

Ms. R. J. Abdullah, a civilian, was called as a witness by the government, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the government:

Q. Please state your full name and spell your last name for the court reporter?

A. Rebecca Jane Abdullah; last name is A-B-D-U-L-L-A-H.

Q. And where do you currently reside?

A. In San Diego.

Q. Now, I've asked you earlier how would you like me to refer to you in my questions. You said, "Becky is fine." So, with the court's permission, I'll just refer to you in that manner.

I want to take you to August of 2006. Is that when you started your first year of law school at the University of San Diego?

A. Yes.

Q. Were you in the same section that included Jessica Brooder, Elizabeth Easley Cook, and Captain Wacker?

A. Yes.

Q. Participated as a student with them for the first semester, go into the second semester, and I'm going to try and shorten my examination by directing your attention now to April of 2007. During the first -- your spring break, first week of April 2007, did you have the opportunity to participate in a program to go from San Diego down to New Orleans to provide legal aid to some of the victims of Hurricane Katrina in New Orleans?

A. Yes.

Q. All right. When you -- I think you arrived on Sunday, the 1st of April; is that correct?

A. Yes.

Q. And stayed at the hotel at St. Charles? Do you know the name of the hotel?

A. It was named after a street, but I can't remember.

Q. You stay in a hotel and you have a room and you have roommates. Who are the roommates?
A. Jessica Brooder and Liz Cook.

Q. Okay. Monday is the first day you're there. Did you actually go to work and provide, you know, legal aid services?
A. Yes.

Q. All day? I mean, can you -- if you could just give us the thumbnail sketch of what you're doing, the services you provide?
A. We started that day in the morning I believe around nine and we started with -- we researched case law about whether the federal government could remove -- or whether the parish could remove FEMA trailers when the federal government (inaudible) and we stayed there, I think, until I believe around four, and we drove back to the hotel.

Q. The next day similar, did you have a work day?
A. We did, but I didn't go.

Q. All right. Did you go to work on the next -- I guess the Tuesday would be the 3rd of April, I believe was a Tuesday. You do not go to work that day?
A. Right.

Q. All right. Why?
A. Because I had gotten sick the night before.

Q. Do you know what caused your sickness or illness?
A. No.

Q. All right. Did you do any heavy drinking the night before, anything like that?
A. No. I had one beer.

Q. How about seafood? You know, what do you think? Do you think it was food poisoning? I mean --
A. I don't know. I had a shrimp fillboy that tasted kind of funny. I don't know, maybe.

Q. And so, what -- you know, so on Tuesday that day, the 3rd of April, did you actually just kind of hang out in the hotel room?
A. Yeah, I stayed in the hotel.

Q. Trying to get better during the day, get some sleep?
A. (No verbal response.)

Q. All right. We've had some testimony that after the work day on the 3rd of April, some of your fellow classmates went to Audubon Park in New Orleans and went for a run, to work out, that type of thing. Did you go there?

A. No.

Q. Okay. Your roommates, Jessica Brooder and Elizabeth Easley -- I think was Elizabeth Easley at this time. She had not been married yet. Did they go and participate in the workout?

A. Yes.

Q. Do you recall when they got back to the hotel room?

A. Yes.

Q. All right. What time did they get back?

A. I think it was -- it was in the evening, maybe late six or after seven p.m.

Q. When they get back, was there any conversations with regard to whether either one of them had experienced any physical pain or sickness or illness at the park?

A. Yeah, Jessica said she had gotten cramps and so -- she started her period, so she came back to get a tampon.

Q. And do you know if she actually got a tampon? Did she have some with her? Did she ask -- I mean --

A. I don't remember.

Q. You don't recall. All right.

That evening after they get back from the park, the people get dressed to go out and -- that evening to the restaurant?

A. Yes.

Q. Let's walk us through the evening. That's, you know -- we've talked about the fact that you're there now. You weren't feeling very well earlier in the day. You're starting to feel better; is that fair to say?

A. Yes.

- Q. All right. Who goes out on Tuesday, the 3rd of April?
- A. There were a lot of us. I don't know if everybody in the whole USD group went, but I think we, as a group, went, so specifically I remember we -- Liz Easley, Jessica Brooder, Forest Merithew, Bobby O'Brien, Susan Minamizono, and Doug Wacker, and there were others in the group.
- Q. Where do you go -- how do you all meet up? Do you meet up at the hotel lobby? Do you see each other on the street? I mean, physically where does the group get together before you start to move out to find a restaurant?
- A. Jessica and Liz came to the room. They got me. There were some others on the room. I believe we met in the lobby because we all walked over there.
- Q. Do you recall which floor your room was on?
- A. I could guess, but I don't know for sure.
- Q. All right. What's your --
- A. I think it's 10 --
- Q. Okay. You don't know for sure?
- A. -- but I can't remember.
- Q. Were there other USD classmates on that floor?
- A. Yes.
- Q. All right. Were there women and men? Was it mixed or --
- A. Yes.
- Q. Well --
- A. Well, the rooms weren't, but the floor was.
- Q. That's what -- yeah. I don't mean men and women in the same room together. But, I mean, the men weren't all on one floor, women on a separate floor; they were just -- rooms were assigned and you had men roomed with men, but on that floor, there could have been a couple guys sharing a room?
- A. Yes.
- Q. A couple other women -- okay. And you didn't happen to know where everybody was staying? You didn't happen to know where all the USD students were

staying?
A. Not all.

Q. And do you know, are you aware of how many actually came from San Diego to New Orleans during the week; what the total number of student (inaudible)?
A. Approximately?

Q. Yeah.
A. Probably around 20 or so.

Q. All right. So, out of the 20 or so, the evening of the 3rd of April when you make the decision to go out, how many are in your group that you actually physically meet in the lobby and start walking into the -- I guess was the Quarter area?
A. Most of that, if not all.

Q. Okay. How do you find a restaurant?
A. We just followed whoever. There was, like, a leader, this girl, a couple guys were kind of in charge. There were entire levels of law school and so we followed them.

Q. Okay. And do you recall which restaurant the group --
A. No.

Q. You don't know the name of the restaurant?
A. Uh-uh.

Q. All right. Did you eat at the restaurant?
A. Yes.

Q. Did you have a meal? I mean, you said -- if you could just explain to us, first of all, your personal consumption? Do you know if you had a full meal; do you recall?
A. I ordered a meal and then I ate some of it. I don't remember how much.

Q. Was it shrimp again or --
A. I don't know.

Q. -- you tried something different? All right.
How about drinking alcohol, your personal intake? Did you --

A. No.

Q. -- did you ingest alcohol in the evening of the 3rd of April?

A. Later that evening we went to the bar where we were dancing --

Q. Yeah, we'll get to that, but I guess -- you're right. That's not a good question.

How about let's -- I'll just take it chronologically. At the restaurant did you have any alcohol with your meal?

A. No.

Q. At the restaurant did you have the opportunity to observe Jessica Brooder and Elizabeth Easley Cook --

A. Yes.

Q. -- or Easley at the time?

A. Yes.

Q. Are they -- where are they sitting in relationship to you?

A. Nearby. The table's long because a lot of people are there and we're kind of on one end together.

Q. Okay. How about their alcohol intake? Do you have any personal recollection of their intake, alcohol intake at the restaurant?

A. I believe they had some wine.

Q. Do you recall how much?

A. No.

Q. How about food? Did they participate in having a meal with the other students?

A. Yeah, they ate.

Q. How about -- I guess a good way to ask it too: Anything unusual -- you know, sounds to me like this is basically fellow students sitting down and having a meal. Some people have alcohol; some people don't. Is there anything unusual about this evening meal that you note from anybody's behavior?

A. No.

Q. How about Captain Wacker? Do you notice -- is there

any particular unique interaction that he has with either yourself or Ms. Easley Cook or Ms. Brooder?
A. No.

Q. Prior to this April 2007 trip, did you have any personal knowledge as to whether there was any particularly unique or personal relationship that Captain Wacker had with either Ms. Elizabeth Easley Cook or Ms. Jessica Brooder?

A. No.

Q. Had you ever -- you're a classmate. And if I understand correctly, were you also in the same, if class section is the right way. We've had some testimony that your first year of law school student class was broken down into some sections and then, like, a smaller subsection of approximately 25 to 30 students.

A. Uh-huh.

Q. Were you all in that same subsection, that smaller 25 to 30 person group?

A. No. The smaller subsections were broken out. Tortes class and lawyer skills was different. I believe I had tortes with Liz, but not anybody else that you just mentioned, not Liz or Jessica; and then I had lawyer skills not with any of them.

Q. And I guess I should have asked that. By the time you get to New Orleans in April of 2007, you had approximately eight months of law school, you know, first semester, first year, and then you're kind of in the middle of your second semester. How would you describe the type of personal relationship you had, first of all, with Jessica Brooder? Best friends, particularly close, you know, on a scale, how would you describe that type of friendship?

A. Yeah, we got very close. By the time we went to New Orleans, (inaudible), she was my best friend, her and Liz were both my best friends in law school. And I had just moved from San Diego, so, yeah, we were really close.

Q. You just moved?

A. I just moved to San Diego, so I didn't know anybody else, so, yeah, I would say that they were my best friends.

- Q.** Okay. So, by -- okay. So, in April, we're about eight to nine months into this.
- Based upon your personal conversations with them as classmates, as your friendships develop, any indication that they had ever had any sort of personal romantic relationship with Captain Wacker that the general student body may not know about?
- A.** No.
- Q.** How about your relationship with Captain Wacker? Did you know him personally very well at all by the time you got to New Orleans?
- A.** I mean, I don't know how -- I knew him from school. I was around my classmates a great deal. A lot of those same people, you know, we had been to parties at the same time; so I mean, I felt like I knew him well.
- Q.** At the restaurant in New Orleans, first of all, do you have -- can you tell us what time of the evening that may be?
- A.** I think the restaurant was probably around 8:00, 8:30, late 8:00 p.m.
- Q.** How long did you stay at the restaurant?
- A.** Maybe an hour, a little bit longer.
- Q.** So, that might get us to 9:30, 10:00 p.m.; is that a fair --
- A.** I think so.
- Q.** Anything unusual, any unusual interaction or unique interaction between Captain Wacker and Ms. Brooder or Ms. Easley that you see --
- A.** No.
- Q.** -- at the restaurant?
- A.** No.
- Q.** Nothing stands out. Where do you go after you leave the restaurant?
- A.** We started walking toward Bourbon Street. I believe that the group stops for hurricanes on our way to Bourbon Street.
- Q.** Well, you say "believe." I mean, do you recall stopping for --

- A.** Yeah, we stopped for hurricanes, yes.
- Q.** Hurricanes or hand grenades?
- A.** I thought that -- they're in a long green bottle.
- Q.** Okay. All right. And when you say the group stops for that, who's with your group now?
- A.** Doug Wacker, Forest Merithew, Bobby O'Brien, Liz Easley, Jessica Brooder, me, Susan Minamizono. I think that's everyone.
- Q.** Does everybody get a drink from the stand?
- A.** I didn't and I can't recall if Susan did, and I think everybody else did.
- Q.** Okay. Did you note -- I mean, do you have any knowledge as to whether, you know, Ms. Brooder bought her own drink, whether Ms. Cook bought her own drink, whether anybody bought drinks for them, any particular facts that you recall about the purchase of the Hurricane, you called them the Hurricane, just, you know, the drinks at the drink cart that we're talking about?
- A.** No, I don't know who bought them.
- Q.** Let's talk about after the people have the drinks. It's my understanding you can't take the drinks into the other bars, the other establishments, but you have to drink them on the street; is that correct?
- A.** I don't know.
- Q.** Did anybody bring -- did you -- where did you go -- once you got the drinks, did the people drink them outside on the street area or did they take them with them into another establishment?
- A.** Well, they were drinking them and we walked towards Bourbon Street, up and down Bourbon Street, so.
- Q.** All right. How long do you think you were walking up and down Bourbon Street while people had these drinks in their hands?
- A.** Half an hour, 45 minutes maybe.
- Q.** Okay. How about -- same type of questions. Did you note any unusual conduct or behavior, first of all, by Ms. Brooder during the 30 to 45 minutes that you're walking as you're describing?
- A.** No.

Q. How about Ms. Easley Cook? Anything unusual or particular conduct that you note during this timeframe?

A. No.

Q. How about Captain Wacker?

A. No.

Q. At the end of this 45-minute period of time do you know whether people -- do they finish their drinks; do you have any recollection like what's -- and I'll start with Ms. Brooder. Do you know if Ms. Brooder actually drank her drink?

A. I know she drank it. I don't know how much of it.

Q. Okay. How about Ms. Cook?

A. She also drank it. I don't know if she finished it, but it was -- I remember looking at it and it was almost gone.

Q. How about Captain Wacker?

A. Oh, I don't know.

Q. Anything -- and I haven't mentioned the others in the group, but there's nothing unusual that draws your attention to the behavior of anybody else in the group, is there?

A. No.

Q. What time would you say it was in the evening when people kind of finished drinking these Hurricanes or these drinks out on the street? You know, what time do we get to now?

A. I don't know. My best guess?

Q. Yeah. I mean, I know -- we know you're going to do your best to approximate, so --

A. Maybe 10:30 about.

Q. Okay. After people kind of finished this portion out in the street with the drinks that you described, do you go into another establishment?

A. We went into the Funky Pirate.

Q. And the Funky Pirate, is that a jazz club?

A. There's a bar and there's a band there. I don't remember what type of music.

Q. Okay. All right. Do you remember Big Al?
A. Yes, I do.

Q. He's a little bit bigger than you, right --
A. Uh-huh.

Q. -- if I remember. Describe just the interaction,
the social interaction the people have in the Funky
Pirate. Just walk us through in your own words, you
know, what people do, what you do while you're
there, what -- you know, that type of --
A. Music's loud, people talk. There's shot specials
going on. Big Al's kind of cracking jokes with the
people in between songs and stuff, so a lively
atmosphere.

Q. All right. Do you sit down at a table?
A. Yes.

Q. Who are you sitting with?
A. I think we're all kind of sitting together, you
know, all six or seven of us.

Q. Okay.
A. Just kind of crowded around.

Q. Now, how long are you at the Funky Pirate because we
know eventually you leave and go dancing? So, first
of all, let's set a timeframe. How long do you
think you're at the Funky Pirate?
A. Maybe like half an hour or so.

Q. All right. And I'm going to ask you some now
particular questions about each person, some of the
people in your group. First of all, Ms. Brooder.
Can you walk us through within the half an hour that
you're at the Funky Pirate, what you see her drink
and how she's behaving?
A. She's behaving. She's bubbly. She's outgoing.
She's laughing with me. I don't know how much she
has to drink. I believe there was a shot taken when
there was a shot special flashing by at least her
and Liz. Again, I didn't drink.

Q. Do you know if they had -- and I'm still on Ms.
Brooder. So do you have a memory that she has one
of those shot specials?
A. Yes.

- Q. And is the type of shots they kind of come in like a little test tube?
- A. I don't remember, but I think they came from the bar, so I don't remember. But I don't think the bar passes those out.
- Q. Okay. How about Captain Wacker? Does he participate in the shot special, do you know? Do you have a recollection?
- A. I feel like the whole group did it. I remember it being a group thing, but I don't remember specifically.
- Q. Do you remember -- do you have a memory of Liz Cook, whether she actually had a shot too?
- A. Yes.
- Q. How about regular drinks? You know, besides the shot special, did people also order, like, a regular drink when you got in and sat down at the bar?
- A. Yes.
- Q. Do you have a recollection -- and I'll ask the same questions. First of all, Ms. Brooder, do you have a recollection of her ordering a drink?
- A. I think she got an alcohol and tonic, a gin and tonic or vodka and tonic.
- Q. How about Ms. Cook?
- A. I don't remember.
- Q. How about Captain Wacker?
- A. Also, I don't remember.
- Q. Were you particularly close with Doug Wacker at this time?
- A. You described that Liz and Jessica were -- you were very good friends with.
Yeah.
- Q. Did you have -- were you also good personal friends with Doug Wacker?
- A. Not really.
- Q. Do you know or do you have a recollection as to whether, first of all, Ms. Brooder, did she drink that bar drink? Do you know if she drank the whole

thing?

A. She drank it, yeah.

Q. How about Ms. Cook?

A. I can't remember what she drank.

Q. At some point while you're at the Funky Pirate, you have to kind of leave the table, right, because doesn't Big Al call you up --

A. Yeah.

Q. -- and ask you to pass around the tip jar?

A. Uh-huh.

Q. Okay. And so, I mean, how long does that take?

A. It was kind of a long song actually, and I went around the whole bar. So I don't know, maybe like five minutes.

Q. Okay. You don't happen to remember the song, do you?

A. No.

IO: The longer the song, the more the tip?

GC (LtCol Sullivan): Exactly.

Q. You get done with that and come back and join your friends. Are we now getting to that closer portion of your time at the Funky Pirate where you're getting ready to leave? I mean, after you --

A. Yes.

Q. So, you're not there for another half an hour after you complete the tip jar assistance for Big Al?

A. Right. I think we leave pretty soon after that.

Q. Okay. So, then I'm going to focus some questions now on, you know, that last couple of minutes before the group decides to leave the Funky Pirate and go. I want to ask you about your personal observation of the intoxication levels of some of these people we've been discussing.

First of all, what can you tell us about Jessica Brooder's level of intoxication? How was she acting? Is it her usual demeanor when she's sober? That type of thing. In your -- you know, you know

-- do you understand my question? What we're looking for is if you could describe to the investigating officer in the five minutes before you leave the Funky Pirate -- I know we go to a subsequent -- went to a dance club.

A. Uh-huh.

Q. What is Jessica Brooder like? What are your observations of her state of intoxication?

A. Well, she's very bubbly. She's outgoing. I don't know if at that point it was more than she usually is, so I don't know exactly -- my observations at that moment when we're leaving, I don't know how intoxicated she was at that point. If she was, it may not have been a lot at that.

Q. Had you been out with her socially? Prior to this April 2007 trip to New Orleans, had you been out with her socially on previous occasions during her first year of law school where she had drank and it was a social occasion?

A. Yes.

Q. I guess what I'm trying to get to is whether you -- do you feel comfortable by the time you get to New Orleans in April of '07 that you could have an opinion as to whether, you know, based upon your knowledge and your interaction with Jessica, whether you could actually have an opinion to understand, you know, she's sober now, I think she's getting a buzz on, or is she really drunk? Did you know her well enough? Do you think you can offer those type of opinions for us?

A. Yes.

Q. Okay. And same thing for Captain Wacker; same thing for Easley Cook.

So, prior to leaving the Funky Pirate, where do you think Jessica Brooder is based upon your personal observations with regard to completely sober, starting to get buzzed, drunk, completely drunk? Where do you think she is?

A. Starting to get buzzed.

Q. Okay. Same question for Elizabeth Easley. How is she acting? You know, you've walked us through your observations of her. You know, where do you think

she is on that level?

A. Probably around the same, maybe starting to get buzzed.

Q. And so -- pardon me. Up to this point now, it sounds to me, if I'm correct, you've been out for a few hours. You've had the meal, you're at the restaurant, and then you're out on the street for approximately 45 minutes and now approximately 30 minutes or so at the Funky Pirate.

Have you seen any interaction, first of all, between Ms. Brooder and Captain Wacker intimating a romantic attraction, you know, something out of the just pure friendship type of thing?

A. No.

Q. How about the same question for Ms. Cook.

A. No.

Q. All right. You leave the Funky Pirate --

CC: I don't know if this will be helpful, but we are going to stipulate and I'm just trying to --

GC (LtCol Sullivan): Yeah, no, no.

CC: -- that there was never any intimation of any romantic relationship in any of the bars, except maybe there was some dancing.

GC (LtCol Sullivan): Yeah, we're going to get to that.

CC: There's no conversation about anything intimate in the bars. We agree to that, so.

GC (LtCol Sullivan): Thank you. And do you also stipulate, I guess, does that go for all the way back to ever? I mean, August of '06 through --

CC: Yeah. There was no romantic relationship between --

GC (LtCol Sullivan): Okay. Roger. Thank you, Mr. Faraj.

Questions by the government counsel continued:

Q. Now, I'm going to get to leaving the Funky Pirate. Where do you go?

A. I believe we start walking down Bourbon Street in the direction of Canal Street.

Q. Okay. And the group is still together? I mean, do the people who went to the Funky Pirate, does the group still stay together and go as a group?

A. Yes.

Q. All right. And how do you get to go to the dance club? Is there a particular suggestion by anybody or --

A. Yeah, I think I suggested it because I wanted to go dancing.

Q. Okay. Is that -- you like to dance?

A. Yes.

Q. Okay. R and B or hip hop or, you know --

A. Whatever (inaudible).

Q. Say again?

A. I said any cahoots is fun as well, so --

Q. What is it?

A. That's country music.

Q. Oh, so you --

A. Whatever's playing.

IO: It's USD. Come on.

GC (LtCol Sullivan): I obviously have to get out more often. Well, maybe not.

Questions by the government counsel continued:

Q. You enter the dance club. All right. I know I made a joke right there about getting out more, but I want to be serious about this.

Tell us your observations of what occurs between the individuals we're discussing when you get to the dance club. Walk us through as well as you possibly can chronologically.

A. Everything that I remember?

Q. Yeah. I mean, I think that would be -- I think that might assist us in progressing with the testimony.

- A.** Okay. So, as a group we go in, and I don't know where everyone else goes right away, but Jessica and I go up to the bar area, and at this point she is intoxicated and I know this because from my past experiences with her. When she's intoxicated, she tends to buy me drinks no matter what I say. She buys everybody drinks. And I'm like, no, I don't want to drink, no. I've been drinking, but she insists. She buys me and herself a vodka and tonic --
- Q.** Now, let me --
- A.** -- or a gin and tonic.
- Q.** Okay. Now, let me follow up, just a quick question on that. You kind of described her at the Funky Pirate towards the end.
- A.** Uh-huh.
- Q.** Is her level of intoxication now that you go to the dance club and you're up at the bar area, is it progressing? In other words, does she seem to be getting more intoxicated as time is starting to pass?
- A.** At least that's my observation because that's when she starts buying me drinks, so maybe as before I didn't know. Now I know, like, oh, she's getting drunk because --
- Q.** Okay. Yeah --
- A.** -- that's what she does --
- Q.** All right.
- A.** -- when she gets drunk. And then she keeps being -- really badgering about taking a drink, so the girls are walking around with their little tube shot trays, and in my experience, those haven't been very powerful. So I'm like, okay, Jessica, we can take one of these together because I don't think it will make me sick like I was the night before or affect me. So, we do one of those together.
- And then after that, we walk down to the dance floor area. The bars are on upper areas and the dance floor is down in the middle. So, I think Bobby O'Brien just sits up on the table, but --
- Q.** And let me ask you a little bit. So, there are two

kind of bar areas at the dance club?

A. Yes.

Q. And it's got a sunken dance floor?

A. Yes.

Q. And are there railings where if you're at the bar area, you can, you know, sit at the railing and kind of look down into the dance floor area?

A. Yeah.

Q. Okay. Roger that. All right. So?

A. So, Bobby's up and he's just kind of watching us dance. Me and Jessica and Liz and Susan are dancing together, and then Forrest and Bobby -- I'm sorry -- Forrest and Doug, they're kind of behind us and how I felt with that -- they weren't dancing with us. They were more like, you know, protectors from other guys trying to come in and bother us.

Q. All right. Let me ask you then: If I understand your testimony, when you go up to the bar and have the shot with Ms. Brooder, is Ms. Cook with you?

A. No.

Q. So, that's just you and Ms. Brooder. And from that area, you go -- do you go down into the dance floor area?

A. Yes.

Q. All right. Prior to leaving the bar area, besides the shot that you discussed, did Ms. Brooder buy any regular drinks? Was there, you know, like -- and when I say "regular," I mean like an order of like you said at the Funky Pirate, a vodka tonic or whatever it was?

A. Yes.

Q. Does she also get a regular drink?

A. She gets an alcohol tonic drink. She gets one for her and one for me even though I tell her I don't want one.

Q. That's what I was asking.

A. Right.

Q. Okay. Then you do the shot. What do you do with the two drinks? What does she do with the two

drinks then when you proceeded to go to the dance floor?

A. We bring them down. There's a table by the area where we're dancing and we set them there.

Q. Okay. That's what -- now I got you. So, then you put the drinks down on the tables and then proceed to go into the dance floor area where -- is Ms. Cook dancing?

A. Yes.

Q. Who's she with?

A. She's dancing with me and Jessica and Susan.

Q. Okay. Now, what happens -- how long do you dance together?

A. A while. I mean, at least an hour we were dancing, I think.

Q. Okay. All right. So, these are multiple songs? This isn't one dance to a song? I mean, you're standing on the dance floor, and it's like a typical club. The song track keeps going?

A. Right.

Q. Another song will come on. Another song will come on. Some people enter the dance floor. Others exit. You guys are in your group and you're continuing; correct?

A. Yes.

Q. Let me ask you this: While you're dancing, does -- first of all, does Ms. Brooder ever leave the group of girls that are dancing and go to that table that you described; do you know? Do you see her leave your group and take any drinks from the two drinks that she purchased and then rejoin your group? Do you know?

A. I can assume, but I don't remember.

Q. Well, yeah, that's okay. I'm just asking if you have a personal recollection. If you don't remember something, please just be clear for the record that you don't have a recollection.

A. I don't specifically remember.

Q. How about Ms. Cook? Same thing: Does Ms. Cook, while you're dancing during this hour timeframe,

does she ever leave that group, and do you have any observations of her drinking anything and then returning to your group?

A. Well, as I said, I know she drinks from her drink that's on the table as well, but the table isn't very far, so it's not like she has to leave. Like Jessica -- the way we're positioned is Jessica would have to walk over to the table and then I would probably notice her, but if I turned to look at Liz, then the table's like near her.

Q. Okay. So, it's closer to her, so she could just kind of turn and --

A. Yeah.

Q. All right. Do you know, do you have an observation of Liz Cook actually having a drink --

A. Yes.

Q. -- on that table? Okay. And does she take some sips of that drink while she's dancing with you?

A. Yes.

Q. Okay. What was her -- let's -- I guess I should also ask this question. At any time during the 45 minutes to hour that you're dancing, does Captain Wacker ever come into this group?

A. No.

Q. Okay. How about Forrest or any other of the gentlemen from USD that accompanied you?

A. Yeah. Towards the later end of that time, Forrest and Liz danced together for a little bit.

Q. Okay. How are people dancing? I mean, is it -- first of all, what kind of music is it? Do you remember?

A. It's like pop.

Q. Just pop music?

A. Yes.

Q. Is anybody dancing, at least at this portion in the evening, in that group, in any strange manners or -- you know, is anybody indicating to you that they're -- there's a lack of physical ability to control themselves, that type of thing?

A. In the beginning, no.

Q. Okay. Well, does that change?

GC (Capt Day): Sir, can I just take a moment to -- Lieutenant Colonel Sullivan?

GC (LtCol Sullivan): Sure. No, no, no. One moment.

The question was whether we have the 1200 VTC?

CC: We're not going to call Blosser, so do we need to let him know?

GC (LtCol Sullivan): Yeah, yeah. You know what we can do is if -- can we -- we'll take five minutes. Can we take five minutes, Your Honor? I forgot to call Captain Blosser and wave him off. We'll take five minutes. I'll start right on the dance floor with my questions and we'll continue to move.

IO: We're in recess.

[The Article 32 investigation recessed at 1151, 13 April 2010.]

[The Article 32 investigation was called to order at 1154, 13 April 2010.]

IO: We're back on the record. All parties present when the investigation recessed are again present.

I remind the witness you're still under oath.

Lieutenant Colonel Sullivan?

Questions by the government counsel continued:

Q. Yeah. And, Becky, we were talking about you're now at the dance club and 45 minutes to an hour of dancing, as you described, to pop music.

I wanted to ask you now about at the end of this hour, is this approximately -- by the way, am I right? Is this about an hour from the time that you had this conversation with Ms. Brooder up at the bar where you got the shot and she got those two drinks?

A. Yeah, I would say an hour to an hour and a half, but --

Q. Okay.

A. -- somewhere in there.

Q. All right. Time has now passed. I want to ask, first of all, same questions: Observations of Ms. Brooder. What is her level of intoxication like now? How is she acting physically? What characteristics or what is she doing that cause you now to have an opinion of a level of intoxication and what is that opinion?

A. At the end of the first hour, hour and a half, she appears to me to be very intoxicated. Her -- we had been dancing that whole time together and she had been dancing normally, very lively to the beat of the music. She now is swaying very slowly with her eyes closed not to the beat of the music.

Additionally, she -- we had made a joke earlier in the night. There's a stage. I said, Oh, you're gonna go dance on stage, and she's like, No, I'd never do that, and we laughed about it. I turned around and I'm like, where's Jessica; and she is on the stage, again swaying with her eyes closed. She has a drink in her hand.

And then additionally, before she had said -- you know, it was just us girls dancing and she said, "No boys allowed. We're just dancing, having fun." And now, at the end of this time there is a guy that approaches her and starts talking to her, and usually she would, you know, not even -- she's kind of like looking at him and somebody had to separate them. Obviously we didn't want him talking to her.

And then additionally, at one point I turn around and she's dancing with Doug Wacker, which I also thought was weird, obviously, because before she had said, "No boys allowed," and then now she's dancing with Doug.

Q. All right. Let me ask you -- let's go through this chronologically. You say her eyes -- you know, when you're at the bar and you order the drinks, was she looking at you with her eyes open?

A. Yes.

Q. All right. And you have a discussion with her. I know you've described her level of intoxication, but when you talk to her, she speaks back with a logical

response?

A.

Yes.

Q.

Here we are now an hour later. What is the difference between the position of her eye lids now versus when you first came onto the dance floor?

A.

Her eyes -- after that time, her eye lids are -- I mean, they're closed. They look to me to be closed and she's just kind of swaying her body and her head really slowly from that time I start noticing her until the time that I leave.

Q.

All right. Now, you say she's swaying really slowly. The music, the pop music, I mean, was it slow music they were playing or -- at least in your opinion, was -- had you ever seen her dance like that before to the beat of the music that was happening to be playing?

A.

It was not to the beat of the music. The music was faster. And I've never seen her do that dance -- weave slowly back and forth not to the beat of the music.

Q.

At this time when you're noticing it, do you approach her at all and talk to her?

A.

I don't remember.

Q.

You know, because I'm trying to explore the -- obviously, you know, her interaction with her as to why, you know -- what else do you see that -- I mean, I think you said she was really intoxicated now. What other factors, what else did you see that you can describe to the investigating officer that caused you to offer that opinion?

A.

While we were still on the dance floor, I mean, the whole time, her whole remaining time she was just swaying. She wasn't -- I can't remember if I talked to her because -- I don't know what there would have been a conversation about when she was like that that made sense. I mean, she's on the stage. She's dancing with Doug and she doesn't look --

Q.

Did you see how she got to the stage?

A.

No. I just turned around and then she was up there.

Q.

Was she on the stage with Captain Wacker?

A.

No, I don't think he was up there.

- Q. Were there other people up there?
A. Yes.
- Q. Was she dancing with anybody on the stage?
A. I mean, they were dancing, but she wasn't -- she had her back, I think, to them all and she was just doing her own kind of thing.
- Q. All right. How many other people were up there?
A. Maybe eight or ten.
- Q. All right. Did you have any personal observations of how she left the stage area?
A. No.
- Q. Okay. After the stage where she's -- that portion of your testimony when you're discussing seeing her on the stage --
A. Uh-huh.
- Q. -- okay. You have not seen her dance with Captain Wacker?
A. I can't remember in what order those events --
- Q. Where do you see her dancing with Wacker? Is it --
A. In the --
- Q. -- down on the dance floor level or is it up on the stage?
A. It's on the dance floor where our group was dancing the entire time.
- Q. Okay. Describe for us then, first of all, your observations of Ms. Brooder.
A. When?
- Q. When she's with Captain Wacker.
A. Oh, she is dancing the same way, where she's swaying slower than the beat of the music and her eyes are closed and her body -- she -- her back is to his front and then their bodies are touching and they're swaying in the same -- you know, the same motion, the same timing.
- Q. All right. Is she looking at Captain Wacker?
A. No. I think her eyes were still closed.
- Q. Okay. What is Captain Wacker doing? First of all,

- where are his hands? Could you see?
- A. I can't remember.
- Q. What about Ms. Brooder; did you see -- did you ever see her physically touch Captain Wacker? Does she turn around and put his arms around her -- her arms around his neck or anything like that?
- A. Not that I remember.
- Q. I mean, what else do you see between them happening? And not that there is anything else. What I'm trying to do is exhaust your memory. Could you explain to the investigating officer, is there anything else about your interaction, that you observed about the interaction between Ms. Brooder and Captain Wacker on this dance floor? First of all, I guess I should ask, first of all: How long were they together that you saw?
- A. I think it was multiple songs, so 15 minutes. I --
- Q. All right. And is it the same type of dancing? I mean, is there any --
- A. That's the only dancing I saw them do. When he was -- she was -- had his back to him and they were touching and they were swaying in the same, you know --
- Q. All right. And she never turns and faces him or anything like that?
- A. I don't remember her doing that, no.
- Q. Okay. Did you see how that terminated, how that ended? Was there a time where she walks away from him? I mean, do you observe the end of that or what's the next memory you have of Ms. Brooder and Captain Wacker on this dance floor?
- A. That's all I remember before we start leaving.
- Q. Okay. What about Ms. Cook? Same type of questions for Elizabeth Easley Cook. Describe her physical interaction. What is she doing? You're on the dance floor for about an hour to an hour and a half?
- A. Uh-huh.
- Q. Walk us through what you see of Ms. Cook with the same type of questions that I'm going to ask also with regard to, did you have -- were you able to form any opinion about her level of intoxication?

A. Okay. So Liz was also intoxicated and I know that, again, because I have gone out with her previously before this -- before New Orleans.

Q. But what did you see on this evening? We're at the dance club now. What are you seeing from Ms. Cook that causes you to believe she's intoxicated?

A. A couple things. First, her personality changes whereas she becomes more bubbly and she doesn't -- Jessica's a very bubbly person and that's personified when she gets drunk. Liz is not really like that. She's not very outgoing or bubbly. She's kind of just a straightforward person. And so she became very outgoing and bubbly.

Additionally, when she is intoxicated, she tends to walk off by herself and take care of whatever it is she feels that needs to be taken care of. And on this night, I think she left the bar, I think, twice. She just walked out. I think the first time Forrest mentioned he'd left something at the other bar, and so he went to go get it. And after a couple minutes, she went -- she left to go find him.

And then another time she went outside to call somebody, I think. I don't know who she was calling so late at night. So and I asked Forrest to go get her because I didn't want to go out on Bourbon Street by myself and try to find her. So, both times we had to go send someone to go get her. And I don't know why she left and what she was doing, but that was consistent with what she'd done before.

Additionally, she danced with Forrest and that was an indicator because she's not flirtatious. I've never seen her dance with another man besides her husband and I haven't seen her flirt with anybody either. So, that, to me, indicated that she was intoxicated because she was dancing with Forrest and --

Q. Was she flirting with him?

A. Yeah.

Q. Okay. And why do you say that?

A. Well, they were laughing and talking and they started dancing together, and I would call that flirting because she's -- she doesn't do that.

- Q.** How about the dancing? Did she do anything that you thought was provocative or of a sexual nature with Forrest?
- A.** Yeah. I mean, she was dancing to the pop music with him.
- Q.** But, I mean, do you understand -- I guess, what was it about the way she was dancing that you thought was flirtatious?
- A.** Well, her back was to him and then she, you know, went down low and she came up and, so.
- Q.** Anything else about Ms. Cook? In other words, did you have time to talk to her before you leave?
- A.** Oh, yeah. Yeah, I spoke with her.
- Q.** Okay. So, let's get to that. First of all, anything else that I have not asked you about the dancing that you recall, of any significance that you remember?
- A.** I don't think so.
- Q.** Okay. Do you have the opportunity before you leave to have any conversations now with Ms. Brooder?
- A.** No.
- Q.** Okay. What about Ms. Cook?
- A.** I did, yeah, with Liz.
- Q.** All right. Can you describe for the investigating officer that conversation?
- A.** It was I want to leave. You know, what do you guys want to do?
- Q.** And that was just between yourself and Ms. Cook?
- A.** Yeah.
- Q.** How does Ms. Cook respond? What is her -- what is her demeanor now? Talk to us about her physical state, her level of intoxication, what you see.
- A.** She says, "Oh, yeah, we want to stay," and she's real animated, energetic. She's laughing. Again, that shows to me that she's intoxicated because that's not her usual demeanor.
- Q.** Anything else about her demeanor? Anything else -- how about is she clear when she speaks to you? Is she slurring? You know, anything else, any other

- indicia that you noted that was unusual?
- A.** No, I don't think any slurring. No. There's just -- there's just she's gotten really -- her personality has gotten really -- you know, she's quiet. She's kind of serious. That was not her at that time. She was like, yeah, we want to stay; you know, real animated, real energetic.
- Q.** How about Ms. Brooder? Did you have the opportunity to be present when she vomited?
- A.** Yes.
- Q.** All right. Can you describe to the investigating officer, first of all, where that occurs and who else is present when Ms. Brooder vomits?
- A.** Okay. So, I said that I wanted to leave. I wanted to have a man walking, you know, the women back, so I asked like Forrest, for -- I asked Forrest if he wanted to -- if he would walk me back and he said yes. So, at that point we all -- Forrest had a tab. He had to close it out, so we walked up to the bar. We're kind of on the corner edge of the bar.
- Q.** Who else is present?
- A.** Liz, Jessica, me, Forrest, Doug, and Susan. I don't remember if Bobby had left at this time or not, but I know the rest of us were there.
- Q.** In a group?
- A.** Yeah. We're standing around. Forrest is closing our tab and we're gonna discuss who is going -- you know, what everybody wants to do.
- Q.** Okay. All right. So, walk us through that.
- A.** So, we're just kind of standing there and Jessica says "I can barely see," and then she just vomits on the bar and Forrest reached over and I think she was going to vomit in someone's drink, so Forrest reached over and took the drink so she couldn't do that.
- Q.** Okay. So, first of all, how far was Ms. Brooder from you when she said, "I can barely see"?
- A.** Not very far. Like a couple feet maybe.
- Q.** Well, from you to the investigating officer or closer?
- A.** Probably closer because we're all on the edge of

this bar, on this corner, and it's not very long.

Q. Okay. So, within 2, 3 feet of her?

A. Yeah.

Q. Where was Captain Wacker from you?

A. I think also pretty close. We're all in this tight vicinity of space.

Q. So, in other words, I mean, he's not across the bar; he's not on the dance floor? Is he also within 2 to 3 feet of you?

A. I don't know exactly. He has to be very close because we're all --

Q. Okay. Let me ask you this: Do you have an opinion as to whether Doug Wacker actually saw Jessica Brooder vomit on the bar?

A. I don't know how one would miss it, but I don't know where his eyes are.

Q. And why do you say you don't know how one would miss it?

A. Because we're all standing there, she does it, and we're all like, oh, my gosh, and then Forrest is like, I can't let her vomit in someone's drink. You know, so we're all together. We all see it. We all talk about it. It's --

Q. All right. Let me get to that. When you all talk about it, who's talking? Who's y'all?

A. I don't know. We're -- I was like, Oh, my gosh. Why did you move the drink? And he's like, She can't vomit in someone's drink. And so, we're all just kind of, you know, making comments or --

Q. Did Captain Wacker make a comment?

A. I don't remember.

Q. Do you remember anybody else making a comment?

A. No. I only remember Forrest because he answered me.

Q. Okay. Does somebody physically come to Ms. Brooder to assist her?

A. I think Liz did. Well, I know that shortly thereafter Liz said, "I'll take her to the bathroom," so.

- Q.** Okay. Yeah. Before Liz takes her to the bathroom then, is there a discussion about Jessica being ill? I mean, you know, you're all students. You all know each other. Are people -- is there any discussion as to what the heck's happening here?
- A.** Not that I recall.
- Q.** Okay. What else happens that you recall there before Ms. Cook takes Jessica to the restroom -- I guess I should ask you a different way. Did you actually -- when she vomits, did you physically see her vomiting? Did your eyes turn to her and did you have observation of Ms. Brooder?
- A.** Yes.
- Q.** Okay. Describe for us, after she completes -- after she vomits -- first of all, is there just one expulsion of fluid? In other words, do you see fluid coming out?
- A.** Yes.
- Q.** All right. Does it spray along the bar?
- A.** Yes.
- Q.** Do you see if there are -- any of the bar personnel that react to this? You know, did somebody come out and clean up? I mean, is it just laying on the bar or are people now starting to react to this?
- A.** I don't remember there being any reaction by the -- I don't remember that.
- Q.** Does anyone in the group go "oh" or are there any comments made of "Jesus," you know, that type of thing? Is there any human reaction to the fact that one of your fellow students has now vomited publicly?
- A.** Yeah. I mean, it's -- when I said, "Why did you take the cup away; she can't vomit in someone's drink;" there was kind of like a surprise -- you know, like a "wow." There was just surprise.
- Q.** Was Ms. Brooder saying anything? After the expulsion of the fluid, does she -- how is she starting to react? Is she indicating that she now has come to her senses? Does she call for a cloth? Does she -- do you see if she reaches for a napkin? Does she excuse herself? Does she say she's sorry? What --

- A.** No, I don't think she does anything.
- Q.** That's what I'm trying to get to. Do your best to explain now, what does Ms. Brooder do as she reacts to this?
- A.** She doesn't do anything. She says at the bar, "I can barely see." She just leans over and throws up. There wasn't any warning really that I saw and then she just kind of stands there and then Liz says, "I'll take her to the bathroom."
- Q.** Did you have any conversations with Jessica Brooder? Did you ask her if she was okay? Did you say anything?
- A.** No.
- Q.** Did anybody within your hearing ask if she was okay?
- A.** I didn't hear anybody.
- Q.** Were you -- did you maintain visual contact with Liz Cook and Ms. Brooder as Ms. Cook then takes her to the bathroom?
- A.** I saw them walk to another room. It may have been outside. I'm not sure. I assume that's where the bathroom was. That's where I saw them walk.
- Q.** All right. Describe to me the physical motion. What do you see? How is Ms. Brooder walking? I mean, is she upright? Is she walking without any assistance whatsoever from Ms. Cook?
- A.** No. Liz has her arm on her and, you know, she's helping her walk.
- Q.** Okay. Is there -- can you describe in any more detail? Where's Liz's arm? Is it on her -- on Ms. Brooder's shoulder? Is it around Ms. Brooder's waist area? I mean, could you even be any more specific? Do you have anymore specific recollection?
- A.** I believe that's it hooked around -- no, no. I can't be sure.
- Q.** You can't be sure. Well, if I asked you then: Did you have an opinion as to whether Ms. Brooder was capable -- I mean, did she appear to require the assistance of Ms. Cook?
- A.** Yes.

Q. Did you see if there was any swaying or any difficulty that Ms. Cook was having in carrying or -- well, in assisting Ms. Brooder?

A. Well, she had her weight on her because Jessica was leaning on her --

Q. Okay. Well, we haven't covered that then.

A. What do you mean that Jessica was leaning on her? Well, however Liz was holding -- helping her walk, she had her arm around her, so as to support her weight and to guide her to the bathroom.

Q. And were -- was there anything obstructing your view from the corner of the bar to watching Ms. Brooder and Ms. Cook, as you've described, as Ms. Cook takes her out to that -- I guess, that patio area where you assume there was a restroom; is that right?

A. Uh-huh.

Q. Was there any obstructions? Were there any poles? Did they go behind anything where you lost sight of them for a period?

A. Yeah. I didn't see them make it to the bathroom. There were people. There were poles. And I had turned back to the group, so I didn't watch the whole --

Q. Okay. Do you know if anybody else in the group watched Liz Cook take Jessica out there?

A. I don't know.

Q. When you turned back to the group, what do you do?

A. I talked to Doug because I had asked Liz, I said, "I want to go." Before we -- before Jessica vomited, I asked Liz if they wanted to stay or go, you know, what did they want to do, and she says, "Oh, we want to stay."

So, when they -- after they had left for the bathroom, I looked at -- I turned to Doug and I said, "They want to stay. Can you take them back?" And he said, "Yeah." I said, "Okay. Make sure they get back safely. Jessica has a tab open. Make sure she closes her tab. Obviously, they can't do it themselves." And he said, "Okay. Get them back safely. Close out their tab. Got it."

Q. Okay. And those are his words?
A. Yeah.

Q. Was there any discussion -- did you have any discussion at all with him about the fact that Jessica had just vomited, had obviously been ill?
A. I didn't discuss that.

Q. Is there anything else that you discussed with Captain Wacker then while Ms. Cook and Ms. Brooder were away from the bar in the restroom?
A. No. I just asked him to get them back safely, close out her tab. Obviously, they can't handle that."

Q. Did you say that?
A. Yeah.

Q. I mean, you just said, "Obviously, they can't handle that" in your testimony. What I want to be clear on is, is that a comment you're making here today or did you actually say the words to Captain Wacker, "Close out their tab because they obviously can't handle it"?
A. Yes, I did.

Q. You said to Wacker that evening, "They obviously can't handle it"?
A. Uh-huh.

Q. Did he say -- that's a yes?
A. Yes, that's a yes.

Q. Did he say anything in response to you when you said that to him?
A. He said, "Get them home safely. Close out her tab. Yes, got it."

Q. All right. How was he acting? I haven't really asked you about his level of intoxication, his demeanor. How was he acting? What are your observations of him when he used those words, "Get them home safely, close out the tab, got it"? How was he looking?
A. He was -- I mean, I looked him in the eye. He looked me in the eye. I gave him the instructions. He repeated them back, said, "Yes, I can do that." He was alert. I trusted my friends with him, so I didn't think that if he was intoxicated at all, I

don't think it was very much.

- Q.** Yeah, that was the point of my question. Any physical indicia like we've already gone through with Ms. Brooder and Ms. Cook? Any physical indicia at this point in the evening that caused you any concern with regard to whether Captain Wacker understood what you just said?
- A.** I'm sorry. Can you repeat that?
- Q.** Was there anything that he did or said that caused you any concern that he didn't understand what you had just requested?
- A.** No.
- Q.** And was it your words -- were you the first one that brought up the term "getting them home safe"?
- A.** Yeah.
- Q.** When you had this conversation with Captain Wacker, was there anybody else present?
- A.** I mean, we were all, again, around the bar. I don't know if anybody was listening.
- Q.** Okay. Who else was still at the bar though?
- A.** I believe Forrest was there and Susan.
- Q.** Do you remain at the bar long enough to see Ms. Cook and Ms. Easley return from the restroom -- I mean, I'm sorry -- Ms. Brooder?
- A.** You know, I can't remember.
- Q.** Let me ask you this: When Ms. Brooder vomited, did you have the opportunity to observe as to whether any of that vomit got on any of her clothing?
- A.** That I don't -- no.
- Q.** And either prior to or after that, had you seen Ms. Brooder either stumble or lose her balance at the bar, anything like that?
- A.** No, not that I remember.
- Q.** How about on the dance floor?
- A.** Besides her swaying, I don't think I saw her stumbling.
- Q.** Is there anything else that you observed at the dance bar before you leave? I think we've ended --

you know, related to the comments you made to
Captain Wacker --

A. Uh-huh.

Q. -- is there any other discussion you had with him
before you leave?

A. That's my only discussion with him.

Q. Okay. Do you have a discussion with anybody else
before you leave the bar?

A. No, not before I leave the bar. I don't think so.

Q. Okay. What do you do then?

A. Then Forrest walks me back to the hotel.

Q. What time do you get back to the hotel?

A. I think it is around 2:00 a.m. It's sometime very
late, and I think it's 2:00 a.m.

Q. As you're walk -- how far was the dance bar from the
hotel?

A. Well, it was -- it wasn't too far down Bourbon
Street as far as Bourbon Street goes; and then we
had to cross Canal Street and then walk, I think, it
was another block down to the corner where the hotel
was.

Q. All right. So, if I ask you to estimate how many
city blocks it was from the dance bar, you know --
granted, you maybe have to take a left or a right --
about how many city blocks do you think you walked
from the dance bar back to the hotel?

A. Oh, gosh.

Q. If you can't do that, how about timing-wise? How
long did it take you to walk back from the dance bar
to the hotel?

A. Probably 15 minutes.

Q. And you didn't stop or, I mean, you just walked from
the bar to the hotel?

A. Yeah.

Q. Common pacing, normal --

A. Normal walking, yes.

Q. -- walking? Thank you.

Is there any discussion between yourself and Forrest and Susan as you're walking back to the bar with regard to Ms. Brooder's state of intoxication or anything like that?

A. Yeah. Susan was like -- Susan said, "Are you sure we should leave them with him? You know, they're obviously intoxicated. And you say the way that they were dancing." And I said, "Oh, no, it's fine. Just kind of a thing around school or at least between me and them that Doug is creepy, but he would never do anything or take advantage of them, so they'll be fine."

Q. Are those words you said to Susan?

A. Yes.

Q. Okay. Did she say anything in response to that?

A. She said, "Okay."

Q. When is the next time you see either Ms. Brooder or Ms. Cook?

A. I first see Liz and it's almost exactly an hour later. I'm sleeping and she comes through the hotel -- our hotel room door.

Q. Did she knock on the door? Did she need assistance to get in or did she use a key? How did she get into your hotel room?

A. You know, she must have used a key because she comes in and I'm waking up and she's on the phone.

Q. Okay. Describe for the investigating officer then what Ms. Cook does, what she says, what she's like, her demeanor. Just walk us through this.

IO: Before you do that, I'm sorry. You said -- you were pretty specific about the one hour. How come you're so specific about the one hour?

WIT: I can't remember exactly the time, but I know that when she walked in, I looked at my phone to see what time it was. I said, "Oh, that's exactly an hour from when I fell asleep."

IO: Now, is that an hour from the time you got back to your room or the hour you left the bar?

WIT: I believe it's the time that I fell asleep.

IO: Okay. So --

WIT: So, there's the bar. We walked back. And I was really tired. I fell asleep, like, right away.

IO: So, what would you say is the time from -- the last you had saw Liz, how much time had passed?

WIT: Probably an hour and a half.

IO: Okay. I'm sorry. Go ahead. She gets to your door or she comes in the room and --

GC (LtCol Sullivan): Well, I should ask that question too, the follow-up to the investigating officer's question.

Questions by government counsel continued:

Q. Do you know what time it was when you went -- when you got actually into your room and put your head down to go to sleep?

A. I looked at my phone, and right now I can't remember the exact time. I can't remember the exact time, but I know that whatever it was, it was an hour, but I just can't remember the exact time.

Q. Okay. Roger that. Okay. And then let's describe then the interaction with Ms. Cook when she gets into the room now, an hour and half after you had left the bar. You know, we know where we're at now in your examination. Describe for the investigating officer everything she does, she says, how she's acting, her demeanor. Walk us through that.

A. She comes in and she's -- she's talking a lot and she's making a lot of noise. And I thought she was laughing, and then as I wake up, I realize that she's crying and she's on the phone and she's -- her hands are moving and she's, like, I love you. You're my one and only. I would never cheat on you. And I'm like, Liz, what's going on? And she wouldn't answer. She wouldn't, like, even acknowledge that I was there. She's real, like, panicked.

And I thought -- she finally -- she's, just like I said, repeating that. She's crying. She gets off the phone. I said, "Liz, you know, what's wrong

with you?" And she said, "I was in the room and Doug was kissing me, and I said I couldn't and I ran out." And I'm like, okay, but she wasn't, you know, completing sentences. Like I said, she was panicked. And I said, "Well, where's Jessica?" And she said, "She's in the room having sex with Doug." I said, "Well, go get her." So, she leaves to get Jessica and then she brings Jessica back.

- Q. Okay. Why don't you go with her?
A. I didn't know where they were. I didn't know, like, where to even go get her.
- Q. I mean, why don't you go with Ms. Cook?
A. I don't know. I just said, "Go get her." I didn't know where they were. I don't know.
- Q. Okay. Didn't think about it or --
A. No, yeah. I just sent her back. I just figured she knew where she is, go get her.
- Q. All right. And you mentioned -- I just want to make sure I'm correct in understanding your testimony.
A. Did you say Ms. Cook was laughing or did you say you initially thought it was, and then when you --
Well, I thought she was laughing. No, she was not laughing.
- Q. All right. Okay. How long was she in your room before you said go get Jessica?
A. It wasn't -- I don't know.
- Q. Can you give us an estimate? Are we talking --
A. It was --
- Q. -- a long time?
A. -- no, it --
- Q. -- is this within minutes?
A. -- wasn't a very long time. She talked on the phone. I tried to get out of her what happened.
- Q. Well, let me ask you about that. Did you actually get up from bed?
A. Yes, yes.
- Q. All right. When you say you tried to talk to Ms.

Cook about what happened, how did you do that? Did you sit her down? Did she sit -- physically, how did you do that?

A. She walked in. She sat on the corner of the bed. I got up while she was walking in. I called her. I said, "What's going on? What's wrong with you?"

Q. So, you were standing up now?

A. Yes.

Q. Okay. Did you get close to her? In other words, had you come up to her and look her in the eyes and start asking these questions?

A. Well, I didn't look her in the eyes. I was on the side of her. She was like turning her head, trying to talk on the phone.

Q. Okay. That's what I want to get to then. First of all, are the lights on?

A. Yes, the lights are on.

Q. So, who put the lights on?

A. I felt like I -- I don't remember. I think they may have been on, like I left them on for them.

Q. Okay. When you start asking Ms. Cook these questions that you related as to what was going on, describe her physical state. I mean, is she acknowledging you? Is this a logical question and answer that I'm -- like I'm attempting to do here or -- you know what I'm trying to say?

We're trying to get your impressions, because you saw her, as to what her physical state is, what is her level of intoxication, if you have an opinion on that. Is she understanding you? Walk us through those answers, if you could.

A. Well, she comes in. She's on the phone. I say "Liz, what's wrong? What happened?" She just turned her head. She's not answering me. She's just trying to talk on the phone.

She gets off the phone. She's looking around. I said, "What happened? What's wrong?" And she's still looking around, like, it's not like she looks in my eyes and we have a dialogue. It's like, oh, I don't -- he was on top of me. He was kissing me. I said I couldn't do this. I ran out. And like I

said, she was panicked. Her eyes were roaming around, her head -- you know, her arms were animated.

Q. Had you ever seen her in this physical state before?

A. No.

Q. Had you been out with her before drinking?

A. Yes.

Q. Anything like that ever occur when you were out with her before drinking?

A. No.

Q. What else then in the hotel? What else is she doing?

A. She's -- well, like I said, she's just like -- I don't know -- looking around like she's -- I don't know what she's looking for, but she was panicked. And then I said, "Where's Jessica?" She's like, in the -- she's in the room with Doug having sex. I mean, I didn't know what the room meant or anything. I said, "Well, go get her," and so she leaves.

Q. How long was she gone before she returns to your room?

A. I really don't know. I don't know because it was -- you know, it was really crazy. I don't know if I can estimate time.

Q. Was it -- all right.

A. I mean, it wasn't an hour.

Q. Okay. All right. Was it one minute? Was it 60 seconds?

A. It was longer than minute.

Q. Okay. How about five minutes? Was it longer than five minutes?

A. Probably.

IO: Why don't we try this: What did you do? Do you remember what you did while she was --

WIT: I just stood there, like, oh, my gosh.

IO: Stood there and didn't move?

WIT: I don't -- I really think that I just stood there and was like trying to, you know, comprehend what they were doing and what -- now I had to help them, you know, deal with when they came back.

Questions by the government counsel continued:

Q. Well, they're gone for a period of time. I mean, so you don't do anything? You don't make any phone calls? You're not going to the restroom? You're not --

A. Right.

Q. All right. So, they're gone for a period of time. You think it's -- it's not an hour, but it's not a minute. Okay?

A. Yes.

Q. Do they come back to the room?

A. Yes.

Q. Walk us through your -- again, the same type of questions -- your observations. First of all, who comes in the room? Is it just Elizabeth Cook? Is it Jessica Brooder? Is it both? What are they doing? What are they saying? How are they acting? What are your observations and opinions with regard to their level of intoxication? Same type of thing. Can you explain to the investigating officer this phase of the evening?

A. So, they both come in the door and Liz is still obviously like panicked and Jessica -- a lot of my attention is focused to Jessica because she comes in and I'm --

Q. When Jessica comes in, is she walking on her own volition or is Ms. Cook helping her?

A. I don't remember.

Q. What do you remember?

A. What I do remember is they come in and I get ready to talk to Jessica, you know, try to talk her through it, see what she needs me to do to help her, but she is not making sense at all. She's -- she also is panicked and she's looking around and she's just -- she's like on intent on calling. She's, like, I have to call, I have to call. Who you going to call? I have to call Justin. And she gets her

phone and she walks out of the room. And I go to get her. I'm, like, I don't know if you should call Justin right now. You're obviously not in any state of mind to talk to somebody. I'm like, just come back in the room. You have to come back in the room. She's, I'm not going back in the room. All those people are in there. Everyone's in there. Jessica, nobody's in there. It's just me and Liz. You were just in here. You know, you saw that it was only us. No, I'm not going back in there. And we had an argument, and I've never seen her like this. I didn't know -- I had to, like, forcefully get her back in the room. Jess, there's nobody in here. It's just us. We've been in here. Don't call him. Get back in and then we'll tell him you need to wait until you're okay to speak with him and call.

So I finally get her back in, and then it's just her sitting on the bed. After a while, she does some pacing, but I can never ask her any questions. I can never get any answers. There's no conversation. It's just her just repeating nonsensible things.

- Q.** What nonsensible things is she repeating?
A. There's no complete sentences. She's, like, I'm out of town. I shouldn't have. I'm sorry. That's really all she keeps repeating. "I shouldn't have. People go out of town." I'm like, what -- you know, what shouldn't you have done? What are you talking about? And it's like I'm not even there. She doesn't respond to me and is really just maybe a couple of hours of -- I mean, I'm trying to figure out how to calm her down, how to get her to just to -- maybe just go to sleep or something, but I can't figure out what's wrong with her, but she just -- she paces and --
- Q.** What is she wearing?
A. She's wearing her black top that she wore that night and her jeans, so the same outfit that we went out in.
- Q.** Do you notice anything about the jeans?
A. I didn't know. They were just jeans.
- Q.** Yeah, but are they on correctly? Do you notice anything as to whether there's anything unusual

- about them?
- A.** I didn't know.
- Q.** Okay. Do you have to change her to get her ready for bed?
- A.** No, I don't think I did. She started asking for concerts. She said, "Do you have any concerts? I need concerts." Jess, what are you talking about? And then I -- so, but she doesn't answer me, obviously, and she keeps asking for concerts, so -- and then she starts looking in her bag or -- no. I'm sorry. I don't think she looks in her bag. She looks at her bag. And I'm, like, do you need pajamas? So we get her pajamas and we get them on her.
- Q.** What? What do you mean "we get"? Explain that.
- A.** Oh, I mean, Liz and I were trying to take care of her. I don't know -- I don't think I physically put them on her. I'm pretty sure that was Liz. I don't remember who grabbed the pajamas from her bag.
- Q.** Okay. And what were they? Were they pajamas or were they kind of a gym short type thing?
- A.** I mean, she didn't have like a set of pajamas, but I remember it's probably the first thing we could grab out of the bag. We didn't go through her stuff to get -- we didn't have time. We were just trying to put something on her.
- Q.** Right. I mean, do you have a memory of what this garment was?
- A.** I know it wasn't a full set of pajamas, but I don't remember what it was.
- Q.** What about Ms. Brooder's -- at any time during this, does she cry? Is she sobbing? Anything like that?
- A.** Yes.
- Q.** Okay. Is this kind of ongoing? I mean, is this --
- A.** Yes.
- Q.** -- all right. For how long then? I guess I should have been better in my questioning. This time period where she gets back in the room and you're trying to gain control of her, how long does that last?
- A.** I think it lasted a couple of hours. I think

between the time we finally fell asleep and the time I had to wake up to go to the clinic, I maybe got one, maybe not even two hours of sleep. This went on for a couple of hours of her just crying and repeating herself.

Q. Is there anytime after she gets back to the room for this couple of hours that you have any sort of logical conversation with her?

A. No.

Q. Did she still appear to be intoxicated to you? I mean --

A. The entire -- yeah, even the next morning.

Q. What about Ms. Cook?

A. Liz was intoxicated, and I know that because she's very self-sufficient and I had to also -- I mean, she was helping with Jessica, but I had to direct her to do things. I had to look out for her as well. So, she was not as intoxicated as Jessica, but she still was.

Q. What about her emotional state?

A. She was crying too. She was panicked. She was trying to console Jessica, but at the same time she was very upset. And then when I would try to console Jessica, I mean, Liz would -- I mean, she was just crying and they were both just really upset.

Q. Eventually do you get them to bed?

A. Yes. I -- yeah. Liz was holding Jessica and I think she was like singing her -- singing to her something just to get her to calm down and she would not calm down, and then we finally go to sleep.

Q. Okay. What time -- do you have any recollection as to the time that you go to sleep?

A. I believe it's at least 5:00, 5:30.

Q. How long do you sleep?

A. Between one and two hours.

Q. Did you actually get up that next morning and go to work?

A. Yes.

- Q.** All right. Describe -- do you have any conversations with either Ms. Brooder and Ms. Cook the next morning?
- A.** Yeah. I get up. Jessica and I worked in the same clinic. Liz is in a different one. So, I get up and I said, "Jessica, are you going to work today?" And she's just -- she's, like, ahh. I'm like, Jessica, are you going to work? She's like -- and then she said yeah. So, I get in the shower. When I get out and I ask her the same thing and we do -- and then she kind of grunts and then she says yes, but she never moves. To me, it looks like she's just in the exact same state as she was last night where I'm asking her questions and she's just not even really understanding what I'm asking her. She's just saying something, but she's still laying there.
- Q.** What about -- first of all, anything else about Ms. Brooder after you wake up and get ready to go to work? Anything else I haven't asked that you noted?
- A.** No. I mean, it looked like she was in the same state as she was when we went to sleep and -- no. That's it.
- Q.** How about Ms. Cook?
- A.** Liz, before I leave, I had a conversation with her to the effect that if I go, are you going to be okay because she was in a better state than Jessica. I said, "I don't want to leave you guys. Can you take care of her?" She's like, no. I'll make sure she's okay, and, like, if she has to go to the hospital or something. She said, "No. I can make sure she's okay. You can go." So, Liz told me that she'd look out for her and that's why I left.
- Q.** Okay. Any other conversations then between you before you leave?
- A.** No.
- Q.** What time do you get back?
- A.** In the afternoon sometime. They weren't there -- oh, no. They were there. No, they were because I said good-bye to them.
- Q.** Okay. Well, that's what I want to ask about now. First of all, I guess, I should ask this question: When you go to work, do you see Captain Wacker at

all?
A. I think actually when I left the room, we took the same elevator down to the breakfast area.

Q. Captain Wacker, in the morning?
A. I think so, yeah.

Q. And how's he dressed?
A. Like he's going to the clinic.

Q. Is he wearing a Marine uniform or is he --
A. No.

Q. -- wearing a suit and tie?
A. I don't remember if he wore a suit and tie; but I mean, we dress professionally.

Q. Okay. Do you have any conversations with him?
A. No.

Q. Does he say anything to you?
A. No.

Q. Does he ask you how Jess and Liz are doing or anything?
A. Nope.

Q. Does he ask you where they are?
A. Nope.

IO: Was there anyone else on the elevator?
WIT: No. It was just us two.

Q. Do you know what time it was -- is that the only interaction you have with Captain Wacker that morning?
A. In the morning, yeah.

Q. Okay. Do you know what time it is when you get back to your hotel?
A. I think -- it's in the afternoon sometime. I don't know if it's around --

Q. Was it after lunch?
A. It was after lunch, yeah.

Q. Okay. Describe what happens when you get back to

your room.

A. I get back and they're packing up and they're leaving and we're all crying. I mean, (inaudible) New Orleans and they're the ones who got me there and I don't want them to go, and they're really just like, we have to leave. We can't stay here. They're very upset. They found the first -- they told me they found the first tickets they could. Jessica had to take -- like fly all over the country to get home.

And Jessica, she's no longer intoxicated as far as I know. She's talking. We're talking together. She looks awful, if that makes sense, like just disheveled and --

Q. Does she say anything to you about the night before, anything?

A. I think the only thing she says is she's sad she had to go. She doesn't really remember anything. I think that's it.

Q. Is there any other -- how about Ms. Cook? Does she say anything to you?

A. She said the same thing, like, she doesn't remember anything except for what she's already told me, and they both just -- you know, they have to leave. They don't remember anything and they can't believe it happened.

Q. How would you describe the pace? I guess what I'm asking is, is this a loose conversation, or when you get back, did it appear that they were short for time and they were trying to get out of there?

A. Yeah, they wanted to leave. I'm not sure if they waited for me to get back to say good-bye, but they were ready to go, like, as soon as I got in and said good-bye. Then they were leaving.

Q. So, this wasn't a long drawn out --

A. No.

Q. -- conversation? I mean, it was they said their good-byes as you've related to the investigating officer and then they -- did they leave?

A. Yeah.

Q. Ms. Cook, how did she look? You know, you

described, you said in your words Ms. Brooder looked awful?

A. Uh-huh.

Q. What about Ms. Cook?

A. I didn't know notice Liz -- I mean, she didn't have make-up on. She always puts make-up on. So, that was a difference. Other than that, I mean, she doesn't look great. She didn't get dressed up or put on make-up or anything.

Q. Okay. Is there any other conversations that you have with either Ms. Cook or Ms. Brooder in New Orleans that we haven't discussed yet about what occurred?

A. No.

Q. Okay. Captain Wacker, do you see him -- if I understand correctly, you stay in New Orleans; is that right?

A. Yes.

Q. Do you finish off the entire week and participate in the provisional legal aid?

A. Yes.

Q. When did you come home?

A. I came home on my scheduled flight. I can't remember if it was Saturday or Sunday, but it was in the morning.

Q. Three or four days after --

A. Yeah.

Q. -- after this?

Do you interact with Captain Wacker at all after Liz and Jessica Brooder leave on the afternoon of the 4th of April, which is a Wednesday, if I understand correctly? Do you interact with Captain Wacker at all either later that Wednesday evening or the Thursday or the Friday or the Saturday that completes this week? Do you work together? Do you see him? Do you have any opportunity to talk to him or say anything or go what happened between you and Liz Cook and Jessica Brooder?

A. Yes.

Q. When does that occur?
A. Well, some groups went out and once -- I can't remember what nights they were, but at least one night we were hanging out with the same people. We had dinner and went to bars and stuff with a group of people, and -- but we don't -- the only discussion that we ever had was at one of the bars, he asked me if I was mad at him and I just said, "I don't really want to talk to you." And that's the extent of our conversations related to this.

Q. All right. How many days after -- how many days into the week was this? You know, if they left on Wednesday afternoon --
A. Uh-huh.

Q. -- what evening do you think this was when you had this conversation with Captain Wacker?
A. I think it may have been Thursday, but I can't remember -- I'm not sure, but I think it may have been Thursday.

Q. Okay. Do you know -- first of all, do you know where you were that Thursday?
A. On the evening I'm talking about, we were at a bar that is located over by the colleges. That's the area of bars we were in.

Q. Do you happen to recall the name?
A. There's only one bar that I know the name of and I don't know if it was that one.

Q. And that's --
A. It's called The Boot.

Q. The Boot?
A. Uh-huh.

Q. Were there any -- was there anyone else --
IO: Would you say that again?
CC: The Boot.
GC (LtCol Sullivan): The Boot.
WIT: That's what they called it in --

IO: B-O-O-T.

WIT: As far as I know.

IO: Thank you.

Questions by the government counsel continued:

Q. It's evening time. Was this again -- was this another type of evening where there were other fellow USD law students that you were with?

A. Yes.

Q. Do you recall any of the others that you were with?

A. Yeah. There was Justin Gray. He had a friend from New Orleans that was there. Forrest was there. Jacky, Adam Burke, another guy that I can't remember his name.

Q. And Captain Wacker?

A. John Amstram -- yeah, and Doug.

Q. How does this conversation take place then? Does Captain Wacker approach you? Are you sitting next to him? Is this -- I mean, can you give us a little bit of the background as to how this takes place, where you're located, and --

A. We're at the bar. Either he's there and I approach -- I don't remember, but just -- I look over and he's there and there's nobody in between us, even though we're kind of spaced out, so we just happened to be at the bar at the same time.

Q. Okay. How far away from Captain Wacker are you?

A. A couple of feet, 5 feet.

Q. Does he close that distance at all to talk to you, or does he --

A. No.

Q. Are you -- is this -- is it this distance?

A. No. We're closer.

Q. Okay. Is it from -- do you see the investigating officer here? He's about 6 to 7 feet way from you. Was it closer than that?

A. Maybe a little closer.

- Q. So does he go to within 3 or 4 feet? Did he have to raise his voice to talk to you?
- A. No, I don't think so.
- Q. Did he approach you? Was he the first one who spoke?
- A. Yeah.
- Q. And what exactly were the words he used?
- A. He said, "Are you mad at me?"
- Q. No introduction nothing? Nothing else?
- A. Mm-mm.
- Q. Had you talked to him that evening before?
- A. I don't know if we had any direct conversation; but if we did, it was about school or something totally unrelated, and it was within a group.
- Q. You know my point? I'm guess what I'm trying to understand is, is this the first time since the incident, since Jess Brooder and Elizabeth Cook have left New Orleans, and it's just you and Captain Wacker?
- A. Yes.
- Q. And without any introduction, the only thing he says to you is, "Are you mad at me"?
- A. Yes.
- Q. Do you say anything in response?
- A. Yeah. I said something to the effect of, I don't want to talk to you.
- Q. Did he say anything else?
- A. Mm-mm.
- Q. When you said that to Captain Wacker, when you said I don't want to talk to you, what did he say?
- A. Nothing.
- Q. Did he leave?
- A. I think I left.
- Q. After this conversation, are there any other times when you had a conversation with Captain Wacker about New Orleans?
- A. No.

- Q.** Ever? Same question, I guess with regard to have you ever -- has he ever sent you any emails or texts or anything like that?
- A.** No.
- Q.** So this -- I believe you exhausted then any interaction you've had with Captain Wacker relating to this matter. Is that fair to say?
- A.** Yes.
- Q.** Now, you get back to the San Diego area on approximately -- and the 4th is a Wednesday, the 5th would be a Thursday, the 6th would be a Friday, Saturday the 7th, Sunday the 8th. Monday the 9th of April, would that be a first-school day at USD after the spring break period? Do you know if that was -- that Monday was --
- A.** I don't know. Sometimes, the school has Easter Mondays, so I don't know.
- Q.** Well, all right. Tuesday the 10th of April. What I want to get to is after you get back to San Diego and you're back from this New Orleans trip, how do you become aware of the fact that Ms. Brooder and Ms. Cook may be going to the school to talk about what happened in New Orleans, maybe lodge some sort of complaint, that type of thing? How does that come to your attention?
- A.** They tell me.
- Q.** They tell you verbally or in writing or --
- A.** Probably verbally.
- Q.** I mean, these are your friends, so obviously you get back to -- I'm sure this is -- at least you're talking about what occurred, what may have occurred?
- A.** Mm-hm.
- Q.** What I want to get to is, it comes to your attention that they are going to speak to the USD's, if it's campus police, the law enforcement unit there and provide -- at least talk to them of what occurs; is that right?
- A.** Mm-hm. Yes.
- Q.** Did they ask you to also give a statement to the USD Police Department?
- A.** Yes.

- Q. All right. And do you do that?
A. Yes.
- Q. One of the things I want to ask you now, Becky, is are you -- have you graduated?
A. Yes.
- Q. All right. Are you a lawyer now?
A. Yes.
- Q. All right. And same thing with Ms. Brooder and Ms. Cook; all right? One of the things I just want to ask you in general is, did they ever try to -- I'm going to use the term "unduly influence" you to provide certain information, in other words trying to -- don't tell the law enforcement this, but tell them that. In other words, did they ever, in your opinion, ever seek to try and have you selectively provide information in your opinion, or did they ask you to tell law enforcement what you know, where to go forward and lodge a complaint? That's one of the things we want to ask you.
A. They never instructed me. The only thing that they ever said was just be as detailed as you can and honest.
- Q. Okay. Yeah. Do you understand the -- and that was probably one of the most inartful questions I've ever asked; and I ask a lot of inartful questions. But what I'm trying to get to for the investigating officer is, you know, this is kind of a unique case in that you're all law students. You've studied law, things like this.
- Ms. Brooder, do you have an opinion, based upon everything you know about her, as to whether she's a truthful person or not?
A. Yeah, I would say she's truthful.
- Q. How about the same thing for Ms. Cook?
A. Yes. Truthful.
- Q. Do you understand what I'm getting to? You can't help it that you're all friends where this occurrences took place; but do you feel that they ever tried to influence your testimony or your cooperation or lack thereof with law enforcement or even try to shape your testimony with regard to what

A. you know of what happened?
No.

Q. And that goes to this day, doesn't it?

A. Yes.

GC (LtCol Sullivan): Sir, can I just have a moment?

IO: Sure.

Questions by the government counsel continued:

Q. You also became aware of the fact that after the complaint or action was taken, it was a USD -- I'm not sure. I think it's called a critical complaint board or something like that -- there's a board that was held, like a hearing, at the University of San Diego. You're aware of that; right?

A. Yes.

Q. As part of that, did you have to provide information for that?

A. I did. Yes.

Q. Do you recall if there was an email exchange between yourself and Liz Cook?

A. Yes.

Q. She took a look at your statement and things like that. That's what I'm getting to. Do you remember that?

A. Yes.

Q. All right. Did she ever -- I guess what I'm -- when you're doing that, all right, are you trying to cooperate with the board to ensure that the information you have is complete, it's -- you're offering all the information that's possible; right?

A. Yes, because nobody instructed me on what needs to be in the statement, and the only people I knew, Liz and Jessica, knew anything about it.

Q. And this looks like your statement and you replied back in an email; right? And least in her opinion, she thought that you should provide more information with regard to the same types of things, kind of like a lot of stuff I ask; right? Demeanor, actions, and levels of intoxication, that type of

- thing; is that correct?
- A.** Yes.
- Q.** Now, we have emails, and I think that is in evidence before the investigating officer. But I also want to talk about you see each other at school, you have phone conversations. Same thing for Ms. Cook, did she ever ask you not to provide the total information you have? In other words, leave this out, don't tell them I drank? You know what I'm trying to say? Or is it more of, Hey, be inclusive, be as complete as you can?
- A.** It's the latter.

GC (LtCol Sullivan): I have no further questions.

IO: Mr. Faraj, one second.

If at any time you need a break --

CC: I was going to actually ask for a brief comfort break. Just a brief one.

IO: Five minutes?

CC: Yes.

IO: Okay. We're in recess.

[The Article 32 investigation recessed at 1254, 12 April 2010.]

[The Article 32 investigation was called to order at 1304, 12 April 2010.]

IO: We're back on the record. All parties present when we previously adjourned are again present. The witness has resumed her place on the witness stand, and I remind you that you're under oath.

Mr. Faraj, you may cross.

CROSS-EXAMINATION

Questions by the civilian counsel:

- Q.** Good afternoon. You wrapped up with several questions, I'm going to characterize as classical

leading questions, about whether you had any influence or an attempted influence over your statement, and you said no; right?

A. Right.

Q. Do you recall that? Why do you think you got the statement?

A. Why do I think -- I'm sorry?

Q. Why do you think -- why did you communicate the statement to Ms. Cook?

A. It was for the USC admin hearing, and nobody from USC communicated to me anything about what I needed to do. It was through Liz and Jessica. They were the ones who asked me to provide a statement. So I didn't know what needed to be in the statement or whatever. So I sent it to them so they could, I guess, you know, provide guidance on if that was sufficient for the hearing, because nobody told me what to do.

Q. Let me make sure I understand this. They actually asked you to write a statement of what happened that night; right?

A. Mm-hm.

Q. You completed the statement?

A. Yeah, I did a statement.

Q. Okay. And then did you send it back and say, Here is the statement or did you send it back and say, Here is the statement, take a look at it and tell me what you think?

A. I said, Here's a statement. I think I said, Please let me know if you have any comments, you know; because I didn't know what a statement was. I've never done this before and nobody from USD told me. And as far as I knew Jessica and Liz were the only people who knew anything about it.

Q. The critical issues board, no one from the board ever contacted you?

A. I think -- no, nobody from the board that I remember. I think Professor Player (ph), who was somehow involved, told me that I needed to write a statement; but that was toward the end, that was, like -- no, I never spoke with her.

Q. So when you said no one from the board contacted you, that's not really true. Someone on behalf of the board did contact you?

A. I don't remember.

Q. The professor? What was the professor's role?

A. I don't think she was on the board. I'm not a hundred percent sure because, like I said, nobody told me everything, how it worked. I think she may have been -- this is what I think: I think she may have been helping Liz and Jessica but --

Q. But you're not sure?

A. I'm not sure.

Q. Is it fair to say that someone from the school, an official, a school official or a professor, did contact you to provide a statement?

A. Yes.

Q. You're not sure what role that person was playing?

A. Yes.

Q. Okay. And did you provide a statement to that person?

A. I think so.

Q. And is that the same statement you sent to Liz earlier, or was there another statement?

A. I don't remember if there was any revision.

Q. Okay. Did you provide a -- you provided a statement to the USD Police Department?

A. Yes.

Q. Did that statement go through any revisions with Liz?

A. No. That was me verbally speaking to the police officer.

Q. Lieutenant Callahara?

A. I don't know.

Q. Okay. Why did you ask Liz to go back and get Jess from Wacker's room?

A. Because I didn't think that -- I saw Jessica when she left, and I didn't think that was something she would have chosen to do. I didn't think she wanted

to be there.

Q. Okay. Do you know if she chose to dance the dirty dancing on the dance floor?

A. I don't know what she chose and doesn't. I don't know --

Q. But you saw her. Did anybody force her to dance?

A. Not that I know of.

Q. Did anyone force her to go up on stage?

A. I didn't see her go up on there. I just saw her up there.

Q. Is it fair to say, then, you were imposing your own set of right and wrong on what Jess should be doing or not doing when you told Liz to go get her from the room?

A. I was doing what I thought Jessica would want to do if she was in the right frame of mind.

Q. Yet I go back and ask: It's unlike Jessica to dance dirty dance with anybody, based on what you know of her?

A. Yes.

Q. Especially not with a guy she doesn't know?

A. I've never seen her dance with a guy she doesn't know.

Q. Didn't you see her dance on the dance floor with a guy she didn't know and then you had to pull her apart?

IO: I think the testimony was she was interacting with a guy to the point where -- that's what you're referring to, Mr. Faraj? She was interacting with a guy, and someone had to pull him away, on the dance floor. But I don't think it was actually dancing.

CC: I'm going to refer to Investigative Exhibit 52, and if I may approach the witness?

IO: Sure. What is 52, letterwise, on your -- defense, what's 52 on your binder?

CC (LtCol Sullivan): Alpha alpha, sir.

IO: Thank you.

CC: And that's several pages. That one is a long exhibit. On the front is her statement to NCIS.

IO: Okay. Well, that's part of the government exhibits. So that would be -- I believe it's eight, Exhibit 8 of the government's exhibits or IE-8.

Questions by the civilian defense counsel continued:

Q. Ms. Barker, I put in front of you what's been marked as Investigative Exhibit 52. I'm flipping to the first page of a four-page document. Do you recognize this document?

A. Yes.

Q. Okay. Simply referring to page 2 of 4, the second full paragraph of, perhaps, 15 lines down, maybe 10, 15 lines down, you see where it says you also saw Jessica?

A. Mm-hm.

Q. Would you read that to yourself and when you're done -- you can read before or after to put it in context if you need to.

[The witness did as directed.]

Q. Did that refresh your recollection as to what you saw the night of April 3 or early morning April 4?

A. I can -- not really.

Q. I'm sorry?

A. Not really. My memory is the same as -- I'm sorry, go ahead. I'm not really sure what you're asking right now.

Q. Did that refresh your recollection as to what you saw that night?

A. Do you want me to describe to you what I remember right now?

Q. Well, my initial question, we began this by asking if you remember ever seeing her with a strange guy and, perhaps, dirty guy?

A. Yes. I remember her interacting with a guy that I did not think looked -- yeah, he looked scary to me.

- Q. Today, you remember interacting. When you say "interacting," what do you mean?
- A. I mean, right now I remember them being in close vicinity. He was -- I mean, I read that, but I don't remember --
- Q. Well, at one point, you did have a memory of her dancing with a guy who was dirty and gross-looking; and you put that in your statement to NCIS, although you may not have that specific memory today. But at some point, you did have that memory; right?
- A. Yes.
- Q. Okay. And that would also be inconsistent with what you thought Jessica is or does?
- A. Well, by the time she was interacting with that guy, that was after she had done the swaying thing and her eyes were closed. So, yeah, that was inconsistent with what she would normally do.
- Q. Okay. And throughout all of this, no one forced Jessica to do anything. She was making decisions on her own?
- A. I didn't force her to do anything.
- Q. Okay. And you don't remember the guy making her dance with him?
- A. I don't know. I just know that subsequently we separated them. I don't know.
- Q. Okay. And you don't remember anybody forcing her up on stage?
- A. I didn't see her go up there.
- Q. Okay. Do you believe anybody forced her to do any of those things?
- A. Probably not.
- Q. Are you unsure?
- A. I mean, I didn't see her do everything she did. I don't know if anybody did anything.
- Q. My question to you is: Do you believe anybody forced her to do any of those things that are inconsistent with her personality?
- A. Such as?
- Q. Dancing with -- you know, dirty dancing with some

guy or interacting with some guy, certainly dancing with Doug Wacker, going up on stage to dance. Do you believe -- do you have any reason to believe that someone forced her to do those things?

A. I have no reason to believe.

Q. Okay. You said "probably." I just wanted to make sure we got it right.

A. I have no reason to believe. I have no knowledge of force.

Q. What type of law do you practice?

A. Mostly tax and corporate, estate planning.

Q. So when you sent Liz up to get Jess, you sent her up because of what you believed she should or should not be doing, not because of anything that Jessica would do?

A. I did not think that Jessica, if she was not intoxicated, would want to be doing that because of everything I knew about her. So that's why I sent Liz up to get her.

Q. Okay. Would you agree with me that sometimes people do things out of their own volition even though they're intoxicated?

A. Yeah.

Q. You get behind the wheel of a car and drive, you make that decision; right?

A. Right.

Q. You're responsible for it. You decide to go up with Doug Wacker to his room, whatever happens inside, that's her decision; right?

GC (LtCol Sullivan): Are we assuming in the hypothetical that he's conscious and --

CC: I have no --

IO: I think, if I may, I think the whole point of the question here may be when you told Liz to go back and get Jessica, your point was to prevent the -- let me get the names -- Jessica from engaging in sexual intercourse that you felt she would not have done but for the fact that she was under the influence of alcohol?

WIT: Correct.

IO: Okay. So at that point, that was what you were trying to prevent her from doing, consensual intercourse with --

WIT: Any type of -- I didn't know what was going on.

IO: You didn't, but your intent was to pull her back from, basically, waking up the next morning and regretting what she had done.

WIT: Yes.

IO: Okay. Thank you. I'm sorry, Mr. Faraj.

CC: That's okay. You did a good job asking my question.

Questions by the civilian counsel continued:

Q. Based on that question, when you told her to go get her, is it fair to say that you didn't have any fear for her safety or fear that she would be forced to have sex with anyone?

A. As far as I knew, Liz had gotten up and left. So I was not afraid that she would have any physical harm to her. Yeah.

Q. That's your statement; correct?

A. That's what I'm thinking yeah.

Q. Okay. Would I be also -- would it also be reasonable to assume that if you feared for her safety, that you would have gone up and gone with her? When I say "with her," I'm referring to Liz.

A. I guess depending on how much I feared, if I put myself there.

Q. Liz didn't leave you with any impression that she was being taken advantage of? With "she," I refer to as Jess.

A. All she said was, "She's having sex with Doug." Yeah.

Q. She said, "She's having sex with Doug," or "They're having sex"? Do you remember?

A. She said, "She's having sex with Doug."

- Q. Okay. When you -- you said you were pretty tired that night?
- A. Yep.
- Q. You fell right asleep?
- A. Yeah.
- Q. And you know that because you kind of looked at your phone or you knew what time it was; and then some time later, you were awakened and you realized it was about an hour since you fell asleep?
- A. Mm-hm.
- Q. Describe your level of fatigue on a scale of one to ten, one being not at all, ten being you can barely stand up I'm so tired?
- A. Probably -- maybe a six just because I have trouble falling asleep at night. So I didn't have trouble falling as sleep, so that meant that --
- Q. And would that have been assisted -- you didn't have much alcohol that night. Would that have been assisted by the alcohol, the feeling of fatigue?
- A. If I had had more, or based on what I had?
- Q. Based on what you had.
- A. Oh, no.
- Q. So you normally do have trouble falling asleep, but that night you kind of just went right to sleep?
- A. Yeah because it was really late.
- Q. Okay. Do you know if you awoke as soon as she walked in, or is it her noise that woke you up?
- A. I think I heard her outside, then open the door and come in, so I think it was the whole --
- Q. Okay. So it was the beginning of the walking in and the whole thing, and that's when you got up?
- A. Yes.
- Q. Okay. You have no idea how long she was outside?
- A. No.
- Q. Okay. I'm moving back in time. You were answering questions about Jess's level of intoxication. You said she was buzzed before you walked into Razzoo, between the Funky Pirate and Razzoo; and at the end

of Razzoo, she was pretty intoxicated. Did I hear that right during direct?

A. Yes.

Q. And in answer to that question about Captain Wacker, you said he was -- you said he didn't appear to be very intoxicated.

A. Yeah.

Q. How often had you hung out with Captain Wacker before that night?

A. At a place where there would be intoxication?

Q. Yeah.

A. I can think of at least two that involved parties and alcohol.

Q. And at those parties, did you have frequent or regular interaction with Captain Wacker?

A. I mean, I talked to him a couple of times.

Q. I guess the better question is: Had you ever had a situation to evaluate his level of intoxication before?

A. I did see him drunk before.

Q. Okay. And when was that?

A. That was at the Halloween party.

Q. All right. And what was -- what things led you to believe that he was intoxicated?

A. He -- he has this -- what I noticed that night was that his eyes, I don't know how better to describe it than that they looked kind of glazed over a little bit. And he kind of got sweaty and -- I mean, just kind of loud and maybe a little slurring of speech.

Q. Do you know how much he had to drink that night at the Halloween party?

A. I don't. At the Halloween party? No, I don't.

Q. Do you know how much he had to drink during the night of April 3 and April 4?

A. No.

Q. So when you're making your decision about his level of intoxication, you really don't have much in the

way of assessment of different variables to say definitively that he was drunk or was not drunk?
A. I don't know how much alcohol he consumed.

Q. So he could have been drunk, he just didn't appear to be drunk to you based on what you had seen before?
A. Can you repeat that?

Q. He could have been drunk; he could have been intoxicated. But based on what you had seen before, you just didn't know if he was or not?
A. Yes. Based on what I had seen, I didn't think so. But yeah.

Q. Okay. You had dinner with Jess and Liz?
A. That night? Yes.

Q. April 3?
A. Yes.

Q. And do you remember what they drank?
A. I think it was some type of wine.

Q. Do you remember the number or drinks they had?
A. I don't. I don't think it was -- no, I don't.

Q. That's fine. And from there, you were walking, they consumed some other drink. What do you believe that drink to be?
A. A hurricane.

Q. Hurricane. Was that name of it?
A. I thought, but I don't know.

Q. Could it have been a hand grenade?
A. Yes, because that's kind of what the bottle looks like.

Q. Or is there a hurricane and a hand grenade?
A. I don't know the drink.

Q. You don't know? Was it just one drink that they consumed between dinner and the Funky Pirate?
A. Yeah. I think so.

Q. Do you know who purchased those drinks?
A. I don't.

- Q. Okay. And I think you already established this, but you remember only one drink, but you do not remember?
- A. I believe there was a -- they come in long tubes and so -- I think that's the only drink we stopped to get before the -- yeah.
- Q. Okay. You get to the Funky Pirate, and how many drinks do you remember Liz having at the Funky Pirate?
- A. Like I said, there was a shot special. I believe the group did it together minus me.
- Q. And this is not the test-tube shot. This is a shot there at the bar maybe?
- A. This is just a shot at the bar. Yeah.
- Q. Do you know what type of shot it was?
- A. I don't.
- Q. Okay. That's all right. And then you said that both Jess and Liz have regular bar drinks, or did I not hear that correctly?
- A. I don't know.
- Q. I think you said Jess had a vodka tonic at Funky Pirate?
- A. Yeah, and I can't remember if I saw Liz drink anything else.
- Q. Okay. Did Jess have any more drinks besides that vodka tonic?
- A. Not that I recall.
- Q. Okay. You then left to go to Razzoo or the dance club?
- A. Yes.
- Q. Did they consume any alcohol during that transition?
- A. I don't think so.
- Q. Okay. You get to Razzoo and you remember Jess -- who buys the drinks for --
- A. Jessica buys the drinks for me and her.
- Q. And you know that she's drunk because she starts to buy you drinks?
- A. Right.

Q. Okay. And she bought another vodka tonic?
A. Yes.

Q. Okay. You don't drink yours?
A. Right.

Q. Do you leave it at the bar?
A. No. I set it on a table by where we were dancing.

Q. The table at the dance floor. Does anyone consume that drink?
A. I don't know. I don't think so. I think I remember it being there all night.

Q. Okay. Jess, on the other hand, also takes her drink and puts it on the table near where you're standing?
A. Yeah. I think so.

Q. Right?
A. Mm-hm.

Q. And I think you testified that you remember seeing her drink, but you don't remember if she kept going back. Can you tell me what you remember from that?
A. I remember -- I mean, I don't know if she ever left the area or whatever to get -- I don't remember -- I remember seeing the drink in her hand up on the stage; but for the most part, we were just dancing --

Q. She wasn't dancing with her drink when you were dancing?
A. Not that I remember.

Q. Okay. So she left it unattended on a table dancing. But at some point, you saw her with a drink again on the stage. She must have gone back to get that drink or some other drink?
A. Right.

Q. Do you know how much of that drink she consumed?
A. I don't know how many drinks she consumed.

Q. Do you know if she had any other drinks at Razzoo?
A. I don't know.

Q. You described Ms. Cook's demeanor as being calm but more conservative in nature, and that night she was

- more bubbly, outgoing?
- A. Yes.
- Q. She was flirtatious?
- A. Yes.
- Q. Also inconsistent with what you know of her?
- A. Yes.
- Q. And the reason you believe she was flirtatious was because of the suggestive dancing that went on?
- A. Yes, and her, you know, the laughing and the giggling with Forrest.
- Q. Okay. And that also is similar to what Jess was doing with the guy and then Doug Wacker?
- A. No. When she was interacting with the guy and Doug Wacker -- she was bubbly and outgoing before, but whether she was interacting with the guy and Doug Wacker, first dancing with Doug, that's when she had, like, no personality and she was just swaying with her eyes closed.
- Q. Okay. From that point when it appeared to you that they weren't acting like themselves -- is that fair to say?
- A. Mm-hm.
- Q. Did you notice at any point, anyone or at any time, them not walking under their own power?
- A. No. I mean, just at the end, you know, Liz had to help Jessica to the bathroom; but other than that, I don't think they --
- Q. Have you seen people vomit and then get assisted by friends to the bathroom before?
- A. Yeah.
- Q. I mean, was that the type -- is that consistent with what we're talking about, somebody vomits and gets assistance into the bathroom? My question is: You have seen people get assisted after they vomit. Is the assistance Liz was giving Jess consistent with that, or is it she's stumbling down, falling, and she has to be picked up?
- A. I don't think she had to be picked up. Yeah, it's assistance to the bathroom. She's carrying her weight. You know, Jessica couldn't make it by

herself.

- Q.** She's actually standing there. At first says, "I can't see;" and then she vomits and then Liz helps her to the bathroom?
- A.** Yes.
- Q.** Okay. And you don't recall if you saw them come out of the bathroom or not, but you do recall the conversation with Doug Wacker about getting them home, or getting them to the hotel?
- A.** No, I did not see them make it into the bathroom; and I also didn't see them come out. I just turned around and they were just -- yeah, I didn't see them come in or out of the bathroom.
- Q.** When -- the next time you saw them was when Liz walked -- or the next time you saw one of them was when Liz walked in the room. Did she walk in on her own?
- A.** Yes.
- Q.** When she was pacing around and saying things?
- A.** She walked, she sat. She wasn't really pacing around.
- Q.** Okay. And I'd like you to repeat for me, to the best of your recollection, what you heard -- I think I heard you say "I love you, you're my one and only, I would never cheat on you." What else did you hear her say?
- A.** That's really all I heard.
- Q.** Was she repeating this?
- A.** Yeah. There was a repetition.
- Q.** How many times did she repeat it?
- A.** Maybe once or twice.
- Q.** Describe her tone.
- A.** Describe her tone? She's like --
- Q.** Was it calm? Was it pleading? Was it loud?
- A.** She's crying. Like I said, she's kind of panicked. A little -- I guess a little -- she's crying, she's panicked, she's, like, I wouldn't do this to you kind of -- panicked is really the word I can --

- Q. That's fine. You never hear her say, He took advantage of me, I was not -- did you ever hear her say, He took advantage of me?
- A. No.
- Q. You never hear her say, I couldn't tell what was going on?
- A. No. Not on the phone.
- Q. You do hear her -- she does say to you, or to whoever she's speaking on the phone with, that she said, I couldn't do this?
- A. She says that to me after the -- yeah.
- Q. Okay. Again, I just want to make sure I get this straight: When Liz and Jess come back to the room, you don't recall -- nothing jumps out at you that Liz was trying to help Jess walk?
- A. I don't think so.
- Q. Nothing in the way they walked in jumps out at you?
- A. No.
- Q. It was unmemorable, unremarkable?
- A. They walked in. That wasn't -- no.
- Q. So they open the door and walk in?
- A. Yeah.
- Q. Okay. When Jess walked out of the room to -- and then you had the conversation where she's telling you, I don't want to walk back in there, there's people in there, she walks out on her own?
- A. Yeah. She grabs her phone and walks out.
- Q. Is she stumbling?
- A. I don't remember.
- Q. She just walks out?
- A. Mm-hm.
- Q. You follow her into the hallway of the hotel?
- A. Yes.
- Q. What is she doing? Is she pacing or --
- A. She's standing by the door trying to dial her phone.
- Q. And you stop her from dialing?

A. I stop her from -- I'm not sure how far along she was, but, yeah, I stopped her.

Q. And to the best of your recollection, tell me the type of clothing that you grabbed from her bag.

A. I don't remember who grabbed it, and I just remember her bag looking like black inside of it and -- I can't remember who grabbed it, but I know there wasn't a lot of rummaging. It was just, like, grabbing.

Q. You don't recall? Do you remember what she was wearing when she got up the next day?

A. When she woke up?

Q. Yeah.

A. I assume it was just what she went to bed in.

Q. That's assuming. I'm just trying to figure out what --

A. Yeah. No, I'm sorry. I don't remember.

Q. You don't remember that either?

A. Yeah. I can't remember.

Q. We've heard some reference to pajamas. You can definitely say it was not the traditional pajama pants, the long pajama pants?

A. I mean, it's not pajama pants, no.

Q. Was it pajama shorts? No? That's okay.

A. I don't remember.

Q. When -- do you know who Liz was speaking to on the phone when you heard her make those statements that I referred to earlier?

A. I can guess, but I've never -- I didn't hear her say a name.

Q. Okay. Did you happen to hear anything like, I asked Jess why she had sex and she said no, or she said she didn't have sex? Did you hear anything like that on the phone conversation from Liz to someone else?

A. No.

Q. Okay. How long have you known Captain Wacker?

A. Since law school started.

- Q. I want you to set aside these incidents, these events; okay?
- A. Mm-hm.
- Q. The trip to New Orleans and the investigations, besides these events, have you had any reason to doubt his truthfulness?
- A. Truthfulness? No.
- Q. You've had no reason to doubt his truthfulness?
- A. I don't know.
- Q. And if you have any doubts, it would be because of the inconsistency between the statement your friends, Jess and Liz, are telling you and whatever he may be saying?
- A. I don't know if I ever heard his side.
- Q. Okay. So as you sit here today, do you believe that he's a truthful person, based on your acquaintance with him?
- A. I mean, besides this incident?
- Q. But you don't know what he said in this incident, so --
- A. Yeah, I guess.
- Q. Okay. I don't have any more questions for Ms. Barker.
- I'm sorry. I do have one more correction: On the Lieutenant Callahara statement, I believe you're referred to you as "Baker." He meant "Barker;" right?
- A. My maiden name is Barker, yeah. It's Barker, with an R.
- Q. It is Barker. It says "Baker," but that was a mistake by him; right? So there isn't a Baker?
- A. Yeah. I'm not Baker.
- CC: Okay
- GC (LtCol Sullivan): Follow up.

REDIRECT EXAMINATION

Questions by the government counsel:

- Q. First of all, the last couple of questions about your opinion as to Captain Wacker's character for truthfulness, let's -- do you feel comfortable offering an opinion? Do you think you know the man?
- A. I mean, even though he -- no. No.
- Q. Because earlier you mentioned -- I didn't want to go into it, but I want to ask it now, because I think you had some hesitation with regard to his character question he asked you. You mentioned the term "Creepy Doug"?
- A. Yeah.
- Q. Tell us about that.
- A. Well, there was kind of a, I guess, joke or something that Doug was creepy because of various instances. Do you want me to explain the instances?
- Q. Yeah. Instances of what?
- A. So one time Doug, it was after the first semester of finals, he had a little party at his apartment; and I went there. And as I was leaving, I was leaving with a classmate, and we said, "Bye, Doug." And he was just like fondling this girl's breasts, just kind of out in the open. There was a story that Joe Goreman told us. I guess they were shopping for Halloween costumes, and this hot girl walked by. And Doug said, Did you see that girl? She's hot. And Joe is like, Yeah. And Doug is, like, Why didn't you tell me? And I don't know. Joe thought that was creepy. Those are the two main instances.
- Q. I'm not going to belabor the point, but I mean, if we're going to -- well, let me ask another question, and I neglected to ask this on direct examination. There was a time during the evening on the 3rd of November in New Orleans when you're out where you had a camera; is that correct?
- A. Yes.
- Q. Did Captain Wacker take that camera and take photographs that evening?
- A. Yes.
- Q. All right. And I don't know, have you -- you said in going through the photographs -- they were taken

with your camera; is that correct?

A. Yes.

Q. Some of those photographs depicted Ms. Brooder and Ms. Cook. Have you seen those -- copies of those photos?

A. Yes.

Q. All right. Let me ask: When Captain Wacker -- did he take these photographs in your presence?

A. Yes.

Q. On the evening of the 3rd of April, 2007?

A. Yes.

Q. It was before -- were the photographs taken before you went to the Funky Pirate?

A. I think they were after.

Q. All right. Because some of the photographs depict the hand grenade in the hand and things like that?

A. Yeah.

Q. Did Captain Wacker make any comments, that you recall, when he was taking photographs of either Ms. Cook or Ms. Brooder?

A. Yeah. He would take some and then he'd go over and show Forrest and giggle about it or -- then there was a couple of times he said, like, Oh, I like that one.

Q. Like "that one," referring to what?

A. The picture. Oh, yeah, I like that picture.

Q. And was it -- do you know if it was after he took the photo of one of the girls we just discussed?

A. Yes.

GC (LtCol Sullivan): Just one --

Questions by the government counsel continued:

Q. Do you know -- another question before I sit down is in your statement that Mr. Faraj showed you, you referred to him as "the dirty guy"?

A. Yes.

Q. Do you remember that portion of the question?

- A. Yes.
- Q. To your knowledge, did Ms. Brooder even indicate that she knew that the dirty guy was there?
- A. I can't remember their interaction. I can't remember.
- Q. At the bar, when Ms. Brooder said, "I can't see," was that before she vomited?
- A. Right before. Yeah.
- Q. So she was just standing there in the presence of you all and said, "I can't see"?
- A. Mm-hm.
- Q. When she said that, did you focus on her, when she said that, to see what the problem was?
- A. Well, yeah. I turned and then she just threw up.
- Q. So you didn't get a chance to actually see what she was -- I guess what -- I mean, is she standing there saying "I can't see" because her eyes are just not operating or what?
- A. Oh, I don't know why she said that. I didn't have time to ask her. Was she just --
- GC (LtCol Sullivan): All right. I have no further questions.

RE-CROSS-EXAMINATION

Questions by the defense:

- Q. He just asked a question about the pictures?
- A. Mm-hm.
- Q. Have you seen the pictures he's referring to?
- A. Yeah. They were on my camera.
- Q. How many pictures were taken that night?
- A. I believe there was about -- I can't remember exactly, but maybe, like, four to five of each girl.
- Q. Well, total number of pictures, how many?
- A. And then plus, like, additional ones he took?
- Q. Yeah. Yeah. Not just the girls, all the pictures that were on your camera that night?

A. I really don't know.

Q. Over 20?

A. Maybe 15 to 20. I don't know.

Q. That he took, or total?

A. I think he took, so there's 10 and then -- I think he may have taken, like, around 17 and then maybe I took a couple more.

Q. Okay. And they were random pictures of not just the people, but signs. Who took those?

A. There were pictures of the girls that he took. There's a picture of a dessert that he took. There's a picture of a live sex show that he took. There's a picture of -- I guess they talked about Forrest grabbing me to take a picture of me and him in front of that sign, and Doug took that one.

Q. Okay.

A. And then there were some pictures of, I believe, Doug and maybe Forrest with some drinks. And I can't remember if I took those or if somebody else did.

Q. How do you know, when you said he made a comment about I like this one, how do you know he was referring to a girl?

A. Well, he took a picture, he brought it over -- I mean, they were discussing the pictures as he was taking them. So he took a picture --

Q. With Forrest?

A. Yeah. Yeah. And they looked at it and he said, "Oh, I like that one."

Q. Well, how do you know he was referring to a girl in the picture and not some other picture?

A. I just -- I guess just because it was in the sequence of him taking these pictures.

Q. Okay. So he took a picture --

A. And then he talked about it, yeah.

Q. Then you thought the picture --

A. Yeah.

Q. The dirty guy we're referring to.

- A. Mm-hm.
- Q. Now, you testified when I was asking you, you had no memory of that.
- A. No. I don't remember exactly what they were doing. I remember the guy. I remember they were in close vicinity. I remember that we had to get him away from her. But I don't remember what they were doing. Does that make sense?
- Q. Okay. So as to the question that you were asked about whether she knew he was there or not, what's your testimony?
- A. I think I said I don't remember, because I don't remember.
- Q. Well, you wouldn't know, would you?
- A. If I -- well, I guess --
- Q. You wouldn't know if she knew he was there or not. You don't recall her dancing with him today; right?
- A. Right. Yeah.
- CC: So -- okay. Thank you.

EXAMINATION BY THE INVESTIGATING OFFICER

Questions by the investigating officer:

- Q. I have some questions for you. I apologize. My questions are going to jump around a little bit. I'll try to focus you because I didn't want to interrupt the flow too much. But just the primary reason here with these pictures, did you at any time see any picture that was inappropriate on your camera that Captain Wacker had taken, what you would call an inappropriate picture?
- A. Well, I think so because, like, for example, Liz was sitting on the curve; and she was, like, you know intoxicated, and she wasn't looking at the camera. And he was kind of taking pictures of her, like, a photographer kind of.
- Q. Okay.
- A. And so -- I mean --
- Q. I'm sorry. Go ahead.

A. There was no, like, nudity or anything, if that's what you mean.

Q. You thought it was inappropriate for him to be just picturing his friend in an intoxicated state. Is that what you're getting at?

A. Yes.

Q. Okay. But these were pictures on your camera that, obviously, you would control the distribution of or, you know -- I mean, there's no way for him to get those pictures off there unless you, basically, gave him permission?

A. Right.

Q. Any other pictures that you thought -- were there any pictures of close-up or people's bodies or heads or anything like that, you know?

A. I don't think there was any close-ups.

Q. Okay.

A. I mean, they were close up, but --

Q. Do you have any idea what happened -- you had talked about getting a drink when you went into the jazz club, and you said that -- was it Jessica bought it for you?

A. No. That's Razzoo.

Q. I'm sorry. Razzoo. Jessica bought you the drink and she kind of -- your word was she badgers you or pestered you into getting a drink or a shot?

A. Yeah. I told her I didn't want to drink. I'm not drinking, you know that. She bought it anyway. And then she kept being, like, drink, drink something.

Q. Why weren't you drinking?

A. Because I had gotten sick the night before and I didn't know what it was from, and I didn't want to --

Q. Okay. So you said -- did you take a sip of this drink and you put it down?

A. I didn't drink that at all, the gin and tonic one.

Q. Do you know what happened to that drink?

A. As far as I know, it just sat on the table.

- Q. Do you know that for a fact? Is it possible somebody picked it up and drank it if you never touched it?
- A. I mean, I guess it's possible.
- Q. But you have no recollection of that. Okay. When you noticed them dancing, and I'm talking about Jessica and Captain Wacker dancing, did you believe that was inappropriate?
- A. I mean, it wasn't like inappropriate for the place; but I didn't think that she would do that normally. She was intoxicated.
- Q. Now, that was after the -- we called this -- the dirty guy had been pulled out of the situation; right?
- A. I don't know for sure.
- Q. Okay. Anyway, we have two instances where -- well, that's one instance where people intervened. Any reason why you didn't intervene at that point and help her out if you felt that, you know, that -- or did you feel she was doing that voluntarily?
- A. Yeah, I mean, I guess voluntarily. I didn't -- because I didn't know -- like I said, I didn't think she would do that normally; but I don't know. I guess I didn't feel there was any reason to -- I mean, they were in full sight of everybody, and I didn't see any reason to stop it.
- Q. Now, Liz says she wants to stay. You asked her, you know, I want to leave, it's time for me to go. And Liz says, I want to stay. Was your decision to leave based at all, or was it -- did you leave sooner than you would have because of what you were seeing these girls doing with men you normally wouldn't do?
- A. No, I don't think so. It was just kind of late, and I was just ready to go back.
- Q. And do you remember in the timeline when Jessica vomited, was that before or after?
- A. I said I want to leave, and then I asked Forrest if he would bring us back; and then we walked to the bar to close out his tab, and then she vomited. And so I believe Liz said we want to stay before that happened.

- Q. Before she vomited?
A. Before she vomited.
- Q. But now she's vomited, and Liz is walking her, at least, in the direction of the bathroom. Didn't it occur to you to wait and ask them the question again?
A. I -- it's hard to -- I think that -- I can't remember.
- Q. However, at that point, based on your assessment of both Jessica and Liz, did you -- you know, even despite of what Liz had said to you, did you think they were going to continue partying, continue drinking after you left or --
A. I mean, I guess. There was not much else to do on Bourbon Street.
- Q. Did you think it was possible, after she had thrown up, like, and made the statement about I can't see out my eyes, did you think it was still possible for Jessica to continue partying?
A. I don't know.
- Q. It never occurred to you that that was the end of her night or anything?
A. No because Liz was with her, and even though she was intoxicated, and Doug was going to make sure they got back safely. So to me it was, like, okay, well, they're going to get back safe. So somebody who's responsible is with them. That's all that I -- I just wanted to make sure they got back safe.
- Q. When Jessica makes the statement, I can barely see, do you know where Captain Wacker is when she makes that statement? Do you remember where he was in proximity to her?
A. I think that -- we were all just kind of very close to each other.
- Q. Do you think there was any way he could have heard that statement or didn't hear that statement, based on her tone, based on the music that's going on in the bar?
A. I think that we were all so close together and everybody was discussing the same thing. I think everybody in our group was aware.

Q. Well, the vomiting is one thing, but the same sense of certainty with the statement?

A. I don't know.

Q. You're not sure on that?

A. Yeah. I don't think it was as big a deal as the vomit.

Q. When she vomits -- I'll be honest, if it was me, I would probably laugh. Did it become a joke?

A. I don't think so.

Q. Everybody took it as a serious we got a potential sick person on our hands?

A. I don't think we really did that either.

Q. Just -- okay. And Liz was definitely able, despite -- you described her as being intoxicated, she was still able the help Jessica get in the direction they were going?

A. Yes.

Q. Was this one able person helping an intoxicated person, or was this two intoxicated people escorting each other off?

A. Yeah.

Q. Which one?

A. The latter.

Q. So your description is that two intoxicated --

A. Just one was more than the other.

Q. Okay. Now, when you made the statement about closing up the tab, you said you told Captain Wacker that they, obviously, they can't do it themselves. What did you mean by that?

A. I meant that it was obvious to everybody because they had been drinking all night. Jessica was swaying, you know, and then she just threw up at the bar. In my mind, it was very obvious that they couldn't do it themselves.

Q. And would you characterize yourself as the most sober one in the group at that point?

A. I don't know how much everyone else had been drinking.

- Q. And did you think that based on your observations of Captain Wacker, that he was in agreement with you or he understood that they were that drunk?
- A. Yes.
- Q. Why do you say that?
- A. Because I would not have left them on Bourbon street, like, in that state that they were in without somebody I thought was capable of --
- Q. I understand you came to that assessment. My question is: What makes you believe that, I guess, Captain Wacker wasn't as drunk as they were when you told them that?
- A. Because, well, I looked at him. He was alert. He repeated back what I said. He said he could do it and --
- Q. Would you have let him drive that night, if that was the case?
- A. I mean, I don't know.
- Q. It's possible that you would have? I mean, he was that coherent that you would have actually given him the keys?
- A. I wouldn't have said, No, don't let him drive.
- Q. Would you have let Liz or Jessica drive?
- A. No. Mm-mm.
- Q. Now, at that time of night when you left and you said you had to cross Canal Street, I believe Canal Street is at least a four-lane highway, a road in both directions, with cable car tracks as well?
- A. Yes.
- Q. Is that -- was the traffic such that that would have been an interesting crossing, the better description for a few people intoxicated to get across?
- A. I don't remember there being a lot of cars, and there were traffic signals, obviously. So I don't know -- it wasn't too busy, I don't think, at the time I left.
- Q. Do you remember if there were police out on the corners?
- A. I don't.

- Q. Right now I want to get to the point when Liz comes in the room. What kind of room was that in terms of the door? Was it a traditional key, or were they on the card system?
- A. I think it was card.
- Q. You're not sure?
- A. I cannot remember a hundred percent, but I haven't used a key to get in the door of a hotel room.
- Q. So you presume that it was the key system?
- A. Yeah.
- Q. When you heard her coming in the room, do you recall thinking it's taking her longer than normal to get in? I mean, sometimes, you have to put those things and pull them out, you know, and the handle is a little tough to turn. Do you remember thinking to yourself --
- A. I think when she was getting in, I was still in the process of (unintelligible). I don't think so.
- Q. Okay. Now, I want to jump forward to when she comes back with Jessica. And you said that Jessica gets her phone and then runs out in the hallway. Could you describe in detail what motor function that took for her to be able to do that? I'm sorry to interrupt you, but where was her purse? She had to open it up and then she leaves the room? So could you describe the motor functions she exhibits to pull that off?
- A. Yeah. So she comes in down the hallway. It's not a very long hallway, and her bag, I think, is on the floor or on the night stand or something. So she reaches in to get her phone and just walked back out the door.
- Q. So she knew exactly where her purse was? How did her bag get there?
- A. I don't know. I don't know.
- Q. And then she's able to open the door to go back out in the hallway?
- A. She opens the door. Yeah.
- Q. Would you describe this as a typical hotel room door, where you kind of got to turn the latch a little bit and then give it a good pull to get out

in the hall?

A. I guess. Yeah, I guess.

Q. Okay.

A. I don't remember how much force it took, but, yeah.

Q. Is it possible she had her purse when she came in the room instead of down on the table?

A. It could be. I really don't remember that part. I'm not sure.

Q. Okay. Now, while she's in the room and you're trying to -- you said it took almost a couple of hours to calm her down. It took an enormous amount of ability to dress her up in pajamas, the thought never crossed to call the police or medical people?

A. No.

Q. Any reason why?

A. Because, first of all, I had never been in such a situation; so I didn't know the proper steps to take. And also, I just really trusted Doug and I didn't --

Q. I didn't mean for any type of sexual assault. I just meant based on her drinking and the fact that -- you know, had you ever seen anybody babbling, like you said, looking around and -- you know, it never occurred to you that maybe she needs some medical assistance?

A. I just thought she was really, really drunk and that she would get over it. But then the next morning when she wasn't any different, that's when I told Liz, you know, Can you call the hospital? She needs to go to the hospital.

Q. And -- okay. The next morning you're on the elevator, and you say you see Captain Wacker. Did you go to breakfast in the hotel that morning?

A. Yeah, like, had a little continental.

Q. Did you happen to notice if he went as well?

A. I think so, but I'm not a hundred percent on that.

Q. And you saw him immediately after he left the room. You got in the elevator and he's there?

A. Mm-hm.

- Q. So if he had been -- and he wasn't at the room earlier, you hadn't seen him at that point, that morning; right? In other words, that was the first time you saw him on April 4?
- A. I think so. Yeah.
- Q. Were you there? There has been testimony that he came into the room in a suit the next morning. Were you there?
- A. Yeah. That's what I'm -- something like that is coming to mind, but I don't remember. I just remember going to the elevator and being surprised that he was waiting for the same elevator.
- Q. Okay. All right. So you'd agree with me, then, that if he had been in your room that morning in his suit, that would have been after he was on the elevator with you?
- A. I think so because, like I said, I was surprised to see him.
- Q. Okay. Did you leave your room for a period of time and then come back and then go to the elevator?
- A. No.
- Q. Okay. So I think you follow me logically. I just don't think I'm explaining it well. And you do recall seeing him have breakfast or at least being in the breakfast area, or no?
- A. I don't know.
- Q. You don't know. Okay. Why would you think he was mad at you? Or excuse me. Why would he think you were mad at him? I jumped forward again. I'm sorry. Couple days later you see him at a bar. He comes up to you and asks you, "Are you mad at me?" Why do you think he said that to you?
- A. For everything that happened that night.
- Q. The couple nights before?
- A. Yeah.
- Q. But did you give him any reason that you know of?
- A. I mean, I wasn't speaking to him.
- Q. And how would you characterize your relationship with Liz and Jessica today?
- A. We're still really close. Jessica, I really haven't

talked to her in four months, actually; but I still consider her a friend. Liz and I are really close.

Q. So you said you're really close with Liz and you're still good friends with Jessica?

A. Yes.

IO: That's all the questions I have.

Any redirect, government?

GC (LtCol Sullivan): No, sir

CC: A couple in light of yours.

IO: I'm sorry?

CC: A couple in light of yours.

IO: Okay.

RE-CROSS-EXAMINATION

Questions by the civilian counsel:

Q. On questions by Lieutenant Colonel Sayegh, you said that you thought it was inappropriate for him to take a picture of your friend Liz sitting on the curve intoxicated?

A. Mm-hm.

Q. But do you remember telling me or telling, actually, Lieutenant Colonel Sullivan that she wasn't really intoxicated between the Funky Pirate and Razzoo when they got the hand grenades? Remember that?

A. No.

Q. You said they weren't that intoxicated, and then it was only after the Funky Pirate or after Razzoo or at the end of Razzoo that she seemed to be drunk?

A. No. Liz was intoxicated -- they were both intoxicated at Razzoo. I mean, that's where the dancing and stuff occurred. And, specifically, in that picture where Liz is sitting on the curve, she says, "I'm drunk." She actually says that.

Q. So this was after dinner, though?

- A.** I think that Liz got those drinks on the way from dinner to the Funky Pirate. I think.
- Q.** Okay. So you come back from dinner, you get the drinks, you go to the Funky Pirate. You told me, when I asked you, "Did you get any drinks between the Funky Pirate and Razzoo," and you said no. Remember that?
- A.** I -- yeah. I mean, I don't -- I think that's how it happened, that it was dinner, drink, Funky Pirate, and Razzoo when there was some walking -- and there was some walking down Bourbon Street. I think.
- Q.** Okay. Just to make sure I got this right: When she's having the hand grenade --
- A.** Mm-hm.
- Q.** And I'm referring to Liz.
- A.** Mm-hm.
- Q.** She tells you that she's drunk?
- A.** Yes.
- Q.** Okay. Does that suggest to you that she's intoxicated at that point?
- A.** Yes.
- Q.** Okay. So if you testified earlier that she wasn't drunk, that would be incorrect?
- IO:** I think she actually testified that they were at least buzzed when they left the restaurant.
- GC (LtCol Sullivan):** That's exactly right.
- IO:** I think that's what she testified.
- Questions by the civilian counsel continued:**
- Q.** All right. And I'm going to show you the picture of Liz sitting at the curb. It's part of IE, Exhibit 24. Do you see that picture?
- A.** Yes.
- Q.** And you believe this is an inappropriate picture?
- A.** The series of -- yeah. Yeah.
- Q.** You believe this specific picture is inappropriate?

A. Yes.

CC: Okay. Thank you.

I handed the exhibit back to the IO.

GC (LtCol Sullivan): One moment, Your Honor.

Nothing further, sir.

IO: Okay.

[The witness was warned and excused.]