CATEGORY Military Justice and Discipline

Text Excerpt from JAG Reporter Post: 19 January 2023 https://www.jagreporter.af.mil

The Importance of Building Rapport with Crime Victims

By Major Melissa L. Ken and Major Joseph A. Lingenfelter

This article will discuss rapport building between the trial counsel and a victim—it will show how a strong relationship can positively affect a case as well as a victim's experience in the military justice system.

Building Rapport

A seven-year-old girl was raped multiple times by her brother—her brother who was in the United States Air Force. These horrible events came to light because this seven-year-old girl made statements in school indicating that she might harm herself. When her brother was confronted by the Office of Special Investigations, he confessed to the crime. However, the victim's parents were unsure whether they should allow their young daughter to testify at a court-martial. Testifying meant their seven-year-old would have to talk about her abuse in front of the perpetrator and complete strangers. After several conversations on the phone with trial counsel and circuit trial counsel of the importance of holding their son accountable in court, the parents remained unconvinced. The case looked like it was going nowhere.

Instead of giving up, the circuit trial counsel flew halfway across the world to Germany, where the victim and her parents lived. It was evident that the parents were touched by the mere fact that the circuit trial counsel was there in person. He proposed meeting in the Victim Counsel's (VC) office, a place that the victim and parents were familiar with, and he did not wear his uniform to make him more approachable to both the victim and her parents. The family met with him and spent a couple hours just talking, learning about him and his family and getting to know him as a father, not just a prosecutor. The circuit trial counsel finally explained that his purpose was not to blindly punish their son or further traumatize their daughter, rather his goal was to seek justice for both their children. After listening and learning, the parents agreed to allow their daughter to participate.

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Once the victim's participation was guaranteed, plea negotiations started and the case ended in a guilty plea. This real-life example is typical of many sexual assault cases in that the victim's decision to participate can make or break a case. As demonstrated by above, when attorneys take the time to build rapport with victims, it can have a positive influence on the case as well as the opinion the victim and their family have toward the military justice process.

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This article will discuss rapport building between the trial counsel and a victim—it will show how a strong relationship can positively affect a case as well as a victim's experience in the military justice system. This article focuses on victims of sexual assault, but it applies to all crime victims and witnesses. Noting that each investigative step and action taken during a case must be tailored to the facts, the following provides a framework for working with victims of crime. Not all suggestions or best practices may apply in a given case.

The Science Behind Rapport Building

The science behind rapport building provides a good starting point for working with crime victims as witnesses. For decades "a key assumption for interviews is that a relaxed and comfortable witness will be more compliant and cooperative."[1] In the last twenty years, psychologists have made more of an effort to study the empirical impact of building rapport with witnesses of crime. Two recent studies involved polling relatively small numbers of university students to examine the impact of rapport building with crime witnesses. Since these studies involve small numbers of participants, the result should, admittedly, be taken with a grain of salt.[2] However, the Collins study[3] and the Vallano study[4] still provide useful information and are helpful in examining positive impacts of rapport building during an interview. The two impacts of rapport building highlighted by this article are the amount of information gathered[5] and the accuracy of that information.[6]

The Collins study conclusion that rapport building leads to witnesses providing more information intuitively makes sense—people want to help people who are nice to them. Building rapport with witnesses makes participants more likely to "'try harder' in the interview and recall additional detail and provide a greater amount of helpful information."[7] The Collins study findings provide a valuable lesson, not just for law enforcement, but also for legal counsel. Interview technique and mode of conduct can turn a cooperative witness into an uncooperative one. This concept is especially important in sexual assault cases, where the outcome of the case often hinges on the cooperation and testimony of the victim.

The Vallano study indicated that rapport building does not only have the possibility of securing the cooperation of a witness and a greater amount of information, it can also improve the accuracy of that information.[8] In the study, facilitators exposed participants to misinformation before their interview to determine what effect, if any, rapport building would have on providing false information.[9] The study examined two types of verbal rapport building: uni-directional and bi-directional.[10] In uni-directional rapport building, the interviewer invited the witness to disclose comfortable, personal information, such as where the witness is from.[11] In bi-directional rapport building, the interviewer invited witness' self-disclosure while also disclosing personal information about him or herself.[12] The study found bi-directional disclosure did not provide greater benefit than uni-directional.[13] The study also found that both types of rapport building "also ha[ve] potential to act as a buffer against falsely reporting prior misinformation if combined with an open-ended questioning style."[14]

Another recent rapport building study, the Kieckhaefer Study, discovered that beneficial effects fade over time. In this study, a week passed between participants observing a mock crime video and being interviewed about the facts.[15] Interviewers conducted rapport building during the initial observation phase, but not during the interview. In this study, there was no appreciable difference between rapport building and non-rapport building techniques in the quality or quantity of information provided by witness.[16] The author attributed this to the week-long delay between building rapport and testing the witness's recall.

> This could imply that for rapport to have a beneficial effect on witness recall it needs to appear in close temporal proximity to recall. The lack of an interaction between same versus different interviewer and rapport building further suggests that even presenting the same rapport interviewer one week later was not enough to reinstate the original rapport context.[17]

While this finding may seem to cut against the effectiveness of rapport building, the critical takeaway from the Collins, Vallano, and Kieckhaefer studies is that trial counsel must conduct *regular* rapport building to reap any positive benefit. As hypothesized by the Kieckhaefer Study, rapport building loses its beneficial effect over time.

Five minutes of dedicated rapport building time before beginning a pre-trial interview can make the difference between a relaxed, confident witness and a nervous one.

Regular rapport building can be very difficult in military justice cases as trial counsel often changes during the process and most cases take more than a year to go to trial from the date of reporting. That timeline, along with delayed reporting, can result in years passing between the assault and when the victim testifies at trial. Additionally, it is indisputable that memory fades with time.[18] During these lengthy periods between the crime and trial, victims might be exposed to other narratives about the crime which can further degrade their memory of the event.[19] In the face of these impediments to witness recall, law enforcement and attorneys should use whatever means possible to facilitate accurate memory retrieval, including rapport building. While the studies surrounding the efficacy of rapport building are still nascent, they demonstrate that witnesses feel more relaxed which results in an accurate recall of more information.[20]

Another powerful takeaway from the Collins study is that "only five minutes were allocated for rapport building, and yet it had a very powerful effect on the accuracy of recall."[21] Five minutes of periodically checking in with a victim and giving them a status update in person instead of relaying everything through the VC can make a huge difference. Five minutes of dedicated rapport building time before beginning a pre-trial interview can make the difference between a relaxed, confident witness and a nervous one.

Rapport Building and Discovery Obligations

This section focuses on how trial counsel can conduct rapport building meetings with victims while complying with potential discovery obligations. First, however, it is important to understand the rules that govern discovery obligations.

Brady v. Maryland[22] changed the battlefield of trial; it allowed defense counsel the ability to review evidence in advance and required that prosecutors reveal exculpatory information. Prior to *Brady*, defense was often surprised by evidence that prosecutors presented at trial (as seen in TV shows and movies). This case was followed by *Giglio v. United States*, expanding upon *Brady* and holding that not only are prosecutors required to disclose material, exculpatory evidence, but they are also obligated to disclose impeachment evidence, namely that a witness was testifying under a grant of immunity or promise of leniency.[23]

United States v. Santos held that discovery obligations are even broader in military practice than in civilian criminal courts. [24] This is reflected in the Rules for Courts-Martial (R.C.M.), specifically R.C.M. 701 et sequitur,[25] as well as Article 46, Uniform Code of Military Justice (UCMJ).[26] These rules provide for broad discovery of information as well as equal opportunity amongst parties to access evidence and witnesses. Additionally, "[d]iscovery in the military justice system is intended to eliminate pretrial gamesmanship, minimize pretrial litigation, and reduce the potential for surprise and delay at trial."[27] Thus discovery in the military justice system goes beyond the *Brady/Giglio* requirements to provide material, exculpatory information and impeachment evidence that is favorable to defense. Instead, the military justice system requires that prosecutors provide evidence that is "relevant to defense preparation" as well as "relevant and necessary" evidence.[28] As such, if evidence is relevant and within the control of the Government, trial counsel has an obligation to disclose this information unless production is limited by another rule, such as an applicable privilege.[29]

Even if this evidence is limited by another rule, the Government is still obligated to inform defense that there is privileged information which the Government is refusing to disclose.[30] In *United States v. Figueroa*, the Air Force Court of Criminal Appeals opined that an incomplete discovery response could be more damaging to defense than a lack of response.[31] "An incomplete response not only deprives the accused of certain information but may also have the effect of representing to the defense that the evidence does not exist, perhaps causing the defense to abandon lines of investigation or trial strategies it might otherwise have pursued."[32]

Finally, R.C.M. 701(d) requires that both trial counsel and defense have a continuing obligation to disclose discoverable material.[33] This continuing duty is examined in *United States v. Eshalomi*, where the court determined that if new evidence is found, before or during the court-martial, which is subject to discovery or inspection that the party must promptly notify the other party of the evidence.[34] This means that the obligations of discovery persist throughout trial preparation and even during the court-martial itself, for both trial counsel and defense counsel.

Not only must prosecutors reveal exculpatory evidence, but they are also obligated to be thorough in their investigation and conduct inquiry beyond its own files.[35] In other words, the Government cannot turn a blind eye to potentially harmful evidence to avoid it coming into the possession of the Government and thus being subject to discovery requirements.[36] At the heart of *Brady/Gilgio* and case law regarding discovery obligations lies the concern that a defendant receive appropriate due process and a fair trial—a concern that belongs to the trial counsel as well as defense counsel.[37]

For rapport building meetings with crime victims … the primary purpose of the meeting is for the victim and the entire trial team to get to know one another as people, not just their role in the case.

For rapport building meetings with crime victims, it is most effective to ensure the victim understands that there will be no discussions regarding the facts of the case. During these meetings, trial counsel should have a paralegal present and taking notes in case there is a need to provide testimony regarding the contents of the meeting at court. The primary purpose of the meeting is for the victim and the entire trial team to get to know one another as people, not just their role in the case. The VC should participate as much as necessary to help the victim and trial counsel feel more comfortable and facilitate conversation. It helps if the VC is also familiar with trial counsel so they can point out common threads, if any, between victim and trial counsel. Occasionally, a victim may ask a question or raise a concern about the case during the meeting with trial counsel. Usually these questions are procedural (e.g. "how long will it take for this case to go to trial?") and trial counsel should answer them to begin building trust and credibility with the victim. If a victim attempts to raise a substantive question, typically the VC should step in and let their client know that they can talk

about that offline. Of course, trial counsel must appropriately notice defense counsel of the meeting and inform defense of any discoverable disclosures made during the meeting. The most common discoverable material resulting from victim interviews includes prior inconsistent statements[38] and evidence of a motive to fabricate.[39]

As with any meeting, proper preparation prevents poor performance. Setting expectations and guidelines for the meeting is an essential VC function and ensures the client understands the purpose and limits of the meeting. If there is no VC assigned to the case, trial counsel can still build rapport with the victim, they simply need to be diligent about laying ground rules regarding the purpose of the meeting. Trial counsel or defense counsel can always reach out to their local VC for general tips on how to work with non-represented victims and prepare for a rapport building meeting.

> People appreciate authenticity and are more willing to reciprocate that genuine behavior when they see it displayed. Essentially, when counsel tells their story, it makes victims feel more comfortable telling their own.

From the very beginning of the investigation, trial counsel should be working closely with the assigned VC regarding opportunities for early rapport building. When reviewing a report of investigation, trial counsel will sometimes have questions on matters that were not explored by the initial investigation. The ability to explain those deficiencies to a VC can make a difference in whether a victim will consent to a substantive pre-preferral interview. Early rapport building allows for effective pre-preferral and early pre-trial interviews which can lead to a more informed prosecution of the case. Early discovery allows for timely evidentiary notices, gives trial counsel the opportunity to incorporate this information in their theme and theory, and also avoids impeachment consequences of a victim disclosing information at the eleventh hour. This early discovery can even lead to better informed pretrial agreement negotiations in certain cases.

Further, the expedited transfer (ET) program can create additional barriers to trial counsel's rapport building efforts. The ET program supports victim healing and recovery by giving them a fresh start closer to their support system.[40] However, the ET program also typically geographically separates the victim from the prosecuting legal office which makes in-person rapport building extremely difficult. In order to combat these difficulties, trial counsel should be assigned very early in the process and engage in rapport building before a victim moves to their new base if they choose to request an ET. This will allow the trial counsel to establish a foundation with the victim to build on throughout the process and help them introduce the victim to a new trial counsel if they are taken off the case.

Another place to build rapport is the Article 32 preliminary hearing.[41] Sometimes these hearings take place over video conferencing platforms. However, that does not mean that counsel cannot take advantage of this time to check in with both the VC and victim in the case. Further, trial counsel should take advantage of video conferencing resources or even video-calling applications available on cell phones to give more in-depth case updates to both the VC and victim on a regular basis, not just if the Article 32 happens to be a video conference. Trial counsel can use these platforms as an opportunity to check in with and actually see the victim even if they are geographically separated.

It is essential that all counsel understand the rules of discovery according to case law and the Military Rules of Evidence. Failure to comply with discovery obligations can result in a continuance of the case or even an order prohibiting the use of the undisclosed evidence or witness.[42] Thus it is essential for all counsel to continue adhering to the ongoing discovery requirements while building valuable rapport with the victim to ensure that evidence and testimony is admissible.

Rapport Building Techniques

We have discussed the studies and legal obligations that arise from rapport building, but counsel likely want to know how this works in practicality. Whether trial counsel has stuck with the case throughout the entire process or is a new addition to the team just weeks before trial—talking to a crime victim can be intimidating and sometimes feels awkward. However, it is exactly this awkwardness and vulnerability that help build rapport with victims. Victims are often in a new and uncomfortable situation, in other words, they themselves are forced to be vulnerable. People appreciate authenticity and are more willing to reciprocate that genuine behavior when they see it displayed. Essentially, when counsel tells their story, it makes victims feel more comfortable telling their own. Below are some practical rapport building techniques and examples.

During counsel's first interaction with the victim, begin by telling the victim about yourself. Talk about family, children, pets, job, and personal endeavors to provide the victim with a sense of who you are—a sense of why the victim should trust you with one of their worst experiences. Then, ask the victim if they have any questions about you or your background. Wait to do the substantive interview until after answering all the victim's questions about you.[43]

Shortly before trial, another technique is to provide an example of what testimony will look like. This is not coaching, but merely getting the victim-witness comfortable with testifying.[44] Assemble the whole trial team, including the victim and the VC. The team circles up and shares a story about their favorite childhood field trip or other happy memory. It is a best practice to have the circuit trial counsel start, followed by the trial counsel or VC. The victim should always go last. It is important that everyone in the room shares a story. Go into as much detail as possible when telling the story, thus setting the example for what counsel expects of the victim on the witness stand. This exercise allows the victim to feel more comfortable with the trial team and gives them confidence that they can accurately convey their testimony.

Further, displaying empathy is key to building rapport, trust and confidence. Empathy requires active listening and explaining the trial team's role with compassion and dignity. By listening first, trial counsel can make victims feel they are in control, something they often need. Trial counsel should consider the victim's wishes regarding their preferred way of communicating and its frequency. Setting the tone of the engagement from the beginning, and maintaining it throughout the process is crucial. Keeping consistent contact and providing updates to the victim can help to eliminate any distrust and strengthen the rapport. Trial counsel cannot expect to gain a victim's trust and have good rapport if they only talk to the victim during an initial interview or when reviewing testimony. If trial counsel is new to a case in the later stages of the process, these rapport building techniques become even more important to help the victim feel more comfortable and alleviate their concerns about having a new prosecutor on the case before trial starts.

> Sexual assault trial teams should make rapport building with victims a top priority.

Conclusion: Go Forth and Build Rapport

When trial teams invest time in victims, they make an investment in the case and its outcome. Investments earn a return. The investment of rapport building gives victims power and a certain sense of control over their new situation which in turn helps them to feel more comfortable and confident on the stand. Even if a victim ends up not participating in trial or whether the trial ends in a conviction or acquittal, counsel should remember that their efforts to build rapport and invest in the victim can have a hugely positive impact. Regardless of the outcome of the case, there is always a person who went through the system and formed an impression of the military justice process. That impression truly matters and can change our Air Force for the better.[45]

Sexual assault trial teams should make rapport building with victims a top priority. Every encounter does not need to be case related, in fact some of the most important encounters do not relate to the case at all. Personal introductions, learning each other's stories, and helping the victim to understand that the trial counsel is a real person and not a faceless prosecutor provides a crucial foundation for the success of the case and the military justice process. The most important thing to a trial counsel's ability to successfully work with a victim is trust. By counsel telling a victim their own story, the trial counsel enables the victim to more effectively tell their own.

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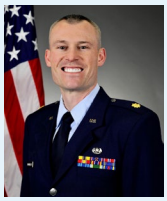

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Edited by: Major Brittany Byrd and Major Allison Johnson

Layout by: Thomasa Huffstutler

Endnotes

[1] Roger Collins et al., *The Effect of Rapport in Forensic Interviewing*, 9 Psychiatry, Psychol. & L. 69, *5 (2002), https://pure.bond.edu.au/ws/portalfiles/portal/27325535/2002_The_effect_of_rapport_in_forensic_interviewing.pdf (citation omitted) (pagination from download).

[2] "Although one lab experiment can produce intriguing results, its data set may be small. For example, if only two people participated in an experiment, it may be difficult to generalize the results beyond the individual study." State v. Henderson, 208 N.J. 208, 243 (2011), *overruled in part by* State v. Anthony, 237 N.J. 213 (2019).

[3] The Collins study was comprised of 42 university students ranging from freshmen to postgraduate level students taking classes in communication skills, psychology, and law at Bond University, Australia. The participants were randomly assigned to three groups (rapport, neutral and abrupt). There was an average of five males and nine females per group and the average age was about 26 years old. The senior author interviewed all participants individually. The interviewing mode (rapport, neutral, abrupt) commenced upon arrival. Participants viewed a 66-second video of a crime and then wrote a narrative of what they saw. After the narrative writing, the participants engaged in a period of cued recall via a verbal interview. Each interview followed the same script, and the interviewer only altered voice modulation, body language, and placement of props (such as throwing a hardcover book on a desk or discretely placing it on the floor). After the interview, participants commented on the interviewer. There were five measures used to score each participant: correct and incorrect responses from the written account; additional correct and incorrect responses from the verbal interview; total of correct responses; interview duration in minutes; and total word count for the narrative. The outcome demonstrated that rapport building conditions resulted in a longer verbal interview (rapport=28.36 minutes, neutral=16.36 minutes, abrupt=15.21 minutes) as well as more detailed written statements (rapport=224.6 words, neutral 112.4 words, abrupt=81.8 words). Additionally, rapport building resulted in an increased production of correct information with no corresponding increase of incorrect information thus resulting in higher overall rates of accuracy of information (rapport=91%, neutral=86%, abrupt=84%). The abrupt mode did result in an increase of accurate information provided during the verbal interview, but there was a corresponding increase of inaccurate information. Participants subjected to the abrupt and even neutral interview styles felt reluctant to assist because of the interviewer's style. Collins et al., *supra* note 1, at *7-*12.

[4] The Vallano study was comprised of 111 participants from a southeastern university. Participants were randomly assigned to six groups in the following design: two (misinformation: present vs. absent) by three (rapport: no-rapport vs. uni-directional rapport vs. bi-directional rapport). The participants watched a one-minute video of a crime and then read a written summary of the mock-crime which was labeled, "Police Report." In accordance with the participants' group assignments, half of the participants read a correct police report while the other half read a police report containing a total of ten incorrect details. A new individual (the interviewer) was then introduced to the participants and began the rapport manipulation portion of the study (no-rapport, uni-directional or bi-directional). After the verbal interview, participants answered a series of written questions (four open-ended, followed by eleven cued questions). Each cued question (e.g., "how many chairs were there?") incorporated a detail included in the provided misinformation. After the written questions, participants completed an interaction questionnaire which measured the participants' perception of rapport. The study found that rapport building had no discernible impact on the amount of information in the written reports, but did increase the length of time of the interview and increased the quality of witness recall. Specifically, rapport-building decreased the percentage of inaccurate and misinformation reported but this benefit was primarily in response to the open-ended questions, not the cued questions. *See* Jonathan P. Vallano & Nadja S. Compo, *A Comfortable Witness is a Good Witness: Rapport Building and Susceptibility to Misinformation in an Investigative Mock Crime Interview*, 25 Appl. Cognit. Psychol. 960, 963-66 (2011).

[5] Collins et al., *supra* note 1, at *10.

[6] Vallano & Compo, *supra* note 4, at 963.

[7] Collins et al., *supra* note 1, at *11-*12.

[8] Vallano & Compo, *supra* note 4, at 963; *see also* Collins, *supra* note 1, at *11-*12.

[9] Vallano & Compo, *supra* note 4, at 963.

[10] *Id.*

[11] *Id*. at 964.

[12] *Id*.

[13] *Id*. at 965

[14] *Id*. at 968.

[15] The Kieckhaefer Study was broken down into two separate studies. The first study did not involve rapport and simply tested the impact of time delay on an individual's memory. Not surprisingly, the study found that time has a negative impact on recall. Some of the questions used in the first study were also utilized in the second study as suggestive questions. The second study, which is the main focus of this article, analyzed the effect of rapport building on witness memory and whether suggestibility depends on the interviewer. There were 198 participants in the second study which were mostly female (76%) and Hispanic (68%). Participants were all selected from the psychology participant pool at a large southeastern university and received course credit in exchange for their participation. The participants were randomly assigned to four groups in the following design: two (rapport: rapport vs. non-rapport) by 2 (interviewer: same vs. different). The participants watched a two-and-a-half-minute video of a simulated crime and, after the video, the interviewer elicited personal information from the participants. The interviewer engaged in rapport building depending on the participant's group. A week later, the interviewer (either the same or a different person depending on the participant's group) spoke with the participant about the details of the mock crime without building rapport. The study found no correlation between rapport building and non-rapport building results; the author's hypothesis was that the positive effects of rapport building dissipate over time. *See* Jenna M. Kieckhaefer, Understanding Rapport Building in Investigative Interviews: Does Rapport's Effect on Witness Memory and Suggestibility Depend on the Interview? (2014) (Ph.D. dissertation, Florida International University) (on file with Florida International University Digital Commons) at 23-24, 31-46.

[16] *Id*. at 23-24.

[17] *Id*. at 77.

[18] *Henderson*, 208 N.J. at 267.

[19] "Studies show that witness memories can be altered when co-eyewitnesses share information about what they observed …. Co-witness feedback may cause a person to form a false memory of details that he or she never actually observed." *Id.* at 268.

[20] *See generally* Collins et al., *supra* note 1.

[21] Collins et al., *supra* note 1, at 13.

[22] Brady v. Maryland, 373 U.S. 83 (1963).

[23] In *Giglio*, the prosecutor failed to disclose that an essential witness was testifying under a grant of immunity which precluded the witness from being prosecuted. In fact, the witness took the stand and indicated that he believed he could still be prosecuted. The Supreme Court held that this witness's testimony constituted the majority of the Government's case and that, as such, his credibility was of utmost importance. The Supreme Court concluded that this error constituted a due process error which merited a new trial. Giglio v. United States, 405 U.S. 150 (1972).

[24] United States v. Santos, 59 M.J. 317 (C.A.A.F. 2004).

[25] Rule for Courts-Martial 701 et sequitur [hereinafter R.C.M.].

[26] Art. 46, Uniform Code of Military Justice, 10 U.S.C. § 846, [hereinafter UCMJ].

[27] *See* R.C.M. 701(a)(1), Discussion (2019).

[28] *See* R.C.M. 701(a)(2)(A), *see also* R.C.M. 703(f).

[29] R.C.M. 701(f).

[30] United States v. Figueroa, 55 M.J. 525 (A.F. Ct. Crim. App. 2001).

[31] *Id.* at 528.

[32] *Id.*

[33] *See* R.C.M. 701(d).

[34] United States v. Eshalomi, 23 M.J. 12 (C.M.A. 1986).

[35] United States v. Williams, 50 M.J. 436 (C.A.A.F. 1999).

[36] United States v. Mahoney, 58 M.J. 346 (C.A.A.F. 2003) (citing Strickler v. Greene, 527 U.S. 263 (1999)).

[37] "Society wins not only when the guilty are convicted but when criminal trial are fair." A prosecutor should not be the "architect of a proceeding that does not comport with standards of justice." *Brady*, *supra* note 22, at 87-88.

[38] *See generally Giglio*, 405 U.S. 105.

[39] Banks v. Dretke, 540 U.S. 668 (2004).

[40] In the Air Force, the Expedited Transfer (ET) Program is managed by the Sexual Assault Prevention and Response (SAPR) Program. The ET program is governed by Department of the Air Force Instruction 90-6001, Chapter 11. The ET program "provides victims who file an Unrestricted Report of sexual assault an option of a permanent change of station (PCS) or a temporary or permanent change of assignment (PCA) to a location that will support healing and recovery." Dep't of the Air Force Instr. 90-6001, *Sexual Assault Prevention & Response (SAPR) Program* (Sept. 30, 2022), ch. 11, para. 11.1.

[41] An Article 32 preliminary hearing is governed by Article 32, UCMJ. This hearing must be held before the referral of charges for trial by a general court-martial. The purpose of the hearing is to determine whether the alleged charges and specifications allege an offense; whether there is probable cause to believe that the accused committed the offense charged; whether the convening authority has jurisdiction over the offense; and to give a recommendation as to the disposition of the case. This hearing is conducted by an impartial hearing officer who produces a written report for the convening authority. A crime victim has the right to be present at the hearing and can decline to testify, if requested. Art. 32, UCMJ.

[42] R.C.M. 701(g)(3).

[43] While junior trial counsel should engage in rapport building meetings, it is often required by VCs that a circuit trial counsel be present for any substantive interviews with the victim. If there is no VC on the case, circuit trial counsel will often impose this requirement on junior trial counsel. Always consult with the VC and circuit trial counsel regarding preferences for substantive interview processes.

[44] "A lawyer shall not … falsify evidence, counsel or assist a witness to testify falsely …." Model Rules of Pro. Conduct r. 3.4(b) (Am. Bar Ass'n 2020). The Supreme Court of the United States has overturned criminal convictions due to the prosecution's failure to disclosure prior inconsistent statements when the inconsistency, the Court opined, was likely created by the prosecution. S*ee, e.g.*, Kyles v. Whitley, 514 U.S. 419, 443 (1995).

[45] "A system that is perceived as fair and treats victims with dignity and respect, and promotes privacy and confidentiality may have a positive impact in bringing victims forward to provide information about being assaulted." Dep't of Defense Instr. 6495.02, *Sexual Assault Prevention & Response (SAPR) Program Procedures* (Sept. 6, 2022), vol. 1, encl. 4, para. 3, sec. b.