felt some of the evidence might arguably color claims of Assault Consummated by Battery.

Milam ultimately recommended the Convening Authority proceed to court martial on four charges. Three from the Article 32 testimony of R.H., C.E., and D.C., and a
fourth charge that flew in out of left field on the eve of the hearing. Literally the night before the Article 32 proceedings began—a year and a half after her initial accusation—Turpiano’s ex-girlfriend faxed a sworn affidavit to prosecutors claiming he had once choked her and thrown her across a room during their short-lived relationship. Milam felt the evidence supporting this charge was “very weak,” but nonetheless recommended the Convening Authority to send it to court.

What happened next perfectly crystallizes the problem many critics see in entrusting legal decisions to senior commanders who are increasingly subject to political pressure if not political capture. By failing to isolate due process decisions from the whimsical variations of public and congressional advocacy, the Air Force system knowingly—and indeed deliberately—permits decisions that should be vested in an impartial and disinterested arbiter to be assailed, manipulated, and warped by improper influence, both spoken and tacit.

Brig. Gen. Robert LaBrutta, holder of a superior record of operational and staff performance, would be the officer to dispose of the Article 32 recommendations from Judge Milam. LaBrutta is neither a lawyer nor a judge himself. He’s an Air Force officer, and accordingly gets paid to align himself with the priorities of his superiors and to keep the big machine running with minimal friction. This means taking into consideration the political sensitivity of legal decisions. It means, in the contemporary Air Force, giving as wide a berth as possible to potential controversy on the subject of any sexual impropriety, especially in Air Education and Training Command and especially when it involves a male officer in a position of relative authority.

Recall that in 2013, the Air Force weathered a horrific political storm after Lt. Gen. Craig Franklin summarily tossed out a sexual assault conviction secured against Lt. Col. James Wilkerson. LaBrutta’s decision came at a time when looking soft on sexual assault would likely have halted his career in place, and might well have gotten him fired.

It is perhaps unsurprising, if at the same time remarkable in all the wrong ways, that LaBrutta looked past the evidence, past Judge Milam’s recommendation, and past the clearly correct decision ... and reached instead for the decision that would avoid political risk on a magma-hot issue. He confounded the Article 32 process and sided with his prosecutors, recommending Turpiano face court martial for sexual assault based on his ex-girlfriend’s original complaint. In doing so, he showed more confidence in her claim than she herself was willing to show, having absented herself from the Article 32 hearing. Incidentally, LaBrutta was recently nominated for a second star.

When LaBrutta’s decision was finalized, Turpiano faced court martial on five charges: one for Sexual Assault and four for Assault Consummated by Battery.

One the opening day of *U.S. v. Turpiano*, presiding Judge Spath observed “…the reason we are here is the perception that the Air Force was not handling sexual assaults appropriately…”

The fact that command influence over prosecutorial decisions would be this obvious to a senior trial judge, and that he would speak openly about it for the record, raises a litany of red flags about the health of the Air Force’s justice system. Or at least it
should. It seems even the judge in this case worried he might be presiding over a case less about evidence, facts, or culpability ... and more about reinforcing the Air Force’s public image at the cost of holding a man’s life at risk.

At court, Turpiano was acquitted of all sexual misconduct. This is unsurprising given the weakness of the evidence. He was also acquitted of two of the additional charges of Assault Consummated by Battery, but was, astonishingly, convicted on the other two. The panel found him guilty of what the victims originally characterized in their sworn statements to OSI as grazing a breast during consensual dirty dancing and giving an unwelcome hug at a bar.

For these crimes, he received three months confinement, three months forfeiture of pay, a Letter of Reprimand, and Dismissal from the Air Force. (Note: “dismissal” is the officer equivalent of an enlisted “dishonorable discharge.”)

This case started with an ultimately hollow accusation of sexual assault. That original accusation ended up amounting to nothing, and there is a legitimate question whether the evidence used to convict Turpiano on the collateral charges would have been obtainable without the strong-arm tactics witnesses say OSI employed. Those strong-arm tactics sprung from command overzealousness in pursuing sexual assault ... a response to perceptions the Air Force had previously fumbled on the issue. Note how none of this had much of anything to do with Turpiano’s actual culpability, which is the only legitimate focus of a criminal justice system.

The evidence that condemned Turpiano was weak. The witnesses whose testimony secured his conviction were impeached on the stand.

This “dirty dancing” claim made by R.H. was not only inconsistent, but refuted by another witness. According to R.H.’s own statements, the alleged assault and battery occurred in a crowded dance club with dozens of eyewitnesses, a uniformed police officer, and bouncers present. R.H. was surrounded by her closest friends and not one of them corroborated her testimony. No one in the club reported anything, and OSI neither reviewed the available closed-circuit video feed nor questioned the police officer on duty in the club that night. R.H. reported nothing until months later, after her best friend had accused him of sexual assault.

Of the dozens of potential eyewitness from the club that night, the one who ultimately testified recalled: “I do remember them dancing together. And I remember that it was mutual ... there wasn’t any sort of force or unwillingness on either side. I remember that it was — there was nothing out of the ordinary, especially for that club or for that environment.”

Remember, prosecutors tried to morph this incident into “Abusive Sexual Contact.” They fell short, but still managed to get a man convicted of a crime for touching someone intimately during an inherently intimate consensual act. It falls upon us, the observers, to wonder whether this is the sort of thing anyone had in mind when it was suggested the Air Force do a better job dealing with sexual assault.

The alleged unwelcome hug reported by C.E., similar to the dancing, occurred in a crowded bar with dozens of eyewitnesses, a uniformed police officer, and bouncers present. C.E. was surrounded by her closest friends. Not a single one of them saw an assault or battery. In fact C.E. was having a conversation with one of her friends
when the alleged hug occurred. This friend of hers provided a sworn statement to OSI saying she didn’t see Turpiano touch C.E. at all. C.E. didn’t tell any of her friends that the “hug assault” occurred in its direct aftermath. No one in the bar came forward claiming to have witnessed a battery, no video evidence was collected by OSI, and C.E. never reported the incident until interviewed by OSI as part of the wide-ranging inquiry into the initial sexual assault complaint.

The inconsistencies in R.H.’s and C.E.’s testimony over time triggered Spath to issue the following instruction to the panel prior to deliberations:

“So for example, if a witness testifies in court that the traffic light was green, and you heard evidence that the witness made a prior statement that the traffic light was red, you may consider the prior statement in evaluating the truth of the in court testimony. You may not however use the prior statement as proof that the light was red.”

The fact that the panel chose to convict despite being warned by the judge that the witnesses might not be reliable and after watching those witnesses get caught in their own inconsistencies on the stand raises perhaps the most important question of all: has the Air Force become so politicized on the issue of sexual misconduct that it’s no longer possible for someone accused of such conduct to receive a fair trial? Has the institutional social science approach to sexual assault prevention seeped all the way down into court martial juries, catalyzing members to nullify justice so they can “send signals” on behalf of the institution?

LaBrutta’s decision to send the sexual assault charge to court undoubtedly created contrast with the other charges, making them seem like a comparatively mild alternative available to a jury that couldn’t find guilt on sexual assault but had reason to believe the accused was a “bad guy.” This is a common prosecutorial tactic; over-charge to signal the jury that the accused is a “bad guy,” and hope the jury chooses something on the menu, even if it’s not the main course.

By this ethical alchemy, it became possible for an officer with an impeccable 14-year service record — including twin one-year deployments to Iraq and Afghanistan — to be accused of sexual assault, have a grand jury equivalent recommend against indictment on that charge, and still end up with life-crushing convictions on unrelated charges developed through dubious investigative tactics. If that sounds divergent from what should be occurring in a contemporary justice system in a society that proudly proclaims faithfulness to the rule of law, it’s because it is. The Air Force is a world apart, as this case shows.

Maj. Turpiano spent 90 days in jail. He is now on unpaid leave while he awaits the disposition of his appeal. That appeal was due to be heard this month, but is expected to be delayed at least 90 days, which is typical. He’s had no contact with his appointed appellate attorney and has spent more than $125,000 of his own money on legal fees paid to civilian counsel.

It’s doubtful that Michael Turpiano is perfect, or that he has led a mistake-free life. The same could be said for all of the main participants in his trial. The transcript paints a picture of a convivial training environment occasionally spilling over into
drunken revelry. And where revelry obtains, chicanery and even debauchery are certain to follow.

But none of this is the point. Whether Turpiano was, as implied by some of his adversaries, a “womanizer” ... or a “playboy” ... or a “party animal” ... whether he liked to “work hard and play hard” or “push it up” ... has no bearing on his entitlement to fairness when accused of criminal misconduct. The law isn’t about moral judgments, but the legal conclusions and consequences attending to specific facts established in properly developed evidence. Legal conclusions can only arise from legitimate legal processes. When the systems and structures governing legal processes become too riddled with unwarranted and improper influence, legitimacy is jeopardized. *U.S. v. Turpiano* is case in point.

In current form, the Air Force disciplinary process is not about finding the truth or determining the right balance between punishment and rehabilitation. It’s not about incapacitating offenders or affirming the dignity of victims. It’s not even about discipline. It’s about what most things in the Air Force are about: empowering a tiny number of senior bureaucrat-commanders as maximally as possible so they can reinforce institutional interests. Of late, those interests have to do with protecting the service’s public image against an onslaught of criticism from a growing coalition of legislators, advocates, lawyers, airmen, and ordinary citizens who claim — credibly — that it doesn’t know what the hell it is doing with its justice system. A few years ago, the complaint was about sexual assault specifically. The response to that criticism has now called the fundamental health of the entire system into question.

There are different perspectives from which to consider institutional interest, and arguably there is a larger and broader interest at stake here for airmen and the citizens they protect. While the brass sees it as important that unlimited commander discretion, even in matters of law and order, be maintained so as to continue advancing the twin illusions of infallibility and perfection among its command class — not an irrelevant or invalid goal given the power generals hold in time of war — it’s much more important for the future of the service that airmen have trust and confidence that they will be treated fairly when accused of misconduct. If that trust erodes beyond a certain point, the legitimacy of the entire system will unravel and discipline will break down catastrophically.

The sheer number of cases of manifest Air Force injustice appearing in the media is perhaps an early signal of that unraveling.

There’s a great irony at work here. Generals insist they must maintain unfettered authority over justice processes because it’s necessary for “good order and discipline.” This is, in my opinion as a former commander, total garbage. Commanders need total authority in the context of combat, when the inability to control distraction, incapacitate a troublemaker, or exact swift justice can create adverse consequences measured in blood and harmful to the nation’s defense.

But outside of that context, commanders have no need of total authority. By allowing them to hold on to it, Congress is allowing them to undermine good order and discipline by continually injuring their own credibility as they degrade the trust bond between themselves and those they are charged to lead. This will lead inescapably to a morally hollow fighting force ... and moral hollowness is just as dangerous as its
physical counterpart, only more insidious. It’s more insidious because commanders can hide it using the tools of propaganda, which further erodes trust while swerving important truths.

Air Force commanders crave control and stability. They are risk minimizers. They are tactical avoiders. Political disapproval is their gravest risk, and they will tactically avoid it by exercising their power to control processes and maintain stability. A justice system in their hands will be governed accordingly, and will not remain a justice system for long.

For evidence, look no further than the severity of the punishment imposed on Maj. Michael Turpiano … wholly disconnected from his actual conduct but instead designed to signal various parties about the Air Force’s supposed seriousness in dealing with sexual assault. Maj. Turpiano is paying the price for Lt. Gen. Craig Franklin’s mistakes and Lt. Col. James Wilkerson’s misconduct. His trial is a show of force designed to spare the service Congressional scrutiny that might threaten its broader interests.

The Air Force has decided that destroying anyone tainted with an accusation of any misconduct – no matter how minor – carrying a vague sexual component … is the way to send the signals it must send. Even the judge in Turpiano’s trial explicitly alluded to this, and the panel sitting in judgment at that trial seemed to have received the signal already.

Notice how a system operating in this way sets aside the right of the accused to a fair process. Instead it makes him a pawn in a grand scheme to protect the institution. When the law eschews individual justice for utilitarian aims in this way, individuals no longer enjoy liberty because they are entitled to it … but by the grace of those wielding legal power. Such arbitrariness is the mark of fascism.

Without a political deflector shield, the Air Force is going to burn up. Many casualties will be created in the process. Some of those casualties will be traditional – the same disempowered and wretched individuals that populate any justice system gone wrong. But given the role of the Air Force, our national defense will also be a casualty when good people finally refuse to be part of something manifestly unfair and morally wrong.

You can build all the F-35s Lockheed can produce, but without airmen who have trust and confidence in their leaders, all that technology will be irrelevant. Of the many ways to destroy trust and confidence, abuse of power is the quickest and most certain.

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