

Ms. Jessica Brooder, a civilian, was called as a witness by the government, was sworn, and testified as follows:

**DIRECT EXAMINATION**

**Questions by the government:**

Q. Could you please state your full name and spell your last name for the court reporter?

A. Jessica Lee Brooder, and it's B-R-O-O-D-E-R.

Q. And I think if you can just speak clearly and keep your voice up, you won't have to lean into the microphone. I think we'll be all set. Miss Brooder, you were born and raised here in the San Diego area?

A. Yes.

Q. Where did you go to college?

A. Undergrad I went to San Diego State University.

Q. And law school?

A. The University of San Diego and Cal Western and Loyola Law School in Los Angeles.

Q. Okay. I want to direct your attention then to the fall of 2006. Is that when you started law school at the University of San Diego?

A. Yes.

Q. Did you meet Captain Wacker at that point?

A. Yes.

Q. How did you meet Captain Wacker?

A. He was in my section at law school, my small section.

Q. Okay. And could you explain to the investigating Officer when you say section how was your law school class, meaning your class year, broken into for study purposes? What's a section mean?

A. A section -- I believe there was three sections and then an evening section. The day section was divided into -- I think it was three. I've been to different law schools so it might have been 4 of about 90 students in each section. And then the small sections within those 90 students are broken down to groups of about 20 to 25.

Q. When you use the terms small section and group of 20 to

25 students, was Captain Wacker within that small section of 20 to 25 students?

A. Yes.

Q. Because of that -- because of the way the class was broken down for study purposes -- class purposes, did you have core curriculum that first year of the law school students took as part of beginning your legal education?

A. Yes. All of our classes were with those people. I believe we had one class that Doug and I did not have together that first semester, but other than that every single class we had together.

Q. Okay. And what are some of the core classes we're talking about?

A. Property, civil procedure, lawyering [sic] skills, torts was the one I believe we didn't have together, constitutional law, stuff like that.

Q. And is your law school class broken up into two separate semesters; first semester going from late of August 2006 up through the Christmas break, second semester commencing after January 2007 going through May?

A. Yeah.

Q. How would you describe -- first of all then for the investigating officer, what type of relationship did you have with Captain Wacker from August of 2006 when you started your first year through the end of that first-year semester break?

A. We were friends, we were buddies, and it was very, you know, platonic relationship. We would see each other at law school events. We didn't really have much contact outside of school, like we wouldn't call each other or just hang out one-on-one or anything like that.

We would sometimes do study group, rarely, but there was an occasion or two or we would have study group of, you know, 6 to 10 kids where we would study for a particular final or something. We would see each other at lunchtime in groups.

Q. And when you say a particular study group, meaning six or eight kids, those are six or eight fellow students within that 25-person subsection that you talked about?

A. Typically, or the 90 -- the 25 or the 90; normally the 25.

- Q. All right. Now, you mentioned this earlier, did you do anything -- socialize with Captain Wacker during this timeframe when it was just you and he?
- A. I think one time when we were studying at school we left campus to get a burrito once together and came straight back to campus, but that was the only time. Every other time was -- there was other people around.
- Q. All right. And so is it fair to say that from August through that first year of law school class for you, 2006 August through the spring of 2007 -- because I'm going to ask you some particularized questions about April 2007, that you -- this type of relationship that you describe for the investigating officer continued throughout that eight- to nine-month period?
- A. It did -- it was the same exact kind of relationship except in the spring -- the beginning of the spring semester we started to see each other probably less because I was less -- I wouldn't go to as many social events because I was more focused on my school. We had another extra class, and I just didn't feel like I had as much time. So I saw him less the second semester than I did the first semester, but the same nature of the relationship.
- Q. All right. And so if I understand the nature of the relationship, it's a classmate of yours attending law school, attending classes, attending law functions. Is there anything else besides that, any special type of relationship that you developed with Captain Wacker at any time during that first-year?
- A. No.
- Q. All right. Personally, were you involved in a romantic relationship with a Mr. Justin Micklish at that time?
- A. Yeah.
- Q. And just to describe the personal relationship, how long from August of 2006 -- you know, we get into April 2007 -- during that year, how long have you been involved with Justin Micklish?
- A. At that time we had been dating five years, and we had been living together for probably two years.
- Q. Okay. And for the first semester into second semester of '06 and in the spring of '07, you were residing with

Justin --  
A. Yeah.

Q. -- Micklish --  
A. Yeah.

Q. -- for the record?  
A. Micklish.

Q. Micklish, I have a problem. I apologize for not pronouncing his name correctly. During the spring of 2007, did you become aware of the fact that there was an opportunity to participate in providing legal aid to some of the victims of Hurricane Katrina in the New Orleans area?  
A. Mm-hmm.

Q. How did that come about? And you're going to have to vocalize the response.  
A. Yes. I was involved -- my friend Elizabeth Easley and I were involved in the pro bono clinic programs at school throughout fall and spring semester. I did guardianship clinic and AIDS clinic, and she did domestic violence and this was -- we heard about this was another opportunity because at school if you graduate with a certain amount of pro bono hours, you get special recognition at graduation. And in addition to that we just wanted to do it. But we heard about this on campus through the student hurricane network gave a presentation, like, at lunchtime one-day, and we went to it. We thought it would be a neat thing to do over spring break.

Q. And you mentioned Elizabeth Easley is your friend. Was she also in that same section and subsection of your law school class that you've already discussed for the investigating officer?  
A. Yes.

Q. And she is now subsequently married and goes by the name of Elizabeth Cook; is that correct?  
A. Cook. Yes.

Q. Well, I want to ask you some questions, Miss Brooder, then about your trip to New Orleans during the first week of April 2007. First of all, who actually flew down with your law school class to provide -- to go to New Orleans

for that?

A. It was several students. I would say about 20, around 20 students. Some of which I didn't know, but I knew that they were school -- went from the school.

The people I did know from there were Rebecca Barker Abdullah, Elizabeth Easley Cook, Doug Wacker went, my friend Bobby O'Brien, a boy named Forrest Merithew who I just met really there, another Justin Gray who I'd met there that were in our section, and then some other people who I wasn't real familiar with but were in the same class as me.

Q. Now, this trip -- the members you just discussed were first-year law school students, correct?

A. Uh-huh.

Q. In your same class?

A. Mm-hmm.

Q. Part of the total of the 20 that you talked about -- there were some second and third year students from USD that also participated in the trip?

A. Yes. And I believe some of them, the third years I think, were organizing it. So there were no, like, teachers or anything there. There was upper-class students that were sort of administrating the trip.

Q. All right. And did you arrive in New Orleans -- do you recall what hotel you checked into and stayed in?

A. We all stayed in the Royal St. Charles Hotel.

Q. Okay. And is that down near the quarter, the French Quarter area?

A. The French Quarter area, yes.

Q. And when you say, "we all stayed," did that include -- first of all, did Captain Wacker stay at that same hotel?

A. Yes.

Q. Yourself, you stayed in a room. Did you have roommates?

A. Yes.

Q. And who were your roommates at the time?

A. Becky Barker Abdullah and Elizabeth Easley Cook.

Q. Okay. And was that an arrangement to try to save some

- money as a law student while you were down there?
- A.** Yeah, and I think, I mean, we all had to raise money to go down there ourselves, and it just was easier for everyone to bunk up. So I think everyone ended up sharing rooms.
- Q.** So the law school didn't pay for your hotel?
- A.** No.
- Q.** Did the law school pay for your flight?
- A.** No. We just raised money and then it just kind of got rationed out to everybody.
- Q.** Okay. Did you have to contribute some funds from your own --
- A.** I ended up having to pay for a plane ride home; yes.
- Q.** Well, we will get to that. Do you recall what date you arrived in New Orleans?
- A.** It was the 1st of April 2007.
- Q.** Do you know what day of the week that was?
- A.** Sunday.
- Q.** And on the Monday on the 2nd of April 2007, did you participate in providing legal aid to some of the residents of New Orleans?
- A.** Yes.
- Q.** And if you could, just describe briefly what that was that you did and how you interacted?
- A.** I worked -- Becky Barker Abdullah was also in my clinic that I got assigned to. We did Hurricane Katrina FEMA claims and contractor fraud cases because the people were about to get kicked out of their FEMA trailers and we were trying to extend that period of time, stuff like that.
- Q.** And I direct your attention now to the 3rd of April 2007. I believe -- was that a Tuesday?
- A.** Yes.
- Q.** Did you do the same thing that day? Did you also, in the morning and early afternoon, participate in the provisional legal aid?
- A.** Yes, at the same clinic.

Q. Okay. What did you do at the close of the day? As the day ends in the early afternoon of 3 April 2007, could you describe for the investigating officer what you did that early evening?

A. Yeah. Well, Elizabeth Easley and I -- Elizabeth Easley Cook and I were planning on running a marathon in the summer -- that summer, and so we had been -- several weeks beforehand we had been going running regularly trying to get prepared for that. So we decided that that would be something we wanted to do while we were there also.

So that particular late afternoon, early evening, we organized sort of or just asked our fellow, you know, classmates that were around if they would like to go with us. And we all went to a park and went running. And that included Elizabeth Easley Cook and myself, Doug Wacker, Forrest Merithew, Bobby O'Brien, and also another girl that I'm having trouble remembering her name. But that was the group that went --

Q. All right.

A. -- we went running.

Q. Have you heard of Audubon Park --

A. Yes.

Q. -- in New Orleans?

A. Mm-hmm.

Q. Do you know if that was the park that you actually went in the early afternoon of the 3rd of April to work out?

A. Yes, I believe it was.

Q. Okay. Now, were you able to go on your run?

A. We started out -- we went to go start running and the boys in the group kind of split off from us because they were a bit faster, and the girls started running. But pretty quickly after I started running, I started to get real severe cramps in my stomach and tried to kind of run through them a little. I didn't know if it was a stitch. And then it buckled me over where I had to, like, kneel down on the ground. And then I went to the bathroom to see, just because I wasn't feeling well, and I had started my period.

Q. Right. So when you went to the bathroom, you just

checked yourself personally and realized that you were commencing your menstrual cycle?

A. Right.

Q. And what did you do after determining that?

A. Well, the girl -- I told the girls and I just -- I was, like, I can't run anymore; my stomach. I hurt too much, and I am just not feeling well. So they just -- I said, "You can go ahead if you want, and I'll just wait." And they just all waited with me, and we waited for the boys to return from their run. And that's what happened.

Q. All right. Well, do you eventually leave Audubon Park and return to your hotel?

A. Yeah. We went to leave the park after they were done, and we went back to the hotel room. I think on the way we discussed maybe trying to go out to dinner together, this group of us.

And so we went back to the hotel and showered and got dressed. And at this point Becky Barker Abdullah was in our hotel room. She hadn't gone running, and she hadn't gone to the clinic work that day because she was feeling ill. But we asked her to go to dinner, and she said she was feeling okay enough, you know, to go out to dinner with us. We all got - as soon everyone showered and got ready then we went out to go to dinner.

Q. All right. And did you go out in the French Quarter area?

A. Yeah.

Q. Who went out to dinner on the evening of 3 April 2007 with you? Who was part of this group?

A. The same people that went running and then also Becky. So Doug Wacker, Bobby O'Brien, Forrest Merithew, myself, Elizabeth Easley Cook and Becky Barker Abdullah, and that other girl that I'm having trouble remembering.

Q. Okay. Another law school student, a member of USD?

A. Right. Yes.

Q. Was she an Asian-American female?

A. Yes.

Q. Okay. And -- could you then -- when you leave the hotel, what's the first thing you do? Do you go to have a meal?



- A. Yes.
- Q. Where do you go?
- A. I believe the restaurant was called Charters or -- nearby, but we just walked nearby along -- near where the hotel was to try to look in some restaurant windows to see if we saw anything that we liked or wanted to --
- Q. Yeah. In other words, someone hadn't called ahead and selected a restaurant and made a reservation. You were walking in the Quarter and looking for a restaurant that may have appealed to you?
- A. Right. And we walked by, and we looked in a window and happened to see the rest of our group from USD already seated at a dinner table. And so we saw them, and thought that we should go there and join them and have dinner with them.
- Q. All right. And did you do that? Did your group of six to seven join the rest of the USD law school contingent at the table?
- A. Yes.
- Q. So how many people are we talking then were in this restaurant?
- A. At that point it was, you know, 15 to 20. It was almost, if not, the total amount of students that came from USD.
- Q. Okay. And so far on this trip now you arrive on Sunday, worked on Monday, and this is now Tuesday evening?
- A. Right.
- Q. During this 72-hour period that you're in New Orleans, had you had any special or personal interaction with Captain Wacker at all during this time frame?
- A. We had gone as a group -- not personal, one-on-one interaction, the night before we had gone as a group -- because we had to go to an orientation on Monday evening for two hours and we all went to that together. And then after that we went to a little bar where they played, we played, like, different bar games, like, not fooseball but shuffleboard, and stuff like that. And then we all just went home. But that was just a normal interaction I wouldn't -- nothing out of the ordinary from what our relationship had been prior to going to New Orleans.
- Q. And I guess I should ask it that way. That's a better

way to ask it. From August of 2006 when you first meet Captain Wacker up until, we're now in the early evening of 3 April 2007, had you ever had any private conversations with him or he ever indicated to you that he found you to be sexually attractive or he wanted more than a classmate-type relationship with you at USD?

A. No. We were always just friends and friendly, platonically friends.

Q. Prior to 3 April 2007, had you ever indicated to him -- I know I asked if he indicated to you -- had you ever indicated to him that you were interested in any different type of relationship than the classmates at USD type of relationship that you've already discussed for the investigating officer?

A. No, never.

Q. There was one time when there was a Halloween party in October of 2006 at Pacific Beach where an incident occurred during this party in which Captain Wacker actually touched you; is that correct?

A. Yes.

Q. Could you explain to the investigating officer what happened there?

A. Yes. We -- Doug and I were -- before the Halloween party occurred Doug and I and another friend of ours went to go buy Halloween costumes all together as friends. And Doug --

Q. Who was the other friend?

A. This is Joe Gorman, a friend of ours. And Doug and I ended up buying --

Q. And when you say "friend," for the record, Joseph Gorman was also another one of your classmates in his law school class; is that correct?

A. Yes, yes. In this small --

Q. Was he also part of your section?

A. The small section, yes.

Q. Okay. Roger that. So first of all was as a law school function? In other words, did people in your class talk about having a Halloween party in October 2006?

A. You mean the Halloween party, the law school function? Yeah, it was a sponsored event by the law school.

- Q.** Okay. So you go to get --
- A.** -- the costumes. And Doug and I ended up getting, not matching costumes, but the same costume, a girl version and a boy version. Like, we were mad hatters. So when we got to the law school party, there was a kind of costume contest and so we entered it, like, as a -- not a couple. I attended this event with my boyfriend at the time.
- Q.** Well that's what I was going to ask you. At the time you attended the party, did you go with your live-in significant other at the time, Justin Micklish?
- A.** Yes.
- Q.** All right. Did Captain Wacker go to that party separately?
- A.** I think he went alone. I'm not entirely sure if he brought a date.
- Q.** Okay. And what occurred then in October of 2006 at the party?
- A.** At the party? So we went up there -- we just were going up there, and when I say, "couple," I just mean, you know, the pair of us as friends. And our friends and my boyfriend were all in the audience. And we went up to the stage, and they were announcing everybody to go up on the stage. And we were trying to talk and think of something fun to do when they announced our names, and so they announce Jessica Brooder and Doug Wacker. I believe that's how they announced it. So we come up and we twirled around and he, like, pretended to spank my butt a little and that was it.
- Q.** All right. And when that happened, how did you feel about that?
- A.** Well, I went down to -- we left there and, like, we went down to my boyfriend and my friend April Tatan, who's also a member of the law school, and I didn't know he was going to hit me actually, and he had, like, touched me. I thought it was going to be more of just, like, a fake air spanking. And I went down and was, like, I didn't know he was going to, like, hit me, but I just laughed it off, like, it was a big joke and my boyfriend -- nobody cared about it. I thought it was a friendly gesture.
- Q.** Prior to that, had he ever touched you before in any way?

- A. No, not that I recall.
- Q. After that and up through 3 April 2007, had he ever touched you?
- A. No.
- Q. Had he ever brought up the fact at any time after this incident at the Halloween party through April 2007 that he found you attractive or had any sort of nonprofessional, non-law school student interest in you personally?
- A. Not me personally, no.
- Q. On the third -- evening of 3 April 2007 when you're now out to dinner, were you still living with Justin Micklish at the time?
- A. Yes.
- Q. On the 2nd -- the 1st and 2nd of April 2007, while you were participating in provisional legal aid, had you called back and talked to your boyfriend at the time?
- A. Yeah.
- Q. Well, let's get to the evening of the 3rd of April then. When you arrived at the restaurant -- what was the name of the restaurant?
- A. Charters or Charts or something.
- Q. Do you recall what time you got there approximately?
- A. Well, I recall -- it was approximately, I want to say, around 8-ish or so because we had gone to work, got off around 5:00, went running, went back and showered, and all of that, and it was dark, and I remember it being, you know, nearing 8:00 if not after.
- Q. Did you have a meal at the restaurant?
- A. Yeah.
- Q. Can you explain -- walk us through for the investigating officer what you did at the restaurant, what you ate, who you socialized with that type of thing; just set the stage for us.
- A. Okay. We got to the -- we had to join this group of students so they made arrangements for us to grow the table and sit down. And so it was kind of staggered seating. I mostly interacted with Becky and Liz, Elizabeth Easley and Becky Barker. We ordered meals. We

had to wait a long time to get everybody's meals. I know that Bobby O'Brien's meal, for example, didn't come and that we had to wait even longer for that to come.

I don't remember exactly what I ate for dinner. I know that I had a meal because we had gone running and everything like that. We ordered drinks. Liz and I and another girl, I'm not sure which girl, split a bottle of wine that was not -- the waitress was giving us a sort of a deal because it was the last bottle sitting so it was three-quarters of the way full. So we were getting it cheap, but she brought that and the three of us split that.

I didn't really speak with Doug there the whole time. I think he was just at a different part of the table. I did - I ended up purchasing or paying for Doug's meal that evening because he had bought my lunch earlier that day so I was repaying him, but that was the extent of our interaction.

**Q.** How long were you at the restaurant?

**A.** I'm not sure exactly how long we were at the restaurant. We did have, you know, 15 to 20 people that were eating entire meals. I know that it was a -- and we weren't rushing at all. So I would say about -- at least an hour and a half to two hours at the least.

**Q.** And during that time frame, how much did you have to drink?

**A.** Just --

**Q.** What did you drink?

**A.** I drink that - I had two small glasses of wine that came out of that three-quarter bottle of wine that was split between the three girls.

**Q.** Okay. And now, you mentioned Elizabeth Easley Cook; did she drink at the restaurant also?

**A.** Yes, she was one of the girls that split that wine with me.

**Q.** Do you know how many glasses of wine she may have had to the best of your ability?

**A.** To the best of my ability, it was about the same as mine, I believe. It was about, I would assume, it was about two small glasses.

- Q. What about -- you mentioned Becky Barker, now Becky Barker Abdullah. Did she drink while she was at the restaurant?
- A. No, because she was feeling ill that day and didn't -- she wasn't drinking at all. She wasn't feeling well. It was all we could do to get her to come.
- Q. Okay. Did you have any knowledge or observation as to whether Captain Wacker drank while at the restaurant?
- A. No, I didn't see him drink or not drink.
- Q. Okay. So any particular special conversation or interactions with Captain Wacker on this evening while you were at the restaurant?
- A. No. Aside from at the end when I said, "Oh let me pay for your meal because I owe you from lunch."
- Q. Okay. Well, I had neglected to ask that. Where did he buy you lunch? Were you again in a group earlier during the day or -- could you explain that for the investigating officer?
- A. Yeah. We were in a group. I'm not sure if we had even happened to meet everyone for lunch or something or how that really came about, but we were in a big group of people all eating lunch at this famousy [sic] French café there and --
- Q. In New Orleans? Café du Monde, does that ring a bell?
- A. I believe so.
- Q. And this is a lunch hour break from your provisional legal aid services?
- A. Right, with several other students.
- Q. Okay. How was your day broken down? I probably should've asked that too. Were you, like, working from 9:00 to 11:30 or 12:00, and then from 1:00 to 5:00, like, a normal workday?
- A. Yeah. It was a normal workday and everybody would go to lunch, you know.
- Q. Okay. So the lunch where he paid for it, it wasn't just you and he in a particularly personal lunch?
- A. No.
- Q. Do you know if he paid for anybody else's lunch?

- A. No. Not that I know of. I'm not sure.
- Q. Why was he paying for your lunch?
- A. I think I just didn't have cash or was easier or something really, you know, everyday kind of [inaudible], like, you can get me back after. It was just easier in the exchange of money maybe to not break up a bill or something. I'm not sure.
- Q. All right. Well, is it fair to say then, and I know you don't have exact times, but the restaurant that you were talking to us about, you're there from approximately 8:00 at night to about 10 o'clock at night; is that a fair estimate for the investigating officer?
- A. It's fair. It's the best of my ability here.
- Q. What did you do after you finished the meal there at the restaurant? What was the next steps you took that evening on 3 April?
- A. Well, we wanted to go see, like, a jazz performer while -- I know that I -- I mean I can't speak for everyone in the group but Liz and I and Becky had been talking earlier about wanting to go see some jazz performances while we were there. So we were talking about going to do that, and we broke off -- sorry, we broke off from that bigger group that we had joined at dinner.
- Q. Right.
- A. So there were the same people that had gone running and then -- plus Becky now, were alone again.
- Q. Okay. So what we're talking about is instead of the whole dinner group going to find jazz you, once again, came back into your six -- seven person group that included yourself, Becky Barker Abdullah, Elizabeth Easley Cook, Captain Wacker, Forrest -- I can never pronounce --
- A. -- Merithew --
- Q. -- Forrest Merithew; who else? Was Justin Gray a part of that group?
- A. He very well may have been, yes. But it's been a long time.
- Q. Well, after you leave the restaurant, do you actually go to a jazz club with the group of six to seven?
- A. Yes. After we left the restaurant we were on our way to

the jazz club; and then there we saw a drink kiosk, like, where they sold hand grenades or what they're called and some other drinks that I don't remember the name of.

Q. Yeah. So this is like, you know, New York has pretzel carts --

A. A stand alone.

Q. Right. This is a stand alone cart in New Orleans?

A. Yes.

Q. And they sold alcoholic beverages on the street?

A. Right.

Q. And you remember one term being a hand grenade?

A. Yeah.

Q. Did they also sell what was called a hurricane; do you know?

A. Yeah. I am sure they did. That was, like, one of the famous drinks there.

Q. And these are like, in tall glass, maybe like a Slurpee or ice drink --

A. Slushy.

Q. -- with a flavor and alcohol?

A. Uh-huh.

Q. All right. Now, did you get a drink at that cart?

A. Doug actually bought Liz and I a drink there at that cart.

Q. What did he buy?

A. The hand grenades for the three of us.

Q. Did anybody else in that group also get drinks?

A. I'm not sure. I know Becky didn't. I don't know if anybody else did. To my knowledge they did not, but I am not sure.

Q. All right. And walk us through then what occurs. Do you drink the hand grenade?

A. Yes. So we were going to go into the jazz club, but you weren't allowed to bring outside drinks into the establishments. So we just kind of milled around in the street a little.



Q. And this is in the Quarter, correct?

A. Yeah.

Q. So there are people milling about, looking, looking at the architecture, coming in and out. I mean there are multiple -- the French Quarter has multiple venues not only music but bars, restaurants; is that fair to say?

A. Right. And I believe that there was no cars allowed on the streets so we were just -- it was one of those streets that you're not allowed to drive on. And so we were just kind of, you know, outside waiting to go in and drinking the drinks. And at this time I called my boyfriend just to check in with him and say, hey, I am here safe in New Orleans and we're just -- this is what our plan is for the evening, and I'll talk to you later kind of thing.

Q. And that was a call that you put into Justin Micklish?

A. Yes.

Q. Now, who's part of the group that's now milling out in the street, you're drinking, who's part of your group? Who do we have? Has anybody left? Can you explain for the investigating officer who is there now?

A. It's the same group that had gone, you know, the same group that's been around the whole time which is Bobby O'Brien, Doug Wacker, Elizabeth Easley Cook, Becky Barker Abdullah, myself, and then -- I am sorry. I'm having trouble remembering the Asian girl that you referred to and then possibly Justin Gray. I'm not sure.

Q. Okay. Can I have a moment, Your honor? Suzanne Minamizono, does that name ring a bell with regard to the Asian-American girl that was part of your group?

A. Susan rings a bell. As far as last name, I can't be sure.

Q. How would you describe your interaction up to this point of the evening with not only Captain Wacker, but the other boys, Forrest, in the group? Is there anything romantic happening or --

A. No.

Q. -- is this a group of friends from law school that are now out having drinks while you're on a volunteer trip? I'm trying -- if you could explain to the investigating

officer the relationship between these parties, I'd appreciate that.

**A.** Sure. I mean there was nothing romantic going on between anybody to my knowledge, myself included, between anybody, but any of the girls and the boys -- it was just a group of classmates, friends, you know, hanging out and waiting to go see the new things to see in New Orleans together.

**Q.** And is this -- is this the first time where you're actually drinking with Captain Wacker?

**A.** No.

**Q.** All right. So have there been other occasions where -- do you know what the term "bar review" is?

**A.** Yeah.

**Q.** Is that -- is that like a night during the week where the students will pick a bar and your class will go and socialize at the end of the day?

**A.** Yes.

**Q.** Had you been on occasions out to these types of festivities before?

**A.** Yes, to those and then in addition to that, you know, our small group of classmates would put together things at their own houses where we'd have dinner party-type things or, you know -- there is drinking involved usually. Typically -- for some reason law school events, even the school sponsored ones typically have a lot of drinking.

**Q.** You have classes during the day, but once a week, once every couple weeks, there are also social events where you're interacting and getting to know your classmates?

**A.** Yeah or networking-type things or anything.

**Q.** And again, I probably asked this too many times, but I just want to make sure I cover this. Even during those type of social events, bar review, particular classes that we discussed from August of '06 up through 3 April 2007, had there ever been anything and I'm not -- it's not a professional relationship -- but anything untoward or anything personal or romantic that was ever put forward to you by Captain Wacker in any of these events?

**A.** No, never; not once. And typically, you know, I would say a lot of the time my boyfriend would be with me and they would be interacting and --

**Q.** I should've asked that. Did your boyfriend, Justin, actually socially interact with Captain Wacker during some of these events from, you know, the fall semester of 2006 -- in the spring of 2007?

**A.** Yeah. I wouldn't call them friends but -- or anything, but they would speak, you know, and interact with each other and talk about, you know, their -- what's going on or what their, you know, their interests are, like, a regular mingling.

**Q.** From August of '06 through April of '07 how many times, do you think, at some or all these events -- not going into every one of them -- how many times do you think your boyfriend, Justin Micklish, had actually met and spoken to Captain Wacker prior to the evening of 3 April 2007?

**A.** I would say a handful. I don't know specifically, not --

**Q.** Would you say five, more than five, less than five?

**A.** Maybe between five and ten, somewhere in there.

**Q.** And had they gotten along --

**A.** Oh, yeah.

**Q.** I mean was anything untoward, you know, were they -- not collegial is not the right term, but, you know, conduct themselves personally as adult men in conversations?

**A.** Yeah. They seemed to get along as well as anybody, you know, mingling around and anticipating seeing each other sort of on a regular basis at other events later would get along.

**Q.** And the reason why I ask this question is when you related to the investigating officer that as you're outside in the French Quarter you'd finished your meal and you're having the hand grenade, you're drinking, you had a phone call to your then live-in boyfriend Justin Micklish, correct?

**A.** Mm-hmm.

**Q.** Did Captain Wacker say something in the background when he saw that you were on the phone talking to your boyfriend?

**A.** Yeah, he did. We were sort of in a circular type of seating and standing arrangement on the street, this group of us. And Doug was around and knew that I was on

the phone with Justin.

- Q. Why do you say he knew that you were on the phone with Justin?
- A. Because he had called out, like, Hey, Justin or something about Justin on the phone, and I just told -- and Justin was, like, Who is that? And I was, like, Oh, it's Doug. He says hi. And then he said, Tell him hi or something back.
- Q. And did you do that? Did you tell Captain Wacker, hey, Justin says, hi back?
- A. I don't know. I mean -- I might have said, Okay, I'll tell him, because he was kind of -- probably 10 feet away or something.
- Q. All right. Well, as you complete that call and it's now past 10 p.m. in the French Quarter, how long do you think you spent out there prior to entering the jazz club, you know, drinking the hand grenade, people socializing, sitting down at times, that type of thing, how long do you think that took?
- A. I think maybe 20 minutes or so. It wasn't terribly long, but we sat out there, you know, and drank most of the drinks. So I would say 20 to 25 minutes.
- Q. Did you drink your entire hand grenade?
- A. I drank most of it. It was real slushy in the bottom, and I didn't really finish the bottom part of it.
- Q. All right. How about Ms. Cook, Elizabeth Cook? I call her Cook because I know her from her married name, Elizabeth Easley Cook, do you know if she drank the hand grenade in your presence?
- A. I think -- she was -- I was on the phone with Justin, but she was sitting down drinking it. I'm not sure if she drank the entire thing, but she could have.
- Q. What about Captain Wacker? Did he drink his hand grenade in your presence?
- A. I wasn't watching him either as far as how much -- or what he was drinking, but he was drinking it the whole time that we were sitting there just like the rest of us. He drank probably most of it if not all it.
- Q. At some point do you then go into a jazz club?
- A. Yes, right after that.

Q. And what was the name of the club?  
A. The Funky Pirate.

Q. All right. And could you describe for the investigating officer then -- first of all, approximately what time do you think you get to that club?  
A. Well, --

Q. And I know these are approximations so I --  
A. Yeah. I want to say around 11-ish or so.

Q. All right. Who goes into the club?  
A. The same group of people who were standing outside; Becky Barker Abdullah, Elizabeth Easley Cook, Doug Wacker, Bobby O'Brien, Forrest Merithew, myself, Susan, I believe, and perhaps Justin Gray.

Q. And could you walk us through then -- first of all what do you do within the club, what do you drink, how do people interact, and how long do you stay? I mean could you walk us through what --  
A. Sure.

Q. -- happens in the jazz club?  
A. There was a performer there named Big Al who's a very large man.

Q. He's a white male, approximately 400 pounds, correct?  
A. Black male.

Q. He's a black man. I'm sorry, African-American, but he's a very large individual?  
A. -- very large, yeah.

Q. Hence the moniker Big Al?  
A. Right.

Q. Roger.  
A. And so we got in there -- there's tables set up throughout the bar, the jazz club, and so we all just sat at some of the tables as group together. And initially Big Al saw our friend Becky Barker Abdullah who is really quite small in stature and sort of used her as a prop in his show to pass around a bucket of tips because the difference in size between them was really quite funny. And so she was walking around. I took her camera and

started taking pictures of her walking around with the -- kind of like a plastic bottle of money. And then Liz and I ordered a drink while we were sitting there at the table watching and taking pictures.

Q. Now, did you open up a tab?

A. I don't believe so. I think I just paid for one or maybe Liz paid for it. I think -- I'm not sure, but I didn't open a tab.

Q. How would you explain how you were feeling at this point? I guess what I'm trying to ask is: Could you describe what you felt with regard to your level of intoxication to the investigating officer?

A. I felt fine. I mean we were -- I was excited and I thought it was real funny watching Becky walk around, because Becky's kind of a quiet person and so for her to be kind of performing I thought it was real funny. But we were just having a good time and enjoying ourselves, and I felt fine and ready to, you know, be with my friends and do whatever we were all going to do together.

Q. All right. And I had neglected to ask this, but I want to ask this. You had mentioned the onset of your menstrual cycle at the park. Did you -- when you got back to the hotel did you, you know, take a tampon for feminine -- for that; for the onset?

A. Yeah. I had brought some, you know, feminine hygiene products.

Q. Yeah, exactly. So did you have a tampon then as you were --

A. When we went to dinner, yes. Before I went to dinner I had -- when I got showered and ready to go --

Q. Right. And like I said, it's not to embarrass you, --

A. I know.

Q. -- but we're going to discuss that later in your testimony --

A. Okay.

Q. -- and that's the only reason I asked that. All right. So we're at the Funky Pirate. So how long do you think you stayed at the jazz club?

A. We watched his set. I would say Big Al's set and Becky being involved in it made us want to stay probably a

little bit longer. I would say maybe 45 minutes or so.

Q. How many drinks did you have during this 45 minute time frame?

A. I just had a one drink.

Q. And what was it by the way?

A. Like, a vodka tonic, and Liz had a vodka-cranberry, I believe.

Q. And, you know, I mean are these -- can you described just as a standard size drink, 12 ounces? I mean what --

A. It was, like, a little -- I think they're called high ball class sizes. They're pretty -- I wouldn't say they're taller than 4 inches or five -- I don't --

Q. Okay. And for the record the witness made a demonstration with her forefinger and thumb approximating four to five inches. All right. It had ice?

A. Yeah.

Q. Did you have -- was it only one drink during the 45 minute period?

A. I believe so -- there was a waitress that came around with a little, like, a vile shot for, like, a dollar special. I can't remember at this point whether that was at the jazz club or whether that was later on at the dance club. But it was, like, a dollar shot, and everybody got one so --

Q. So did you do a shot?

A. Yeah. Liz and I both did one. I just don't -- that could have been at the jazz club, but I can't --

Q. Now, I understand your testimony is you did a shot, but you are uncertain as to whether it was at the jazz club or the dance club that you went to after the jazz club?

A. Correct.

Q. All right. You say, vile. Are we talking, like, a test tube or --

A. It was a test tube.

Q. Okay. Roger that. All right. And do you know what kind of shot it was?

A. It was like a kamikaze shot. They were just a dollar special. And Liz was a bartender for a long time, and I

told her I don't really do shots. But she was, like, it's a dollar. I know that there is nothing in this. So I was, like, okay.

**Q.** All right. Interactions at the jazz club; is there any particular personal interaction or private interaction at this jazz club when Big Al is doing his set?

**A.** Mm-hmm.

**Q.** Becky Barker brings the can around for tips. Do you have any type of special conversation or unique interaction with Captain Wacker during this time frame?

**A.** Nothing special or unique. Nothing that I can even really -- that's memorable. Just, like, if we talked at all it would've been just a normal interaction, like, oh, this is funny. Look at Becky.

**Q.** All right. How about Liz Cook? How was Liz Cook at this point in the evening with regard to her level of intoxication? Is Liz Cook in your presence functioning? Is she walking?

**A.** Yeah. I mean while we were sitting at the table the whole time we were in there, but she was functioning fine, and she's kind of a calm person. So we were just sitting there laughing at Becky and watching; totally normal, like, she was functioning normally.

**Q.** Okay. And did you have any personal knowledge as to whether Captain Wacker had anything to drink at the jazz club or whether he had any shots?

**A.** I didn't see him drink or not drink again. I wasn't really paying attention to what he was drinking.

**Q.** Well, you said approximately 45 minutes is an approximation you gave us. Eventually, did you leave the jazz club, the Funky Pirate, where Big Al was performing?

**A.** Yes.

**Q.** Did the group leave together?

**A.** Yes.

**Q.** Where was the next place that you went to?

**A.** Well, we went to -- we were again looking around at the different establishments on Bourbon Street and wanted to go also to a dance club while we were there and so -- Becky particularly, I believe. And so we went to this place called Razzoo which was just one -- that happened



to be one of the first dance clubs I think we saw.

Q. Okay. And again, is this in the same general --

A. Yeah.

Q. -- walking area of the French Quarter?

A. Yes.

Q. All right. And could you walk us through then -- first of all, who goes into the dance club and can you discuss what you recall with regard to what occurred there in the dance club?

A. It was the same, again, the same group of people went to the dance club; so Becky Barker Abdullah, Elizabeth Easley Cook, Bobby O'Brien, Doug Wacker, Forrest Merithew, myself, Susan, and Justin Gray, I guess, maybe.

Q. All right. And what do you recall with regard to the dance club?

A. So we go into the dance club, and immediately when we went in there I went to the bar and bought myself and Liz one drink. I believe I opened a tab there. And then I went straight to the dance floor with Becky and just started dancing with Becky. And some of the other girls from our group joined so I'm like -- Susan for example or Liz -- and then after that that's when my memory gets fuzzy, and I just don't really recall anything after that.

Q. All right. And when you say "fuzzy," I mean, what is your last conscious memory of the evening of 3 April 2007? And if it goes after midnight we're getting into the early morning hours of 4 April 2007, could you describe to the investigating officer the last memory, the coherent memory, you have with regard to that -- your conduct during that evening?

A. Just dancing with Becky and the girls out on the dance floor in Razzoo. That's the last memory I have.

Q. Up to this point of the evening, had you had any personal conversation or uniquely personal interaction with Captain Wacker or anything of a sexual nature or relationship was even discussed?

A. No, not at all. I mean we had -- I'm sure some sort of hello interaction while we were all out together, but nothing uniquely personal or different than any other normal conversation or anything.

- Q. What is the next memory you have?
- A. I have, like, a flash of a memory of just seeing Becky's face in our hotel room which I have put together to be in the middle of the night at some time, but I don't recall nothing being said. It's just kind of a picture of Becky's face. Other than that, I just remember from waking up the next morning from then on.
- Q. All right. Well, then after this flash, what is the next conscious memory you have?
- A. Waking up in my hotel room.
- Q. And that would be in the early morning of 4 April 2007?
- A. Yeah.
- Q. Could you describe for the investigating officer what occurs when you wake up? Walk us through that.
- A. Well, I woke up, and I just felt physically real terrible, like, I had been run over by a car or something, like, I -- my body was pulsating sort of, like, I just felt really ill. And then it was only myself and Liz in the room, even though Becky was a roommate of ours, she was not there. And Liz was in the other bed in the room. And I looked over at her, and she kind of looked at me and I was just kind of, like, I don't -- kind of what went on last night. I don't remember, you know, what happened, and she started to --
- Q. Do you know what time it was?
- A. I don't know what time -- I didn't get out of bed that day until I left New Orleans. So I'm not sure -- and within the hotel with the blinds drawn I don't -- I'm not sure what time --
- Q. Did you look at the clock at all or your wristwatch or anything?
- A. It was after Becky had left for work. So I know that it had to be at least, you know --
- Q. On Monday and Tuesday what was the approximate time that you would leave for work?
- A. We would go to work around 8:00, 8:30 so --
- Q. So then based upon that you believe that it was after 8:30-ish because Becky is not in the room?
- A. Right.

- Q. Well do you -- do you have any discussion then -- first of all, how you felt physically, let's talk about that a little bit. Can you describe for the investigating officer, you said your body was pulsating; you used a comment like you had been run over by a car, why do you say that? Why did you use that term?
- A. It was just an out of the ordinary feeling, like, I just felt, like, I couldn't even really get up.
- Q. All right. Now, prior to this, I mean, how old were you on the 3rd of April 2007?
- A. 24.
- Q. Prior to that, you'd gone to college; you'd been going to law school. Had you gone out drinking before?
- A. Yes.
- Q. Had you drank to excess before?
- A. Yes.
- Q. We're talking about the morning after having a headache and things.
- A. Right.
- Q. All right. This feeling in the early morning of 4 April 2007, was that different than you had experienced before on occasions where you had gone out and drank?
- A. Yes. I wouldn't say I felt hung over, like, I wouldn't describe it as hung over. I didn't have, like, that same feeling. I can't -- I felt, like, I was, like, walking through water sort of, like, it wasn't just, like, a headache and a nauseous little or something, like that -- which I typically would say is a hung over feeling. It wasn't like that.
- Q. All right. Now, you've also mentioned that your menstrual cycle had started the evening before?
- A. The day before.
- Q. The day before. The symptoms you're describing, a feeling when you wake up on the morning of the 4th of April 2007, were those the type of symptoms that you generally felt as a result of your menstrual cycle?
- A. No. I don't typically have menstrual, like, you know, problems, like that. I don't have any sort of feeling, you know, ill-feeling -- when I'm -- during my menstrual

cycle.

**Q.** All right. Are there any other symptoms that we haven't discussed? Are there any other factors that you want to describe to the investigating officer with regard to how you felt when you woke up on the morning of the 4th of April?

**A.** I just felt groggy, and that I didn't know -- I was confused, like those kinds of feelings. And I just felt sick, and, like, I couldn't get out of bed.

**Q.** All right. And when you looked at Elizabeth Easley Cook, how did she look? What was her condition?

**A.** She looked kind of the same. She was just laying in bed and just had sort of a look on her face, like, worried, anxiety, kind of confusion as well.

**Q.** Before I move on to the next portion of my exam where I'm going to start asking you about some things, I think we have some photographs. Do you have a copy of the photographs that have been admitted into evidence or will be admitted into evidence? Is this a complete copy?

**GC (Capt Day):** That's a complete copy, and these are in the same order.

**GC (LtCol Sullivan):** Okay. All right. So has the investigating officer received a copy of these yet?

**GC (Capt Day):** No, he hasn't. So there is one for the IO and one for the defense.

**GC (LtCol Sullivan):** Well, the defense counsel I'm sure has them. Do you know what this is going to be marked as? Because it hasn't been entered into evidence as of yet. I'd like Ms. Brooder to be able to walk through the photographs and describe them for the investigating officer.

**IO:** I'm thinking IE 5?

**GC (Capt Day):** Sir, they're already marked as IE 24.

**GC (LtCol Sullivan):** 24? All right. They're going to be IE 24 for the record.

**CC:** Can we actually take a look at the actual exhibit rather

than just a copy?

**GC (LtCol Sullivan):** Sure. Let me --

**CC:** And we'd also request a color copy for us.

**GC (LtCol Sullivan):** Yup, and we'll get that to you over the lunch break.  
Ms. Brooder, how are you doing?

**WIT:** Good.

**GC (LtCol Sullivan):** I had neglected to tell you that if there is any time that you need to have a break or whatever, all you need to do is let us know. And I had also neglected to introduce you to Lieutenant Colonel Sayegh. He is the investigating officer. He is a Marine Judge Advocate and a Lieutenant Colonel. And that is who the investigating officer is today. So I apologize for that.

**IO:** What exhibit number is this? 25?

**GC (LtCol Sullivan):** 24, Sir. Well, now, they have been dropped on the table. I am not so sure if they're in the same order. All right.

Mr. Faraj, do you have any --

**CC:** As you can see I dropped them, and so I'm going to have to put them back in order.

**GC (LtCol Sullivan):** All right. Why don't we take a -- do you mind if we take a five-minute break, sir?

**IO:** Nope. We are in recess.

[The Article 32 investigation recessed at 10:04, on 12 April 2010.]

[The Article 32 investigation was called to order at 10:12, on 12 April 2010.]

**GC (LtCol Sullivan):** Sir, we're back on the record. Ms. Brooder has resumed her seat in the witness stand. All parties present prior to the recess are once again present.

Ms. Brooder, I'll just remind you that you're under oath as we continue in our examination. I want to hand you what has been marked as Investigative Exhibit 24. It's a series of photographs I'd like you to take a look at.

**IO:** Are you giving her the colored pictures?

**Questions by the government continued:**

**Q.** I believe the first photograph was taken on the 1st of April 2007, which was your first day that you arrived. And that's the first photo IE -- exhibit number 24, a group of people at dinner; could you describe for the investigating officer who the individuals are that are depicted within that photograph?

**A.** On the right here, this is Justin Gray. This is me.

**Q.** And then when you say -- you're pointing to the second person in from right, --

**A.** Second person in --

**Q.** -- wearing glasses is yourself?

**A.** Right. The next person, the third person in from the right, is Becky Barker Abdullah. The fourth person in from the right, I'm not sure if that's Susan or another girl Sharon.

**Q.** But it's one of your classmates from the University of San Diego School of Law?

**A.** Yes. Fifth, the next girl in the green top is, I believe, her name is Kristin. She's an upperclassman.

**Q.** All right. For the record now, what that would be is the third person in from the left-hand side of the photograph -- in the color photograph it's a female wearing a green top, blonde-ish hair; what do you believe her name is?

**A.** Kristin.

**Q.** And is she a member of your class?

**A.** No. Well, I mean she goes to USD, but so far as I know, she was not a member of our class but an upperclassman. She was one of the main organizing people of the trip for as far as our school was concerned.

**Q.** To her left, a partial head displayed within the photograph is who?

- A. Elizabeth Easley Cook.
- Q. And who is the male that is on the bottom left-hand corner of the first photograph of IE Exhibit 24?
- A. That's Bobby O'Brien who is a member of our small section.
- Q. All right. Now, let's go to the second photograph, please. All right. There are two females depicted in the second photograph. Who is that?
- A. On the right there is Elizabeth Easley Cook, and on the left is Susan, I believe, or Sharon.
- Q. Now, this photograph, I believe, is taken on the afternoon of the 3rd of April 2007. Is this the park that you had been discussing where people went to work out and run after completing their legal aid day?
- A. Yes.
- Q. Can we go to the third photograph, please? All right. In the third photograph can you describe who --
- A. We're still at the park here. I'm not sure if we're -- I think we're finishing or we were waiting for the boys to come back, but this is, on the very right, is Elizabeth Easley Cook, myself is in the middle, and then I believe Susan is on the left.
- Q. And did Becky Barker, now Becky Barker Abdullah, did she have a camera that she brought along on the trip?
- A. Yes, she did.
- Q. Is she the individual taking the photographs?
- A. She --
- Q. Was she here at the --
- A. I don't believe -- she might be. I don't remember her being there, no.
- Q. Do you know who took the photographs?
- A. I don't recall.
- Q. Okay. Let's go to the fourth. All right. This is the fourth picture, IE -- Exhibit 24. It appears -- the lighting within the photograph itself appears to be a little bit dimmer, circle of individuals within the park, can you describe -- again, on the left, in the black shorts and a white top with red; is that Elizabeth Easley

Cook?

A. Yes.

Q. To her left, is that Captain Wacker?

A. Yes.

Q. There's an individual in green shorts in the middle, number 10, and top off; do you know who that is?

A. Forrest Merithew, I believe.

Q. Do you know who is to his right?

A. That's Bobby O'Brien.

Q. Okay. And then is that you wearing a white top and black running bottoms?

A. Yeah. I believe it's a grey top, but yes.

Q. All right. Can we go to the next photograph, please? And I'm just doing this so we just make a record for the investigating officer. Here we have Elizabeth Easley Cook on the left, Captain Wacker -- as you go from left to right, Elizabeth -- Ms. Cook, Captain Wacker, who's the third individual?

A. Forrest Merithew.

Q. Who's the fourth individual?

A. Bobby O'Brien.

Q. And you're the fifth individual?

A. Mm-hmm.

Q. And then the Asian-American, Susan, your classmate. All -- everybody in this photograph, are they all classmates at USD?

A. Yes.

Q. Are you all within the same section?

A. Not the same section. Bobby, myself, Doug, and Liz are in the same small section. Forrest and Susan, I don't believe were even in our big section, but the same class.

Q. Okay. In this photograph here, is anybody within the photograph itself romantically involved?

A. Not to my knowledge at all.

Q. So everybody here are classmates on this trip for legal aid; not romantically interrelated at all?



A. Correct.

Q. Next photograph, please?

A. This is a picture on the left of Forrest Merithew, and then Doug is on the right.

Q. And that's Captain Wacker. Now, was this taken on the evening of 3 April 2007? You've testified you went out, and was this a photograph that was taken that evening?

A. Yes. I believe so, to the best of my knowledge. It looks like it.

Q. Okay. And you said Becky Barker accompanied you on that night. And did she have a camera?

A. She had a camera the whole time. She's notorious for always having a camera.

Q. Okay. Can we go to the next photograph, please? And like I said, I'm doing this just so we have a record for the investigating officer so he'll -- now, sitting on the sidewalk here depicted in this photograph; who is that?

A. That's Elizabeth Easley Cook.

Q. And what does she have in her hand?

A. That's the hand grenade that Doug had purchased for us.

Q. Okay. So that is the drink from the cart that you discussed earlier in your testimony?

A. Yes.

Q. All right. Could you now go to the next photograph in order?

A. Yes.

Q. All right. That is an individual wearing, like, a black sweater top, jeans, purse on the left-hand side with her back to the camera; who is that?

A. That's me.

Q. And what is that in your right hand?

A. In my right hand?

Q. Well, on the right side of your head. Your hand is up; what is that?

A. My phone.

Q. In your left hand -- to the left, excuse me, to the left

side of your head it looks, like, a green glass; is that a hand grenade?

A. Yes.

Q. All right. Are you calling Justin Micklish at this time?

A. Right, yes.

Q. All right. Do you know who took this photograph of your back while you were calling your boyfriend?

A. It's my understanding that Doug took them -- took it.

Q. How do you have that understanding?

A. Becky told me, and it was Becky's camera. And that's what she said. She said Doug had her camera.

Q. Okay. Let's go to the next photograph, please. All right. Could you describe who was depicted in this photograph?

A. That's me again.

Q. All right. Is that the phone?

A. I'm still on the phone with my boyfriend.

Q. Okay. So is it -- so you believe this photograph here that we're discussing, is taken sequentially while you're still on the same phone call with Justin Micklish?

A. Yes.

Q. All right. How many times did you call him that evening while you were out?

A. I think just that one particular instance.

Q. And I only asked that because I was wondering if this was --

A. -- a separate time.

Q. -- did Captain Wacker take two separate photographs of you while you were on the phone?

A. No, just the one, the one time.

Q. There is a woman who appears to be in the background of the photo against the wall there. Do you know who that is? Is that someone --

A. That looks like Susan.

Q. Okay. Another student from -- that was part of your group?

A. Right.

Q. All right. Can you go --

A. -- or Sharon. I'm sorry, I do not know the name.

Q. Okay. Again, now, in this photograph, again, you are on the phone. You have a green glass in your left-hand, correct?

A. Yes.

Q. To the left now is a female wearing a pinkish top, blue jeans, sneakers, and I know the investigating officer has a black-and-white copy, but to the far left in the photograph; who is that?

A. That's Becky Barker.

Q. And is she actually shorter than you are?

A. Yeah. She's only about 5'1" or something.

Q. Okay. And that's what you were referring to when you said that Big Al kind of selected her because she was small in stature?

A. Right.

Q. To her right in the photograph, in the color photograph, he's wearing a red top, khaki tight pants, and he's in a sitting position; who is that?

A. That's Bobby O'Brien.

Q. All right. And does he have a green glass in his hand?

A. Yes.

Q. And is that the green glass that was sold at the kiosk that you just discussed earlier with regard to hand grenades?

A. Yes.

Q. To your right, also sitting down on the ground on the step, who is that in the photograph?

A. That's Forrest Merithew.

Q. Okay. And he's wearing, for the record, flip-flops, blue jeans, and what appears to be a dark short-sleeved top?

A. Uh-huh.

Q. All right. Next photograph, please. All right. And who is in this photograph?

- A. This is Doug Wacker.
- Q. Captain Wacker, and he's wearing, excuse me, he's got also the green glass in his hand. Do you know if that's glass or plastic by the way?
- A. They're plastic, I believe.
- Q. All right. The bottom portion of that, is it shaped in like a -- was it physically constructed to simulate a hand grenade?
- A. It looks as though it is, yes.
- Q. All right. And he's pointing to a sign that says --
- A. "Hand grenade, New Orleans' most powerful drink."
- Q. Okay. Could you go to the next photograph, please. And within this photograph itself, it's a photograph of your facial features on the right-hand side of the photograph?
- A. Uh-huh.
- Q. To the left is the shoulder area of an adult male. And we recognize from the previous photograph that's the shirt that Captain Wacker was wearing?
- A. Yes.
- Q. Do you know where this was taken?
- A. This looks like it's at the jazz club.
- Q. Okay. And that was called The Funky Pirate?
- A. Yes.
- Q. All right. And as we go to the next photograph in order, there is a large African-American male behind the microphone with a diminutive female in a pink top, and that's Becky Baxter (sic), now Abdullah, as you discussed and Big Al?
- A. Right.
- Q. And that's at the jazz club?
- A. Correct.
- Q. Now, we'll go to the next photograph in order. Is that Becky Baxter's (sic) facial shots --
- A. Barker.
- Q. Excuse me, Becky Barker to the left and Elizabeth Easley Cook to the right?

A. Yes.

Q. Do you know where that was taken?

A. I can't tell from this photo. Just there's not enough to go off of really.

Q. Okay. The next photograph has Becky Barker to the left holding up a container with money in it. Was that the tip jar that Big Al asked her to carry around?

A. Yes.

Q. To the bottom right-hand portion is an adult male blue shirt, dark hair, do you know that is?

A. I can't really tell, but I recognized him from this shot. It's not someone that's --

Q. Is that someone who was with your group?

A. Possibly, but I don't think so.

Q. Okay. All right. And like I said, I'm just going through here so the investigation officer will have a record when he reads the transcript. All right. Do you know who took -- in this photograph here, it appears to be Becky Barker is being carried?

A. Mm-hmm.

Q. All right.

A. By Forrest.

Q. All right. What's Forrest's last name?

A. Merithew.

Q. And he is part of your law school class?

A. Correct.

Q. All right. Do you know who took that photograph?

A. It could have been any of us. I don't know.

Q. Okay. Next photograph, please. Do you know who took that photograph, the Unisex Club, World Famous Love Acts?

A. I wouldn't know; no.

Q. Did you take that photograph?

A. No.

Q. All right. I will retrieve --

**IO:** Can we get those marked alpha through whatever respectively when you turn them in so they will remain --

**GC (LtCol Sullivan):** Absolutely. We will individually mark them alpha through --

**IO:** All under IE Exhibit 24.

**GC (LtCol Sullivan):** Yes, sir.

**Questions by the government continued:**

**Q.** All right. Thanks for identifying these photographs, Ms. Brooder. I want to now continue. Before the break there was a portion of the examination where it was the early morning hours of 4 April 2007. You were describing how you felt for the investigating officer, and I think I asked you to describe what do you see with regard to Liz Cook. Could you describe how she looks? Does she say anything? What is she doing first of all?

**A.** She looked like she had a bad evening, you know, she didn't look well. She just had a worried look on her face.

**Q.** Why do you say worried?

**A.** Just, like, she didn't look -- she was just kind of staring at me wide-eyed, I guess is why I say that.

**Q.** All right. Who was the first person that spoke? Did you speak to her or did she speak to you?

**A.** I believe -- I'm not sure. There was a powery [sic] feeling probably -- I think involved in -- I'm not sure from whom to whom. I think she might've asked me how I was feeling. I asked her what happened. I'm not sure if there was a good morning salutation there first.

**Q.** All right. When you asked her what happened, what did she say?

**A.** She was, like, she told me she couldn't really remember anything. She had these flashes of memory and described -- I told her I don't remember anything, like, what happened -- so far as I know we went to the dance club and went to bed because I don't remember anything beyond dancing with Becky and the girls at the dance club. And she said that she had some memories beyond that, like, flashes of memory and she described those to me.

Q. What did she describe for the record? What did she say?  
A. She said that she remembered pulling my hair back in the bar at the dance club bathroom and that I was throwing up. And she was like stroking my hair there or something. And then she said that she also remembered a flash of being in a hotel room with Doug straddling her. And she had another flash where she saw -- she was on one bed, and I was on the other bed in the hotel room. There was two beds. She saw me laying in the other bed on my back with a bra on. And Doug was lowering himself on top of me with just a sheet covering him but that he was naked.

And then -- and then she said that she left. She saw that and she ran out of the hotel room and called her boyfriend because she didn't know where she was. It looked like our hotel room, but it wasn't our hotel room. And she was really confused, and she didn't know what to do. And she called her boyfriend, and somehow he managed to figure out with her that she was in her hotel on a different floor; got down to our hotel room which was three floors lower; went into our hotel room which is where Becky was sleeping.

Q. Now, is this what Liz Cook is telling you, on the morning of 4 April; she's telling you these things. This is what I remember?

A. Yes. She was saying those are the flashes of what she remembered.

Q. What did you say when she told you she had a flash of Captain Wacker, with you on the bed, with Captain Wacker lowering himself onto you?

A. I was shocked and terribly upset and had no idea how that even occurred. And I just didn't know what to say. Like I didn't believe it sort of, and just was upset by it, but waited to hear what else she had to say.

Q. Okay. And when you say upset, could you describe for the investigating officer, what -- are you --

A. -- I was hysterical; crying.

Q. Okay. That's what I mean. So you started to break down and cry?

A. Yes. Sobbing and, you know, clutching a pillow in front of me. Aside from feeling physically ill, on top of that I was crying hysterically.

- Q. Did you ask Ms. Cook how that could've happened? Were you asking her -- when she was giving you these flashes of memory, did you just listen or did you interject and ask any questions?
- A. No. I was, like, I do not remember -- I told her the last thing I remembered was being at the dance club dancing with Becky, and I was confused. But she at the same time was confused. She didn't know how that happened either. She didn't know how we got to that hotel room. She didn't know how we got to a room that wasn't our hotel room. She didn't understand what the stuff was either. She just had these flashes. They weren't pieced together with other sequential events.
- Q. Okay. What else happened in your discussion with Mrs. Cook on the morning of 4 April? Walk us through -- to the best of your ability, go ahead and explain to the investigating officer what happened next.
- A. Well, we just -- I was, like, not I was like, but-- she discussed how -- the last thing I said was the flash of her leaving going down to find Becky. So she went down to find Becky, and Becky was like where is Jess to Liz, is what Liz told -- and Becky said or Liz said that she's up with Doug in the other hotel room naked or something or I'm not sure what they said. So Becky at this point tells Liz to go back up and get me. And then Liz came back to the hotel room to get me from the room with Doug.
- Q. And so on the morning of the 4th of April did Liz tell you what she found when she came back to the hotel room and found you and Captain Wacker in the room that Captain Wacker was also in?
- A. Yes.
- Q. What did she say?
- A. She said that she had been knocking on the door and trying for a while and Doug didn't come to the door. And then after a little while passed Doug came to the door in boxers, and she opened the door and just kind of came in. I'm not sure the exchange that went on between them. And I was completely naked laying on one of the beds in the room.
- Q. Did Ms. Cook describe your level of consciousness when she came back into that room on the second occasion we're discussing? When she's talking to you on the morning of



the 4th of April, does she say what you were like when she came back in the room?

A. She said that I just didn't -- I couldn't dress -- she said, come on Jess. Let's go. And I was not really reacting to what she was saying. I was just kind of, like, I wasn't there really. And she said she had to dress me because I couldn't dress myself. And she couldn't find my underwear anywhere, and that she tried to put my pants on but she had put them on backwards. And then she said that Doug laughed at that, and then we left the room together. She said I wasn't really reacting normally to a situation where I'm naked in a room, you know, and she's seeing me naked.

Q. When she's telling you these things in your hotel room on the morning of 4 April 2007, do you have any memory of any of this?

A. None; absolutely none.

Q. What else did Ms. Cook then tell you?

A. She told me that she took me back down to the room with Becky or that we ended up getting back down to the room with Becky somehow, and then I think -- at this point I think Liz -- it got established that I couldn't -- I didn't know what was going on. They were trying to tell me that, you know, you were naked in a room with Doug, and I just wasn't -- I was like what are you talking about? I don't know what you are saying. I know I wasn't. And at this point I think that Becky -- I think Liz left the room again to go maybe talk to Doug. I'm not sure. She didn't really mention that at this time.

Q. What else, if anything, does she say then on the morning of the 4th of April when she's telling you what had occurred, that timeframe that were discussing? Does she say anything else to you?

A. Well, she thinks that Doug and I had sex is what she told me what she thought from those interactions.

Q. And exactly what did she say?

A. She says, you know, I left there and you were -- I left you, and you had a bra on and you were laying there and Doug was lowering himself on top of you at right, like, sex was about to occur. And when she came back to the room to get me, I was completely naked; and the only thing she could draw from that was that we had sex.

- Q. What did you say to that?
- A. I was devastated by that. I believed her, you know, what she was saying, but I couldn't believe it if you know what I mean. Like, I believed what she was telling me, but I was so overwhelmed at that that I just said, "I have to call Justin, my boyfriend, and tell him what happened."
- Q. All these things, all of these facts, that you've related to the investigating officer that Ms. Cook tells you in that hotel room, in your hotel room, on the morning of the 4th of April 2010, did you have any memory of any of that?
- A. No.
- Q. After she made the final comments, did you call Justin Micklish?
- A. Yes.
- Q. First of all, why did you call him?
- A. Because I -- because we had been together for five years and, like, I was just -- I had to call him and tell him what happened. Like, I didn't know what happened, and I just felt, like, compelled to let him know what was going on. I was scared, and he was the person that I go to when I'm scared. And I just kind of needed him right then.
- Q. And what was your emotional state when you made this call? Can you describe for the investigating officer, you know, what is your state at this time? After Ms. Cook is telling you these things, you know, what was your emotions?
- A. I was just very upset. I was crying hysterically and sobbing. I didn't know what had happened, and that was the scariest part of it was I didn't know. And I couldn't for the life of me, remember what happened. Even being given some sort of, like, from a reliable source of Liz someone telling me some things didn't trigger anything for me. And that frightened me and then -- So I was frightened. And I called him, and I just was real scared.
- Q. And prior to that, I know I've asked this, had you ever had any, you know, sexual, slash, romantic interaction with Wacker at all?
- A. No.

- Q.** Now, we're talking - I've asked a lot of questions about what Ms. Cook told you on the morning of 4th of April. But I haven't asked what is her state? I mean when she's telling you these things, is she indicating to you that she has a clear, chronological memory?
- A.** No.
- Q.** That's what I -- and I wanted to follow up on that. When she's telling you this is what I remember, what is she saying about her own memory, her own state?
- A.** That she -- the splashes are more like, she finds herself -- doesn't -- in this one position of say, Doug being straddled over her. She doesn't know how she got there, why she's there, what room she's in, like, or anything. She's just kind of -- there are these pictures or images intermittently throughout the evening that she can gather from what went on; but she doesn't recall how we got anywhere, how that occurred.
- Q.** And I neglected earlier to ask you about Ms. Cook and her -- whether she was also in a committed relationship at this point. Did you have knowledge as to whether Ms. Cook was in a relationship?
- A.** Yeah. It was a long-distance relationship because she had moved from Arizona to San Diego, but they had been dating for a while before she went to law school. And they continued to date. I think it had been about two years or so.
- Q.** And his name is Donald Cook?
- A.** Yes.
- Q.** And she subsequently married Donald, correct?
- A.** Yes.
- Q.** And now they have two children?
- A.** Yes.
- Q.** August of '06 through 4 April 2007, I asked a lot of questions about you and Captain Wacker. Different question about Ms. Cook: Had you ever seen or heard anything with regard to whether Ms. Cook had ever had any personal, private, --
- A.** None.
- Q.** -- romantic, slash, sexual interaction or even attraction

- with Captain Wacker?
- A.** No, and we were real good friends.
- Q.** Liz was one of your friends if I understood your earlier testimony throughout the first year; is that correct?
- A.** Yes.
- Q.** And you understand, I mean know you're soon to graduate from law school. You're a college graduate. I'm asking these questions because I'm trying to understand. Prior to this morning of 4 April 2007, for the investigating officer's consideration, is there any personal, private relationship that you ever had with Captain Wacker?
- A.** No.
- Q.** And the same thing with Ms. Cook, at least to your knowledge?
- A.** Right.
- Q.** Ever?
- A.** No.
- Q.** While you call Justin Micklish then on 4 April from --
- A.** Uh-huh.
- Q.** -- do you call him from your hotel room?
- A.** From my cell phone in the hotel room, yes.
- Q.** Okay. And what do you say to him?
- A.** I said I have to tell you something. I don't know what happened. I -- we went out last night. When I called him, I reminded him of when I called him the night before when we were out, and between that time and this morning something happened. I don't know what because I don't remember. And I told him what I remembered which was the -- being dancing at the dance club. And then I told him that I think I had sexual intercourse with Doug.
- Q.** Why did you tell him that? Did you have any memory of that whatsoever?
- A.** No. It was just from what I thought happened from what Liz had told me from the flashes she remembered.
- Q.** All right. And so do you know what time in the morning you made this phone call to Justin Micklish?
- A.** I don't know the time because I'm not even sure what time we woke up, but it was after, you know, when Becky left

again. I'm just not sure what time it was at.

**Q.** When you make this phone call to Justin and tell him that, you had still not had any discussions with Captain Wacker on the morning of 4 April, had you?

**A.** No.

**Q.** So you have still not even talked to him about what happened --

**A.** Right.

**Q.** -- last night. I want to know. So you're making a call to Justin assuming something occurred because of what Liz Cook told you about the flashes of a memory she had?

**A.** Right.

**Q.** After that phone call that you made to Justin Micklish, did you have the opportunity to actually sit down and talk to Captain Wacker and ask him what the heck happened?

**A.** Yes, because during the phone call with Justin he asked - - he wanted Doug's phone number because he - like, we'd said before they had seen each other socially. He knew who he was and everything like that. He told me to tell him hi the night before. So he wanted Doug's phone number because he was real angry, and I gave it to him.

And during the time I was on the phone with Justin, Doug had called my cell phone, and I hadn't picked up obviously because I was on the phone with Justin. So after I got off the phone with Justin, I called Doug's -- I called Doug back to tell him -- I told him I was crying hysterically again, and I said, you know, I talked to Justin. I gave him your phone number. I don't know what happened; it was real teary. I don't even know if it was comprehensible to Doug. It was just a very hysterically, crying conversation.

**Q.** Okay. Well, are you aware that Captain Wacker actually - - that he didn't answer the phone -- that went to his voicemail, correct?

**A.** Right. Yes, it was a voicemail message.

**Q.** And he saved that voicemail and has provided that in discovery; and we played that voicemail for you on a computer. I think it was Sunday afternoon -- Friday afternoon here at Miramar, correct?

**A.** Right.

**Q.** That's going to be introduced as an exhibit to the investigating officer so he can hear your voicemail. But the voicemail we're going to introduce into evidence for the investigating officer, I just want to confirm. You listened to it. That was the voicemail that you left on Captain Wacker's phone in the morning of 4 April 2007; is that correct?

**A.** Yes.

**Q.** And that's -- it's going to be marked, and it's on a CD that we're going to provide for the investigating officer as evidence. And after your testimony, during your lunch break, I'll make sure I know exactly what exhibit it is so I can ensure that I put that on the record.

**IO:** Is there any chance we can hear it now?

**GC (LtCol Sullivan):** Do we have the technology to do that?

**CC:** I have it now.

**DC:** We can do it right now.

**IO:** This is going to be marked as --

**DC:** Our transcript of that is at "A" of the defense exhibits, sir.

**IO:** Okay. We haven't gotten to those yet, but thank you.

**GC (Capt Day):** I think that we have the whole disk marked as a single exhibit with the USD transcript which is 18. So it's on the same disc with the audio recording.

**GC (LtCol Sullivan):** Do you have a stand alone computer we can play that on?

**CC:** I can play it if you like.

**GC (LtCol Sullivan):** Do you know how to get it on?

**CC:** I already have it ready to go.

**GC (LtCol Sullivan):** Go ahead and play it, please.

**IO:** Go ahead.

**GC (LtCol Sullivan):** And Ms. Brooder, just go ahead and listen. I think it's going to be the same phone call that you listened to prior.

[A voicemail message was played during the open session of the Article 32 investigation.]

**Questions by the government continued:**

**Q.** Now you just heard that in court. That's your voice message that you left on the morning of 4 April 2007; is that correct?

**A.** Yes.

**IO:** I'm going to ask for a second -- for the record that was probably too inaudible for the court reporter to get. Mr. Faraj, do you mind -- does that computer come up here? Can I hear it again up here, really quick?

**CC:** Sure.

**IO:** I know it's only a minute, and I know it's interrupting the trial counsel; but I want to hear it again. I was unable to pick up a lot of that.

**DC:** And for the court reporter's benefit, I mean, he can follow along in "A" and see the transcript.

**IO:** Okay.

**GC (LtCol Sullivan):** Well, what are you going to do -- you've heard it; I heard it. Why don't we just -- we don't have to worry about the speakers. If you bring the computer up there --

**IO:** If you don't mind, I just want to hear it again.

**GC (LtCol Sullivan):** The investigating officer just wants to hear it. We've got a transcript. We're going to have a copy of it attached to the record.

**CC:** That's the wrong one.

[The voicemail message was played for the investigating officer.]

**Questions by the government continued:**

Q. Now, Ms. Brooder, that was the phone message you left on 4 April 2007?

A. Yes.

Q. All right. Had Captain Wacker also been texting you?

A. Yes.

Q. Did you note that there had been text messages that had appeared on your phone when you looked at them?

A. I just saw them, yeah, that morning.

Q. After that phone call - after that phone message, did Captain Wacker call you back?

A. I believe he just came straight to our room. He may have called to say he was coming first, but I don't recall that.

Q. All right. And when you say to your room, you're talking about the hotel room that you'd been staying in with --

A. Becky and Liz.

Q. -- Becky Barker Abdullah and Liz Cook, right?

A. Right.

Q. Does Captain Wacker actually come to that hotel room on the morning of 4 April 2007?

A. Yes.

Q. All right. Could you explain to the investigating officer, first of all, who was present when he arrived?

A. Just Liz and myself because Becky had reported to her clinic that I was supposed to be at with her. But I obviously didn't go.

Q. And Liz didn't go?

A. Correct.

Q. What happens when Captain Wacker gets to the hotel room?

A. I open the door crying and upset, and I got out of bed, went to open the door, and turned immediately around and went back and sat on the bed crying. And Doug came in and just kind of leaned up against the opposite the wall or opposite the beds.



Q. All right. What was he wearing?

A. He was dressed for his clinic duties; so a suit or, you know, formally dressed for his clinic.

Q. Does he say anything? Could you describe for the investigating officer the conversation that now ensues. And if I understand correctly, is this the first time in which you actually speak directly to him about what had just occurred?

A. Yes.

Q. Explain to the investigating officer then what -- in the morning of 4 April 2007, the conversation that you have with Captain Wacker.

A. Liz and I were in the separate beds, huddled in the beds and crying. We were very upset, and he leaned against the wall; and I told him, Doug what happened? We don't know what happened. I don't remember anything that happened. And he was like, okay. Calmly, he was, like, going to walk us through the things that had happened that evening.

Q. Okay. Well, first of all, did Ms. Cook say anything in your presence before Captain Wacker starts to walk you through what happened? Does she say anything?

A. Not that I recall.

Q. What was Captain Wacker -- first of all, were you crying in his presence?

A. Yes.

Q. Does he say anything to you about the fact that you were crying?

A. He just looked -- not really. He just kind of walked in and looked, you know, nervous and just sat up against the back wall.

Q. Well, when you said that you don't recall what happened last night, what exactly did you say to him I guess is the better way to ask that question?

A. I said, I don't remember anything that happened, and you need to tell me what happened.

Q. What did he say in response to that?

A. He said, okay, we were at -- he started to go through the events of the evening.

- Q.** Okay. Could you please explain to the investigating officer exactly what he said?
- A.** Yes. He said we were at the dance club dancing, and I said, I remember that. I was with Becky on the dance floor dancing. I remember, you know, that. And he was like, okay. And he was, like, you started out dancing fine, and then that I lost my balance dancing. And I started to not be able to be coordinated dancing and was losing balance. Then he said that I threw up at the bar. And when Liz took me to go throw up in the restroom, Becky had asked him to make sure that he got us home safely and he agreed to. And so Becky and the rest of the group that was still there left. And then he said that when Liz and I returned from the bathroom, that we went to go leave and were on our way walking back to the hotel. And he said Liz was having trouble walking and couldn't balance either walking, and that we stopped at a daiquiri bar.
- Q.** Did he say anything to you -- first of all, during this portion of the narrative, this is Captain Wacker in your hotel room, in a suit and tie, telling you what happened?
- A.** Correct.
- Q.** Correct, if I understand correctly. So far up to this point, did you interject and ask him any questions or are you just -- is he -- is this like a continuous --
- A.** Not yet; I hadn't asked him any questions. I was just crying, listening for right now. Because at this point I didn't hear anything, you know, aside from throwing up --
- Q.** I'm just trying to make sure that we have a record of whether you asked him any questions or not. That's why I asked that. Now, what did he say about Liz Cook and her problems walking? What exactly did he say?
- A.** He said that she was having trouble walking from the -- when we left the dance club.
- Q.** Did he say anything about your motor coordination, whether you had any problems walking?
- A.** He mentioned that dancing or that I was -- lost my balance and kept losing my balance dancing. I couldn't dance anymore. As far as walking I don't recall him mentioning -- I know specifically he said Liz was having trouble walking, but I don't recall what, if anything, he said about me walking.

- Q. All right. What else does he say with regard to what occurred?
- A. He said that we then went to a daiquiri bar which I don't -- I had no recollection of even knowing what those were there, but at -- so we were at this daiquiri bar. I don't know if we drank anything there.
- Q. Well, what does he tell you?
- A. He's telling me that at this point we started, Liz and I, started talking about having a threesome with him. And at this point, that's when I got -- I was, like, what? That doesn't make any sense. And Liz as well was kind of shocked and says, What? What are you talking about?
- Q. When you interjected with those responses, first of all, describe Captain Wacker's demeanor?
- A. He's just very calm, and he just kind of shrugged a little and went to continue beyond that point in the story. He didn't really address the fact that we said, What? What are you talking about? He just kind of, like, let me finish almost. He didn't say that, but it was just -- kind of continued on with the story.
- Q. All right. So did he go into any particular details? Did he say who brought this up? Which one of either you or Ms. Cook were supposedly the person that decided that they wanted to ask him for a threesome? Did he go into any detail whatsoever?
- A. I don't recall any detail that he went -- he just said that we were talking about having a threesome, meaning Liz and I -- us together with Doug. But I don't remember him saying, Jessica you said this or Liz you said this.
- Q. And what did he say when you said -- what exactly did you say in response to that? Describe for the investigating officer not only how you felt when he made this claim, but what you said to him in response when he said, You asked me for a threesome.
- A. I said, "What? What are you talking about? That makes no sense." And I was shocked, and I didn't understand where that would come from. That didn't make any sense to me at all.
- Q. Did Ms. Cook say anything to him when he said that?
- A. She said similar, like, what -- and baffled sounding.
- Q. And he didn't go into any further detail?
- A. No. He continued on with the story.

- Q. What did he say?
- A. He said then we left the daiquiri bar and walked back to the hotel that we were all staying at as a group; and that when we got to the hotel he purchased another room on a different floor for the three of us to go to together.
- Q. Did any -- when he said, you know, when he told you that supposedly you had allegedly asked for a threesome, did anybody, did either you or Ms. Cook interject and say anything with regard to the fact he just said Liz Cook could barely walk?
- A. We didn't say -- we didn't interject that.
- Q. Okay. So you weren't -- you weren't challenging him in that as I've just -- you were listening?
- A. We were listening and trying to figure out what happened beyond saying what, you know, that makes no sense.
- Q. And as you're sitting there on the 4th of April listening to his alleged version of the events, do you have any memory whatsoever of even being in that daiquiri bar?
- A. No. I don't have any memory of being in that daiquiri bar.
- Q. Well, what does he say then? What's he say about -- does he describe how you even got back to the hotel?
- A. He just said we walked back to the hotel. We were walking -- because we -- he just said we got back to the hotel. He doesn't say --
- Q. Does he say who was with you? Was there anybody else besides you and Ms. Cook and him?
- A. Not that he mentioned; just Liz and I.
- Q. What else does he say?
- A. He says that we got to the hotel and he asked us if we wanted to purchase another -- he was going to purchase another room and was, like, Do you guys want to purchase another room, and we said yes, is what he said. And so we went -- he took us to the room on the 10th floor.
- Q. Now, when he says this -- when he tells you this that you again agree, does anybody ask him any questions when he is giving this narrative?
- A. We just -- well, we knew that we had been on a different

room. So we knew we'd got into a different room somehow. So we weren't challenging him as to why. We just kind of listened --

Q. Okay.

A. -- and we're confused. And with regard to the walking, we couldn't remember anything so it would make sense if we couldn't be coordinated.

Q. Does Ms. Cook say anything when he says that he got a separate room? Does Ms. Cook say anything in your presence?

A. Not that I recall, no.

Q. And do you say anything to him?

A. No.

Q. And what is your physical demeanor when he's telling you these things?

A. I'm crying and sobbing and clutching a pillow. And Liz is doing the same with her face buried in a pillow, and we're just crying.

Q. What is the next thing he says then? What does he tell you when he continues the story?

A. He said that we were all making out in the hotel room. And then that Liz left. And then she came back, and I left with her and that nothing happened.

Q. Okay. Now, describe --

A. And then he was like not nothing; making out, but that's it.

Q. All right. Describe in detail exactly -- use the words he used. I mean, he is telling you now -- you're in tears if I understand correctly, and he's telling you that he takes you to a separate hotel room, but then says nothing happened.

A. Right.

Q. All right. Because if I understood your earlier testimony, the whole time -- the reason why you even called your boyfriend was because you had been told that you may have had sexual intercourse with this man, correct?

A. Right.

- Q. How do you feel when he tells you nothing happened?
- A. I didn't believe it. I didn't say anything, but Liz interjected and said that when -- she was, like, that doesn't really make sense because when I left that room -- she was, like, I have a flash of leaving that room and Jess has a bra on, and I come back and she's totally naked and how did it -- what do you mean nothing happened?
- Q. Okay. That's what I want to get to. Chronologically, before Ms. Cook challenges him with those facts, chronologically the first words that Captain Wacker uses when he describes his interaction with you in a hotel room -- first of all, describe for the investigating officer to the best of your ability exactly what he says?
- A. He said nothing happened. We were all making out initially -- as far as me specifically?
- Q. Right.
- A. -- nothing happened.
- Q. How far away from you was he when he told you that?
- A. In the room?
- Q. Right.
- A. About where you are maybe if not less.
- Q. Did he tell you not to worry? I mean did he say anything else, or did he simply say nothing happened?
- A. No. He said nothing happened, you know. I'll call your boyfriends and --
- Q. Well, Ms. Brooder, that's what I want you to flush out for the investigating officer, okay? There are some other words he says.
- A. Right.
- Q. All right. In this first portion of his narrative to you, correct?
- A. Mm-hmm.
- Q. To the best of your ability can you explain, you know, the totality of what he says? First of all, before Ms. Cook interjects and challenges him?
- A. He said that nothing -- we were all making out, nothing happened, and I said, "I already told Justin that we had sex." "The worst thing happened," is what I -- the term

I used. And he said, "Don't worry. You can tell him nothing happened." And then he said, "Well, not nothing, you know, making out." To not make light of that fact. But he said nothing more than that happened. He was, like, "I will call and talk to Justin if you want me to. I will call your boyfriends. I respect you guys -- disrespected you guys. I took advantage." He used all of those words.

Q. And did he use these words before Ms. Cook interjects and said wait a second?

A. He said that, yes. Because I said, "Well, I already told Justin that the worst happened." And then that's when he was, like, no, no, no. You can tell him nothing happened. And then Liz said, "Well, I got - "

Q. All right. Now, we've exhausted that first portion where -- if I understand correctly, and we need to make this clear for the record. Not only did he say nothing happened, but he volunteered -- he's telling you, I will call your boyfriend --

A. Yes.

Q. -- and confirm nothing but kissing happened --

A. Right.

Q. -- if you want me to do that.

A. Right.

Q. Do you respond to that? Do you say something?

A. No, not really. I was just crying because at this point I was like -- I was thinking to myself nothing happened, this is great, and I -- this is a good thing. And that was going through my mind at that point.

Q. Explain that; that's what I want to get to. Explain to the investigating officer at least at this portion -- this first portion of Captain Wacker describing his version of the events, why did you think that was good? Explain what's going through your mind now?

A. Well, because I was in a relationship with Justin and this -- it would just have been better if that didn't happen. I felt like, you know, as far as me being in a relationship with Justin. And so I was happy to hear that this didn't happen.

Q. This being what?

**A.** This being sex with Doug that I thought had happened, and how that didn't make sense anyway with my relationship with Doug to this point, and how I was just happier to hear that. So I was kind of letting that sink in and didn't say anything in response to what he was saying.

**Q.** And then Liz Cook interjects?

**A.** Yeah.

**Q.** And what does Liz Cook say to Captain Wacker?

**A.** Liz says, "When I left the hotel room, she had a bra on. And I came back and she was completely naked. What do you mean nothing happened?"

**Q.** How far was Liz Cook away from Captain Wacker in the hotel room in the morning when she said that him?

**A.** She was about, you know, she was on the other bed. So it would be like a V-shape to Doug, between me and Liz. So within --

**Q.** So she was within five to six feet?

**A.** I suppose, less than ten I would say.

**Q.** Did she say that directly to him?

**A.** Yes.

**Q.** Could you describe the tone of voice, I mean, did she whisper or --

**A.** No. She said it, and he heard her and he responded.

**Q.** Well, we weren't there, Ms. Brooder, so what I'd like you to do is in the same tone, in the same demeanor, relate to the investigating officer exactly what Liz Cook then says to Captain Wacker when he's done telling you, all we did was kiss?

**A.** She said, "What do you mean nothing happened? When I left the room, she had a bra on. When I came back to get her, she was completely naked. What do you mean nothing happened? You were lowering yourself down on top of her. What do you mean nothing happened?"

**Q.** First of all, when she gets finished communicating those words to Captain Wacker, what did Captain Wacker then look like? Describe his demeanor after those words were communicated by Liz Cook.

**A.** He looked the same the whole time. He was very calm and he just kind of took a deep breath and was like, like, he



was going to continue on with what he was saying, and just kind of went, well more clothes came off, but nothing happen -- nothing more sexual happened. He just said more clothes came off.

**Q.** All right. How did you feel when he said that?

**A.** I felt still like I was still hanging onto this, you know, nothing happened. And I felt -- I still felt sick to my stomach like something did happen, but I just wanted this to be nothing. I just sat there and I didn't respond or say anything.

**Q.** Did he say anything else besides that?

**A.** He just reiterated that he would call our boyfriends and tell them what -- apologize and say, you know, whatever he needed to say. He was just willing to do whatever he could to -- that we needed him to do to call our boyfriends he kept saying. And that he respected us and -- oh, and I said -- I did say that, I think I'm going to go home today. I can't stay here. And I don't even think I can come back to school. And he said, "I really wish you wouldn't." And that was kind of the exiting note. And I was just, like, I can't stay here.

**Q.** All right. You said earlier that he had mentioned that he disrespected you?

**A.** Yes. He said, "I disrespected you" -- it was in the nature of him going to call our boyfriends. So it was, like, I disrespected you. I really have so much respect for you guys, took advantage -- throughout the course of this interaction with us he had said those words in the times when he was talking about calling our boyfriends.

**Q.** Did he say anything about whether he had any interaction with Liz Cook? Did he, you know, you're communicating -- you've testified that he communicated to you that nothing happened, kissing, you know, what you've just related Liz Cook challenges him a little bit and then he says, "Well, some clothes came off, but that's it." Did Liz Cook ask you any questions about -- well, you were on top of me?

**A.** In the beginning he just said -- no, she didn't. Not about him being on top of her. In the beginning she just -- he said that we were all making out and that included Liz. And that made Liz very upset because she didn't remember that or recall that, and she kind of shrunk down and rolled her face in the pillow very -- crying and upset because that was the first she heard of that and it

frightened her.

Q. Is there anything else he says in his hotel room that we haven't discussed?

A. Not that I recall right now.

Q. He leaves?

A. He leaves.

Q. Do you have a conversation with Ms. Cook after he leaves?

A. Yes. We talk -- and we were alone in the bedroom and we talked, and I told her, I just have to get out of here. I have to go home. And she was wrestling with the idea of leaving as well.

Q. Okay. Why did you feel you had to get out of there?

A. I just had a gut -- I wanted to get home to Justin, and I did call Justin though and tell him that Doug had said nothing had happened.

Q. Okay. And what was Justin's reaction to that?

A. He listened to me and just -- he wasn't over, he kind of didn't buy it. I got the sense. He just said, you know, we'll talk when you get home, and he just didn't really buy it I would say.

Q. After Captain Wacker leaves your hotel room on the morning of 4 April 2007, in New Orleans, do you have any memory at this point as to whether he had any sexual interaction with you or not?

A. No.

Q. You still have no memory?

A. No.

Q. Did you -- did you ever ask him, and I mean I know it's three years from now. But in the hotel room, did you ever ask him point-blank, hey, did we have sex? Did anybody ask him that?

A. I told him I thought -- I told Justin we had sex because that's what I thought from what Liz had told me.

Q. And what did Captain Wacker say when you told --

A. He said, no, no, no. Nothing happened. You can call and tell him that nothing happened; just kissing.

Q. So that was his response?

- A. That was his response to that.
- Q. He made that response after you told him, I've already called my boyfriend, Justin, and told him we had sex?
- A. Yeah.
- Q. And you had told Justin that because of what Liz Cook said earlier?
- A. Correct.
- Q. All the comments you made to Justin are still not based on personal memory?
- A. Right.
- Q. You didn't know?
- A. No, right.
- Q. Okay. Do you make the decision to leave New Orleans that morning?
- A. Yes.
- Q. Could you walk us through the subsequent steps that you took to leave New Orleans and come back to San Diego?
- A. Sure. Well, I just was looking for flights, and I had to figure out a way to pay for it as a student. And I figured that out with my -- with Justin. I talked to him about it. And then I booked a flight, and the only flight that I could get at this time because it was getting into the afternoon, was to go from New Orleans to North Carolina to Vegas to San Diego which put me in San Diego at about 1 a.m. the following -- that evening -- morning the next day.
- Q. Did Ms. Cook make the decision also to leave New Orleans?
- A. She did. She was thinking -- she didn't know if she should or not because Becky had made it clear that she didn't want to be left alone in New Orleans. And I kind of -- not that I didn't care, but I just had to get home. And Liz was thinking, you know, for Becky's going to be mad; maybe I shouldn't. But she ended up deciding she just had to leave also regardless. And so she ended up going to Arizona because her family lives there. I am not sure of her itinerary.
- Q. Okay. Did you leave the hotel together and go to the airport, the New Orleans airport, together?
- A. We did, and we took a taxicab.

- Q. Okay. She gets on her flights --
- A. We were running late so we parted ways there --
- Q. At the New Orleans airport?
- A. -- pretty quickly.
- Q. All right. Now, did something occur during your flight -  
- not just one flight. I know you said you went to North  
Carolina, Vegas, to San Diego -- did something occur  
during your travel back to San Diego that caused you  
concern?
- A. Yes. Well, I hadn't gotten out of bed all day until I  
went to gather my things to go to the airport, and then I  
jumped on the plane right away at New Orleans because  
we're running late. So I got to North Carolina probably  
around 8:00 or so because I believe our flight left at  
like 5:00-ish or something. And when I got to North  
Carolina, I had to use the restroom. And I went to the  
restroom and my pants were covered in blood, and I  
remembered that I had been on my period. Obviously, I  
just hadn't had occasion to change my tampon that day yet  
because I had been in bed all day and rushing. And so  
then I didn't remember changing my tampon before that or  
that last night, and so I didn't want to risk, you know -  
- but there was no tampon there visible. But I didn't  
want to risk inserting a tampon on top of another tampon.
- Q. Right. Because that could be a potential health risk.
- A. Correct.
- Q. All right.
- A. So I kind of felt and feeling inside, I could feel the  
tip of, like, the string and it was -- so the tampon was  
--
- Q. I know -- I just don't want you to be uncomfortable.  
Many of us -- we're adult males. Many of us have wives  
and significant -- what I wanted to ask is, you know, you  
are looking for your -- for the tampon. Where your  
tampon usually rests in your vaginal canal, the normal,  
regular placement of your tampon, was it in the normal  
location when you are on your menstrual cycle?
- A. No.
- Q. All right. And is that what you meant when you said you  
couldn't even detect it through a visual or an intial

attempt to locate it while you're in the restroom?

A. Right.

Q. Did you -- eventually you located it though, correct?

A. Yes.

Q. Was it in a different position than it was usually in, in your vaginal canal?

A. Yes.

Q. Could you describe for the investigating officer what was different about that position of that tampon?

A. It was lodged in an area where it couldn't have gotten there without something forcing it there if that's helpful.

Q. Often that's -

A. Like an object would have had to force it into the position it was in. I couldn't have gotten it there.

Q. All right. Were you eventually able to retrieve it and remove it in the restroom in North Carolina?

A. Yes. After a long time in the bathroom, about 20 minutes in the bathroom of trying to claw it out.

Q. And that was distinct -- that was a distinctly different position than the normal resting place of the tampons when you're on your menstrual cycle, correct?

A. Yes.

Q. After you finally got it out, did you have some concerns with regard to the version that Captain Wacker had given you about your interaction with him previously?

A. Yes. I realized that he had lied to me and that not nothing happened because the only way that the tampon could've got there was from sexual intercourse or some foreign object. And so his version of what had happened didn't fit with what I now found.

Q. How would you describe your emotional state then?

A. I was devastated and I was -- I had already just talked to my boyfriend and told him nothing had happened and I was -- I couldn't even convince myself nothing happened anymore. And I was just devastated -- I don't know how else to explain it. I was crying and trying to compose myself to get on the next flight, but I was extremely upset.

Q. Were you thinking to yourself that you had no idea then what really happened? Did you have concerns?

A. I had concerns, but I felt like now I knew at least something of that happened that I didn't know before. But yes, I didn't know what happened.

Q. And you eventually get to San Diego?

A. Yes, eventually.

Q. All right. When you get back to San Diego, did you take some steps -- I don't, you know, I don't want to -- we don't need to go into the past three years, but when you traveled into San Diego, what were you wearing? What was the -- were you wearing blue jeans?

A. Yeah.

Q. Okay. Did you have undergarments on underneath the blue jeans? Did you have --

A. When I traveled into San Diego?

Q. Right.

A. Yes.

Q. What did you have on as an undergarment?

A. As an undergarment? I just had a bra and underwear on.

Q. Okay. Underwear?

A. Yeah.

Q. Blue jeans. I had neglected to ask you whether -- did anybody talk to you about whether, like, when you woke up on the 4th of April 2007, were you wearing blue jeans?

A. No.

Q. What were you wearing when you woke up on the morning of the 4th of April 2007?

A. I was wearing not boxer shorts, but, like, a sort of gym short -- pajama shorts, like a gym short material.

Q. Okay. All right.

A. And the black top I was wearing the night before that you saw in those pictures.

Q. Correct. The gym shorts that you were wearing on the morning of 4 April when you woke up, were they yours?

A. Yes.

- Q. All right. Do you know how - do you have any memory as to how you had gotten those onto your body?
- A. No.
- Q. Did you ever learn how?
- A. Yes.
- Q. How did you come to be wearing the gym shorts that you were describing on the morning of 4 April 2007?
- A. When I got back to the hotel room -- Becky Barker had told me this first of all. When I got back to the hotel room with -- when Liz brought me back to the hotel room, Becky started to talk to me about what was going on; and she was saying, you know, What happened? What were you doing? You were in the room naked with Doug. And that was when I said, "I don't know what you're talking about." And she said I started to not make sense and that I got really scared when she was telling me that I was in the room naked with Doug because I didn't remember that happening. And she said I fled the room, and I was standing in the hallway. And she was like, What are you doing out here, you know, get inside. Because our fellow students were in the rooms adjacent to us. And I said, "No, there's too many people in there."
- Q. Did Becky tell you that she eventually had to put those gym trunks on you?
- A. Yes.
- Q. All right.
- A. She said that I was asking her for -- because I had my jeans on backwards and was uncomfortable or something. And I said, "Do you have any concert shorts for me to wear?" And she was like, What? And I said, "Concert shorts, do you have any concert shorts?"
- Q. Is that a term that means -- "concert shorts," means something to you?
- A. No.
- Q. Okay.
- A. No. I don't know. That's what she said I said. And so she's like, Do you mean pajamas? And I said, "Concert shorts." And so she brought me gym shorts from my bag that she pulled out. And I just went to go put those on as if that's what I meant. And so I didn't have underwear on

because Liz couldn't find them in the room with Doug, and so I took off my jeans and put the shorts on without underwear --

Q. All right.

A. -- or Becky put them on me. I'm not sure how I got them on.

Q. And so when you woke up in the hotel room in the morning of the 4th of April, those gym trunks, shorts that you described were what you were wearing as your underclothes that morning?

A. Yes.

Q. You get back to San Diego early morning hours of - it would be the 5th of April if I'm correct?

A. Right.

Q. Did you take any steps to -- preserve is the wrong term, but to segregate the jeans, the gym shorts, the underwear that you'd been wearing?

A. Not right at that second, but the next day or so -- because I got in at 1:00 in the morning. My luggage was out, and I just grabbed those shorts and a pair of jeans that I had been wearing that night. And I put them in a plastic bag and just set them on my dresser.

Q. Why did you do that?

A. Well, after I found the tampon in the airport, I just felt like I didn't know anything anymore, and I didn't know what had happened. And then I thought I was lied to, and so I just thought that was all -- I didn't have my underwear to save. I thought that was the only thing that I had to save; and if something happened, maybe that would help me figure out what happened and so I saved them. I don't know why I saved them. I just felt compelled to save them.

Q. And did you keep them in a plastic bag?

A. Yes.

Q. For how long?

A. For -- until I revisited New Orleans to give a statement to New Orleans Police in September of that year.

Q. And then who did you tender the gym shorts that were described -- the jeans that you described, who did you



provide those to?

A. I FedEx'd or UPS'd them to the New Orleans Police Department at the direction of a detective there.

Q. All right. And he took those into custody -- evidentiary custody?

A. Yes.

Q. All right. After you're back in San Diego, did you also have some concerns with regard to whether there had been something untoward placed in one of your drinks that caused your memory loss?

A. I wasn't -- when I first returned there to San Diego, I was so upset I didn't -- all I could think about was -- I didn't do -- think of anything. I just sat with Justin -- stayed home from work the next day on Thursday. And we -- he stayed with me and tried to console me because I was just devastated and crying hysterically all day. And I didn't want to be alone, and I was just really freaking out. And then the following day I was feeling the same way but he was like, Jess, I have to go in to the office. I'm going to take you to my parent's house, with whom I was very close. And his mother is a counselor, so he thought it would be nice for me to talk to her. And she happens to be a drug and alcohol rehab treatment facility director or she formerly -- and so when I was with her, again crying and very emotional all day, and she mentioned that this sounds like something was put in your drink based on what you've told me from, you know --

Q. Yeah, and that's what she said. But you have no knowledge as to whether anything was placed in your drink or not, so we're clear?

A. I had no knowledge of anything.

Q. And did you take some steps to have a hair sample tested?

A. I did try to have a hair sample tested, but this particular time with Justin's mother it was a urine test.

Q. Okay. And then later did you attempt to have your hair tested?

A. Yeah. I had read on the internet somewhere that that was a way to maybe test it, and so I inquired to some police or authorities about it.

Q. Urine test; when did you have a urine test?

A. That would have been Friday, April 6.

- Q. So it's over 48 hours from the evening of the third?  
A. Uh-huh.
- Q. All right. And how about the hair?  
A. The hair -- the hair we couldn't find a place to do it so that didn't end up getting tested until a lot later through the military.
- Q. So after 48 hours?  
A. Yes; months later.
- Q. Okay. Eventually you make a decision after you get back that you want to report this conduct to the University of San Diego School of Law; is that correct?  
A. Yes.
- Q. And when did you go in and report what had occurred to the USD officials?  
A. Well, because we had been on spring break that week, school didn't resume until that Monday, that following Monday. On Wednesday was the day that we went to the school, I believe. So that would have been, like, the 10th of April.
- Q. Approximately the 10th of April. From the morning of the 4th of April 2007 -- and you've related with Captain Wacker, his version of the events that he gave you on that morning -- was there any other time that you had any conversations with Captain Wacker in which he described the events of 3 April 2007 to you?  
A. No.
- Q. So that is the only time?  
A. Yes.
- Q. During that conversation on 4 April 2007, in the hotel room, did he ever say anything about mutual masturbation occurring?  
A. No.
- Q. Did he ever say anything about whether he ejaculated or not at anytime?  
A. No.
- Q. Did he ever mention -- did he ever say that he disrobed himself and disrobed you?

A. No.

Q. Did he ever say that his --

A. He said - sorry, he said more clothes came off that one time, but nothing happened.

Q. Okay. Did anybody ask him any questions when he said more clothes came off?

A. Did anybody ask him any questions?

Q. Right. What do you mean more clothes came off? Did anybody ask that question?

A. No.

Q. Did Liz Cook ask that question?

A. No.

Q. After he said -- did he say anything about whether he had any interaction with Liz Cook?

A. No.

Q. Your Honor, can I just - I'm going to need to ask for a moment. I just want to finish up because we also have some evidence in this matter relating to the USD hearing and their investigatory process.

Let me ask you some questions about that Ms. Brooder. First of all, you were interviewed by one of the lieutenants that were a member of the University of San Diego Police Department, the USD school police or campus police, whatever they call it, right?

A. Right.

Q. It's like Lieutenant Calahara [ph] or something like that?

A. Calahara.

Q. Is that correct?

A. Yeah.

Q. So he interviewed you and asked you what had occurred, correct?

A. Mm-hmm.

Q. Was his interview in any way as in depth as the questioning that I've just performed here this morning?

A. No. It was more of just -- I said -- he took notes on

things that I was saying.

**Q.** All right. Now, let me ask you this: Did he type up a written statement which he then provided to you so you could review it --

**A.** No.

**Q.** -- you could edit it, you could ensure it's accurate, you could ensure it was complete? You know, check for errors -- did he do that?

**A.** No. We were told that it was -- like they weren't supposed to -- when the hearing, I don't know if you're going to get -- when the hearing came around, we were given copies of our statements, but were told that we weren't supposed to have them by the administration of the law school.

**Q.** And so -- but it wasn't -- when they -- when you said you got a copy of your statement, right?

**A.** Uh-huh.

**Q.** Was it a signed statement --

**A.** No.

**Q.** -- or is it the interview notes? Is it a summary of the interview that the lieutenant did?

**A.** It's a summary that he did.

**Q.** Okay. Yeah, so if we have summaries of the interviews that have been provided to the investigating officer, that's not your -- I guess what I'm trying to get to is did you have an opportunity to correct that --

**A.** No.

**Q.** -- to take a look at that?

**A.** No.

**Q.** Eventually there is a USD hearing, right?

**A.** Uh-huh.

**Q.** Is there a prosecutor at the hearing?

**A.** No.

**Q.** I mean this is kind of like an admin board, right? If I understand correctly, this is what, three students?

**A.** It consisted of one graduate student, I believe a teacher, at some area on campus in the University, not a

law school. There was no one from the law school on the board, and then a Dean I think.

Q. All right. And during the hearing you provided evidence and told the panel the facts as you recall them; is that right?

A. No. We weren't allowed to be in the hearing for the majority of the time. We were called in and asked some specific questions and then had to leave immediately thereafter.

Q. Okay. So you didn't get to come in and actually testify like this?

A. No.

Q. You didn't kind of do your best to go chronologically for the investigating officer?

A. No.

Q. It wasn't like this?

A. No. They were going off -- to my understanding our statements that the Lieutenant Calahara had given them, and then Doug was in there and gave -- I'm not sure what occurred during that time because I wasn't there.

Q. You weren't in the room when Captain Wacker gave his version of events, were you?

A. No.

Q. All right.

A. We were pulled in to answer a few specific questions and then told to leave immediately.

Q. All right. So I mean -- how many questions did you actually answer at the hearing?

A. Not many that I thought. Only --

Q. Was it anything like this?

A. No. It was, like, probably only around five questions.

Q. Okay. Now, had you had any conversations whatsoever or interaction with Captain Wacker since --

A. -- that morning?

Q. -- that morning of 4 April 2007?

A. No.

**Q.** At any time prior to midnight on 3 April 2007, have you ever consented to any sexual interaction with him, any touching whatsoever?

**A.** No.

**Q.** And do have any recollection whatsoever of ever consenting to any sort of touching, sexual interaction at all with Captain Wacker?

**A.** No.

**Q.** Had you ever even discussed that with him ever?

**A.** No.

**Q.** Even joking around? Have you ever had a conversation or even discussed the fact that if you weren't dating somebody, that Captain Wacker would be somebody you're attracted to?

**A.** No.

**Q.** Ever?

**A.** No, never.

**GC (LtCol Sullivan):** Your Honor, may I have a moment?

Sir, that's all I have at this point, and I guess I'll defer -- Mr. Faraj, do you want to take five or ten before you start your cross, or do you just want to start?

**CC:** If we could - The witness has been on there for a while. We could take maybe 10 minutes.

**IO:** Okay. We are in recess.

[The Article 32 hearing recessed at 1127, on 12 April 2010.]

[The Article 32 hearing reconvened at 1139, on 12 April 2010.]

**IO:** All right. Are we all set?

**GC (LtCol Sullivan):** Yeah. For the record, all parties present prior to recess are again present. Ms. Brooder, I remind you that you're still under oath, and at this time I'm going to tender Ms. Brooder to you, Mr. Faraj, for cross-examination.

## Cross-examination

### Questions by the civilian counsel:

Q. Good morning, Ms. Brooder.

A. Good morning.

Q. Ms. Brooder, besides the tampon, you have no independent evidence of any sexual contact -- any sexual interaction between you and Captain Wacker?

A. What do you mean independent evidence?

Q. Besides that, do you have any other evidence, memory, anyone telling you that you had sex besides the tampon?

A. Well, there was the evidence on my shorts, the semen evidence.

Q. There was semen. But again that's not evidence of sexual intercourse. That's evidence of --

GC (LtCol Sullivan): I have to simply object. That's argumentative.

IO: All right. Well, I think the question is, whether it's argumentative or not, is he's asking whether do you personally, other than the observation of your tampon, do you personally, forget of the extraneous stuff, the DNA tests, you don't have any other proof or evidence that there was --

WIT: Right.

IO: So you would agree with him then?

WIT: Right.

### Questions by the civilian counsel continued:

Q. Is that right?

A. Yeah.

Q. In fact when you were first -- when Elizabeth Easley first came in the room, in Room 1008, based on conversations you had with her later, you told her that I wasn't having sex at that time, right?

A. That I wasn't having -- I don't recall telling her that I wasn't having sex. I don't recall --

- Q. I know you don't have any independent recollection, but did she tell you that you said that at any time? That your response to her was, no?
- A. She -- well, they said you were naked in the room with Doug from what they told me. And I said, "What? I don't remember that at all, no."
- Q. Do you remember an instance, a conversation, where she told you -- and again, this is a lot who said, who said, who said. But when she came in the room and she said, "are you having sex," and you said no?
- A. No. I don't remember that conversation.
- Q. Okay. And you now firmly believe that you had sex because of the location of the tampon?
- A. Yes.
- Q. What if you found out that there is a reasonable medical explanation for how a tampon would get that far up the vaginal canal that has nothing to do with sexual intercourse?
- A. I think -- if I can answer your question, it was the tampon in conjunction with the semen which I -- had to have fallen out of my body to get onto those shorts made me think that it was sexual intercourse.
- Q. But my question is: If there was an independent medical conclusion but -- not conclusion, but theory, and it was reasonable that the tampon could have gotten up there --
- A. It wouldn't change my mind about the way that I feel about what happened.
- Q. Okay. And when you say what you feel about what happened, what are you talking about?
- A. That sex -- sexual intercourse occurred.
- Q. When you say feel, is it an emotional feeling or is it a physical feeling that there was sex?
- A. It's the gut feeling -- as far as, like, my physical -- if you mean by -- did I feel in my -- that I felt like I had sex?
- Q. Yes.
- A. I wouldn't say that I felt that. So more of a gut --
- Q. And in fact I want to remind you of a conversation, and I



think I have this down verbatim, when Doug came into the room on April 4 in the morning into your room, and you asked him, "Did we have sex," and he says, "No." And then you say, "Good;" and then you put your hand on your stomach and you say, "It doesn't feel like I had sex," and you're rubbing your abdomen; do you remember that conversation?

**A.** I remember that conversation. I don't think I said, "Good." I think I -- I did say, "I don't feel like I had sex."

**Q.** Well, the good is when he says, "We didn't have sex." You responded good that you didn't have sex.

**A.** I don't -- right, I don't remember saying, "Good."

**Q.** Okay. But it would've been good because you didn't want to -- at that point, you didn't want to have sex with Doug?

**A.** Right.

**Q.** So it's possible that you could've said that?

**A.** Right. I don't remember saying that though.

**Q.** And then you come back and you say, "I don't blame you. I know it takes two to tango." Do you remember that conversation?

**A.** I never said that.

**Q.** Okay. Why are you laughing?

**A.** Because that's just laughable to -- I am sorry. I would absolutely never say that and that's just --

**Q.** Well, it does take two to tango.

**A.** Not when someone is incapacitated.

**Q.** But it does take two to tango, right? Would you agree with that?

**GC (LtCol Sullivan):** Your Honor, I'm just going to object to that.

**WIT:** I understand that it involves two people having sexual intercourse.

**Questions by the defense counsel continued:**

**Q.** Okay. Now, you laughed and I'm trying to get to the

point of why you're laughing because we just established that the conversation was about you not having sex. And so saying it takes two to tango could simply mean that nothing happened, right? That you didn't want to tango?

A. That's just not something I would say. I wouldn't ever say that phrase.

Q. Let's talk about the events of 3 April. You begin by having dinner, right?

A. Yes.

Q. And I want to begin with the dinner.

A. Sure.

Q. I don't care about the park and the run. And at dinner you had two glasses of wine?

A. Yes.

Q. And then after dinner, did you have any other alcohol with dinner?

A. Alcohol at dinner?

Q. Yeah.

A. No.

Q. After dinner you had the hand grenade?

A. Yes.

Q. Okay. And do you know what's in a hand grenade?

A. No. I have no idea.

Q. Do you know the size of the hand grenade?

A. I saw it in the pictures, but I mean --

Q. Can you give me an estimate?

A. -- I don't know how many ounces -- I don't know. I mean it's about -

Q. Go ahead.

A. It's about this tall, and I'm not sure how full they are when you first get them.

Q. Are you familiar with the pint glass of beer?

A. Yes. I know what a pint glass looks like.

Q. Is it about that size?

A. I couldn't be able to tell because of the weird shape of

the cup. I wouldn't know. It was more than the small, like, the vodka/tonic I got at the bar; it would be more than that. I wouldn't be able to tell about -- around the pint size. I wouldn't know.

Q. Okay. But it is bigger than a standard drink -- a standard glass of --

A. That you order at a bar --

Q. -- tumbler --

A. -- like a single vodka/soda probably -- yeah, it would be bigger than that.

Q. And we know -- do you know if it's bigger than a pint glass?

A. No. I don't know because of the shape.

Q. Okay. Is it fair to say that there is hard alcohol in there?

A. I assumed there is hard alcohol in there; yes.

Q. Do you know what type of alcohol?

A. I don't.

Q. We do know based on those pictures we saw that it's supposed to be a really strong drink.

A. I saw that sign. If that's what you're referring to, but I didn't see that sign before we got the drinks.

Q. So one hand grenade, right?

A. Right.

Q. What time is this?

A. After dinner before the jazz club, so I would say between 9:45 and 10:45 or so.

Q. And what time was dinner?

A. I believe it was around 8:00. I'm not 100% sure.

Q. Okay. And then you go to The Funky Pirate?

A. Yes.

Q. Okay. And at The Funky Pirate you get a vodka and tonic?

A. Yes.

Q. Okay. And that's a standard glass --

A. Yes.

Q. Standard size?  
A. Yes.

Q. Did you have any other alcohol besides a vodka/tonic?  
A. I think that I mentioned earlier there was a test tube type shot that was brought around. I don't recall if that was there or at the dance club, but I did have that.

Q. And that's also hard liquor, right?  
A. I assume so. I don't know what's in it, like, necessarily a kamikaze. Liz was telling me, "I used to be a bartender. This is a dollar. There is nothing really in it." Because I told her I don't do shots.

Q. Okay. Well, I'd like to -- I know we talked a lot about what Liz told you. I want to talk about what you know today.  
A. Sure.

Q. Try to focus on that. It wasn't beer?  
A. No.

Q. And it wasn't wine?  
A. Right.

Q. Okay. So it's probably a hard liquor of some sort?  
A. Correct.

Q. Okay. Did you have any other alcohol at that club --  
A. No.

Q. -- at The Funky Pirate?  
A. Right; no.

Q. Did you have another drink between The Funky Pirate and Razzoo on the way?  
A. No.

Q. Okay. And at Razzoo what did you have?  
A. I had that -- I went in and bought a vodka/soda or a vodka/tonic for myself and a vodka/cranberry for Liz. So I had that vodka/tonic.

Q. Okay.  
A. And like I said, that test tube shot may have been there, but it doesn't --

- Q. Okay. And then when you left Razzoo you -- you don't have an independent recollection of going to a daiquiri stand, but then you develop that later. Do you remember that?
- A. I develop that? I was told that, correct.
- Q. And then you had a flash about a man in yellow; do you remember that?
- A. I didn't have that flash. I believe Liz had that flash.
- Q. Okay. Do you recall going to --
- A. No, not at all.
- Q. -- another daiquiri stand?
- A. No.
- Q. But it's possible that you may have had another daiquiri or another drink at a daiquiri stand based on what Liz said?
- A. Based on what Liz said, she remembered being in it. There was no mention of drinking at all. So based on what she said, I wouldn't say that we had a drink. She remembered being in one, if that's enough to tell you that we had another drink there.
- Q. You can't say that you didn't have a drink at the daiquiri stand. You can't say you did. You can't say you didn't, fair enough --
- A. I don't remember even being there.
- Q. -- so it's possible. How much did you weigh at the time of -- on April 3, 2007?
- A. About exactly what I weigh now --
- Q. Please tell me.
- A. -- which is around 140 pounds.
- Q. Okay. And how tall are you?
- A. 5'8" almost.
- Q. Okay. And during the day, that day, how much did you have to eat besides what you ate at dinner?
- A. I don't recall. I'm sure I ate during the day. I don't recall what I ate during the day.
- Q. You had a lunch --
- A. Uh-huh.

Q. with -- which Doug Wacker paid for.  
A. Right. I don't recall what it was.

Q. Okay. Are you typically a heavy lunch eater? Do you eat heavy foods at lunch?  
A. I eat substantially at every meal.

Q. Okay. For example, I almost always have some turkey sandwich at lunch or a salad.  
A. Uh-huh.

Q. Are you that type of person where you go and kind of look for something to have at lunch that's almost always standard?  
A. No, not standard.

Q. Okay. Go ahead, continue, please.  
A. We were at a French café, so it would have been different than the kind of thing I usually would get at let's say like the school cafeteria.

Q. Okay. But you don't remember what you ate. Do you remember what you had for dinner?  
A. I don't really remember what I had -- I know I ordered a meal. I don't remember what it was there.

Q. Was it a full meal?  
A. Yes. I remember ordering a meal off the, like, meal menu. So it was a full meal.

Q. But you have no --  
A. I don't remember what it was.

Q. Okay. Did you eat anything else that night?  
A. Not that I -- after the dinner?

Q. Mm-hmm.  
A. Not that I recall, no.

Q. Did you run that day when you were at the park?  
A. Only for -- it was almost immediately after we started running that I felt ill.

Q. Mm-hmm.  
A. So I would say I ran less than 150 yards.

- Q. Okay. What were your activities during that day?  
A. I just went to the clinic and worked, so I was sitting in front of my laptop most of the day.
- Q. Okay. How much did you sleep the night before?  
A. We had gone out, so I think -- I had gotten at least seven hours of sleep -- six to seven hours.
- Q. What time did you get home the night before, to the hotel?  
A. Before -- I can't really recall for sure but before, like, midnight. We weren't out very long.
- Q. Okay. What time did you wake up the next -- on April 3?  
A. On April 3, to go to the clinic that day?
- Q. Mm-hmm.  
A. Probably around 7:00 to 7:30.
- Q. Okay. When you got to your room, did you sleep right away; or did you stay up and talk with the girls?  
A. Which night? When I got to the --
- Q. On April 2nd.  
A. On April 2nd, no. I think I just -- I don't recall. I might have chatted for a second, but went to sleep.
- Q. Okay. Easley and Barker were both in your room; is that right?  
A. Barker, I believe, came home with me, and then Liz -- you mean the night of April 2nd?
- Q. April 2nd.  
A. Yeah. And I think Liz was already home. She had gone home.
- Q. They were your roommates?  
A. Right.
- Q. And they were your roommates on April 2nd?  
A. Yes.
- Q. They were good friends of yours at the time?  
A. Yes.
- Q. Would you have had conversations about the day's events, the day's work, what you did that day?

A. Well, Becky and I were together that day at our clinic so -- Liz might have been asleep already. I don't recall having any conversations with them.

Q. Okay. When did you begin to feel the intoxication come on?

A. I don't remember feeling the intoxication come on really if -- I just remember dancing and having fun and being, you know, excited that I'm out with my friends, and then I just don't really remember anything after that.

Q. And that would have been at Razzoo?

A. Yes.

Q. And Razzoo's the dance part --

A. Yes.

Q. -- the last place. Okay -- something skipped. I skipped something and I want to go back a little bit.

A. Okay.

Q. Do you have a heavy menstrual cycle?

A. No.

Q. So you don't bleed a lot?

A. I mean I wouldn't say it's light, but it's -- I would say it's moderate.

Q. Okay. And when it begins, do you normally have bleeding?

A. Yes.

Q. Okay. So is it fair to say that on the day you probably would have had some bleeding as a result of your menstrual cycle beginning?

A. Yes.

Q. On the day of April 3rd?

A. On the day of April --

Q. That's when it began? That's when you were at the park?

A. Yes.

Q. Did you drink anything else that day besides this alcohol?

A. Other liquids besides alcohol?

Q. Yeah.



A. Yeah. I am sure I had water at work, and I don't remember really what I was drinking during the day. I might have had a Diet Coke or something.

Q. Okay. Is that what you normally drink? What do you normally drink when you're just having a drink at work or something?

A. Water.

Q. Water or Diet Coke?

A. Rarely Diet Coke, but --

Q. When you begin to lose memory, are you physically at the dance club?

A. Yes.

Q. Okay. Do you have flashes of memory at all after that?

A. There's one flash that I remember just an image of Becky's face in our hotel room which I am assuming is when Liz had brought me back to the room, and they were asking me questions. It's just a picture of Becky's face and there's -- I don't know what's being said or anything like that.

Q. Okay.

A. But that's the only one.

Q. What I want to make sure I understand is besides that, is there any other flashes of memory --

A. No.

Q. -- independent flashes of memory?

A. No.

Q. So everything you testified here today, from the time you begin to lose your memory to the time you wake up in the morning on April 4th where you're looking at Liz across the bed, someone else told you?

A. Right.

Q. You were with good friends that night?

A. Mm-hmm.

Q. In fact, is it Ms. Barker that says -- that she instructs Doug to make sure you get home?

A. Yes.

- Q. Is it fair to say that if Ms. Barker was concerned about your welfare, that she would have taken some steps to make sure that you got home?
- A. I think so.
- Q. For example, if you were stumbling and falling over, she probably wouldn't have left you?
- A. Well, she did say that I threw up. She saw me throw up, but she wasn't feeling well; and she felt like she could have Doug take us home. I feel like she -- that was normal.
- Q. Because you were still under your own power?
- A. No, because Doug was our good friend.
- Q. Did he carry you home?
- A. I don't think so. I don't know. I don't remember.
- Q. Did anyone say they saw him carry you home?
- A. Well, Liz didn't remember that, us getting home, and Doug didn't tell me that, so no.
- Q. Okay. Now, the room you are staying in -- the room where the assault allegedly happened was 1008.
- A. Uh-huh.
- Q. How do you know that?
- A. Well, Doug texted me that that was the room -- there was a text where that room number was in it -
- Q. Okay.
- A. And that's the only way that I knew that. And then I think later during some investigation the military did, they found out what it was but --
- Q. That's not the room that Doug was staying in for the trip.
- A. No.
- Q. He was staying with roommates just like you were.
- A. Right.
- Q. And that was in a different room.
- A. Mm-hmm.
- Q. And that is also not the room that you were staying in?
- A. The 1008 room?

Q. Right.  
A. Right.

Q. Okay. So fair to say you walked to the hotel room, to the hotel?  
A. Mm-hmm.

Q. Right?  
A. Fair to say that we walked there?

Q. Yeah.  
A. I don't know how else we got there.

Q. Okay. And someone got a hotel room?  
A. Right.

Q. And you all walked up the stairs?  
A. I don't know. And I am assuming there's elevators but --

Q. Okay. Well, you took an elevator, you're right. You've been in your relationship for five years --  
A. Yeah.

Q. -- with Justin Micklish.  
A. Yes.

Q. If you, hypothetically speaking, if you had agreed to have sex with Doug --  
A. Mm-hmm.

Q. -- then that would be a betrayal of Justin.  
A. Yes.

Q. And that would destroy your relationship.  
A. No. I don't think so.

Q. At the time that you wake up on April 4th, you say you were crying.  
A. Mm-hmm.

Q. And you're crying because you realize that Justin is going to be pretty upset.  
A. I was crying because I was pretty upset because I didn't agree to sleep with anyone, and I thought that's what happened.

- Q. Well, you just told me you don't remember anything.  
A. Right. But from what Liz had told me --
- Q. Well, how did Liz know what you did in the room with Doug?  
A. Well, like, she had -- the way that she had described it, that's what I thought had happened.
- Q. Liz wasn't in the room with Doug when you were -- when Doug and you were in the room, right?  
A. Well, she -- part of the time. She was not. You're right.
- Q. She left before --  
A. She left as he was lowering himself down on top of me naked.
- Q. Right. And you weren't having sex at the time?  
A. She didn't say that we were having sex at the time, no.
- Q. But she doesn't know what you did in the room after she left.  
A. No. She just knows that I was naked when she came back.
- Q. Okay. My question is, she doesn't know what happened in the room after you left --  
A. Right.
- Q. -- after she left?  
A. After she left, right.
- Q. And so if you stayed in the room and agreed to have sex with Doug, that would be pretty upsetting. That would have upset your relationship. It would upset you and it would upset Justin, right?  
A. It would upset -- yes, it would be upsetting.
- Q. Okay. And that's the feeling you were feeling at the time. You're feeling bad about what you did, and that's why you tell Doug in the voicemail, "I wanted to warn you that I told Justin"?  
A. No. I told him that because up until this point Doug has been my friend, and I considered him a friend of mine; and I thought -- I was speaking out of gut feeling. And that's just the kind of person I am.
- Q. Let's talk about that a little bit. When you called

Justin to report what happened, are you calling him to say I had consensual sex, or are you calling to say he took advantage of me?

A. I said, I didn't know -- I don't know what happened. I think I had sex with Doug.

Q. Okay. Does that mean you had consensual sex or that you had not nonconsensual sex?

A. That was the only -- that was the only thing I said. Are you asking me what I thought it meant?

Q. Yeah.

A. I didn't have consensual sex. I know I didn't have consensual sex. I wasn't saying -- I didn't say the words, Doug raped me on the phone.

Q. That's okay. We don't need to get into the legalese, but at the time you called Justin, your state of mind is that I had -- not I had, your state of mind and what you're saying is Justin had nonconsensual sex with -- or I'm Sorry. Doug had nonconsensual sex with me. Is that your state of mind?

A. That's my state of mind.

Q. At the time you called Justin?

A. At the time I called Justin my state of mind was just sheer panic honestly. I didn't know what happened, and I was communicating that as quickly as possible to my boyfriend who at the time was someone that I would go to if I needed help. And I just wanted to let him know what happened. He was the first person I wanted to talk to.

Q. Okay. You've said you need help. Help with what?

A. Or not help. Help with my state. I was feeling so upset. Because I was feeling upset, he's the person I wanted to talk to.

Q. Okay. Upset for yourself for betraying Justin, or upset because someone took advantage of you?

A. Upset because someone -- I didn't know what happened. I didn't know what happened, and I was trying to communicate that something happened that I didn't know what it was, and it was not something I would have ever done in agreement to, consensually.

Q. What I think I'm hearing you say is at the time, I didn't know if I thought it was not consensual --

- A. No.
- Q. -- but I don't want to put words in your mouth, and I am trying to get at your state of mind at the time you're communicating with Justin. Is it a feeling of, Justin I just betrayed you --
- A. No.
- Q. -- or our relationship, or is it a feeling of, I don't know what happened so I must have been raped?
- A. It was I don't know what happened, and I didn't have consensual sex with someone, and I think that sex happened.
- Q. Okay. So you're telling him something happened, but in your mind you're thinking this is nonconsensual?
- A. Right.
- Q. Nonconsensual sex. You were in law school at the time and may not have had criminal law; but that's generally either a sexual assault or a rape, right?
- A. Mm-hmm.
- Q. And so you take the trouble later to go back to this man and say I want to warn you about what's going on?
- A. I --
- Q. That Justin might call you?
- A. I did say I want to warn you because he was my friend, and I hadn't talked to him. I didn't know anything about what had happened. I wanted to get -- talk to Doug and get his version of what happened.
- Q. Why?
- A. Because that would be -- that was important to me because we were friends and because I didn't know what happened. And I thought that he would be willing to tell me what happened.
- Q. Okay. Well, that's a great point. So then let me back up. Is it fair to say that you're not sure what happened and you want him to tell you?
- A. Well, I didn't know what happened, and I wanted him -- I knew what I thought had happened based on what Liz told me.
- Q. Forget Liz for a minute. What did you think in your

mind?

**A.** I thought that we had sex which is why I called Justin, and so I wanted Doug to fill in the gaps that Liz couldn't fill in.

**Q.** Now, words are important. When you say we had sex, that suggests that we had sex.

**A.** Mm-hmm.

**Q.** But he had sex with me --

**A.** Correct.

**Q.** -- or he took advantage of me, are completely different. So you thought we had sex?

**A.** I thought he had sex with me.

**Q.** What did you want to ask him?

**A.** I just wanted -- I was in a state of -- I don't know if it's ever been something you've had experience with, but if you don't -- you can't for the life of you grasp what happened, and you are supposedly doing things and things are happening to you and you don't know what it is. I wanted to hear every detail of what had been going on. And if Liz couldn't help me fill that in, the only other person I could think of that could help fill that in was Doug.

**Q.** And he told you nothing happened?

**A.** Right.

**Q.** So why did you think something happened?

**A.** Why did I think something -- I have this gut reaction to the things that had happened, and I felt viscerally, like, something bad happened, and I had to get out of there. And I didn't know necessarily what it was.

**Q.** You want to put him in jail based on what Liz told you and your gut?

**GC (LtCol Sullivan):** Objection to that.

**IO:** Is there a question in there?

**GC (LtCol Sullivan):** An objection to the demeanor. We have rules that apply with regard to --

**IO:** I got it. I got it. So just -- I think I know what your

question was. Just rephrase your question. I think I see where you're going.

**CC:** What's the objection?

**IO:** The objection is that you're harassing the witness, and I'm not saying that you are. I am asking you to just rephrase the question, because whether or not, you know, you've put intent in her head for her testimony.

**Questions by the civilian counsel continued:**

**Q.** I want to get this right. You don't think you know what happened. You call your boyfriend of five years, and you say I had -- we had sex, right? I had sex with Doug or we had sex, right?

**A.** I said, "I don't know what happened. I think there was sex with Doug." I don't remember the exact words, but sex with Doug was involved.

**Q.** And I want to make sure I'm clear on this one. At the time you say this to Justin, your state of mind is that it was nonconsensual?

**A.** That's my state of mind.

**Q.** Okay. And based on that state of mind, you then call Doug and you tell him, "I already told Justin, and I want to warn you;" right?

**A.** I said, "I want to warn you. Justin is going to call you."

**Q.** We heard it. And according to you the reason you did that is because you wanted to warn your friend.

**A.** We had a pre-existing relationship as friends; I hadn't seen or known Doug as anything else than just my friend up until this point. It was really hard for me to grasp what was going on and reconcile this friend that I had and what was happening. I didn't know what it was. I thought the best thing would be to get -- to talk to him and that's what I just thought to do.

I was panicked in that phone call to both Doug and Justin. I just was trying to do whatever I could to figure everything out. And I didn't want -- I wanted to make -- to let Justin in the loop of what was going on with me because it was traumatic and severe.



- Q. So it was traumatic, and you're calling the guy who's your rapist to warn him that your boyfriend is going to call him?
- A. He was my friend, and it was traumatic and it sounded traumatic, I think, to him probably on the phone, and didn't know what to do. So I called him because he had been calling me and he -- I was just trying to do whatever I could think of to do.
- Q. To do what?
- A. I didn't know. It was the sensation I had. I didn't know was going on. This is my friend and now Liz is telling me this stuff, and it sounds like something happened. I called my boyfriend -- but this has been my friend -- and I was trying to reconcile these two differing people.
- Q. So again we're back to what Liz told you?
- A. That's what I had to go off of at that moment aside from the way that I was feeling, which was just terrible all over.
- Q. Okay. We're going to talk about that a little bit. But you just told me that you wanted to talk to Doug because he was your friend and to get an explanation, right?
- A. I wanted to get a more complete picture.
- Q. And he came down and gave you the picture?
- A. Right.
- Q. What part of what he told you doesn't make sense?
- A. The threesome thing doesn't make any sense.
- Q. Okay.
- A. The fact that nothing happened because of the tampon thing that I found later, you know. All of us making out didn't make sense to me.
- Q. What if a gynecologist told you that it's perfectly normal for a tampon to go up that far in the vaginal canal without sex?
- A. I don't know -- it wouldn't change what I think happened if that's what you're asking.
- Q. Because I'm hearing that you say that you are kind of more sure about what happened because of the tampon?
- A. The tampon and the semen on the shorts that had to come

out of me to get there.

Q. Come out of him first?

A. Right. And be inside of me and fallen out to get on the shorts.

Q. We'll get to that in a minute too. Did you have any semen on your thighs or legs that you noticed the next morning?

A. Not that I noticed the next morning.

Q. You would have noticed though, right?

A. I don't think -- I don't know if I would've noticed.

Q. Did you take a shower that morning?

A. No.

Q. So you didn't -- I mean you went all the way to San Diego.

A. I couldn't get out of bed -- right -- I couldn't get out of bed easily and I just -- as soon as I got out of bed, it was time to go -- to the airport. I'm sorry.

Q. That bodily fluid, semen, when it dries leaves -- it's distinctly noticeable, is it not?

A. I don't know.

Q. Let's talk about how you are feeling at that point. You had quite a bit to drink?

A. I had those drinks.

Q. What's your analysis of that? Is that a lot or no?

A. It's going out drinking with friends.

Q. Okay. In your direct you left me with the impression that there is no way you could feel the way you did just based off alcohol. Is that what you are trying to communicate, or did I misunderstand?

A. Based on what I remember drinking, yeah. That's correct.

Q. Okay. You're aware that people die from alcohol poisoning?

A. Yes.

Q. You must feel pretty bad --

A. I'm sorry.

Q. You don't know what alcohol does based on the level of

- intoxication. You just know how you felt before.
- A.** I know I felt based on those, up to that point of those drinks I consumed.
- Q.** Okay. And you have no idea what was in the hand grenade. You have no idea was in the test tube shot, right?
- A.** The test tube shot was called a kamikaze. I'm just not - - I don't know exactly what that's made of, and the hand grenade, no, I don't know.
- Q.** And we're not even talking about the daiquiri that you may or may not have had. If you did have it, we wouldn't know what's in that either.
- A.** I don't know because I don't know what those are.
- Q.** Okay. So fair to say that there is just as much a reasonable explanation for the way you are feeling that it was caused by alcohol as anything else?
- A.** Not based on what I remember drinking and the way that I felt at the time and the dancing -- I mean the hand grenade was like, well before the Jazz club. And I was fine when I got to go to -- I feel like that would have kicked in or something if it was --
- Q.** My question was it's reasonable that you were feeling that way because of intoxication?
- A.** Feeling which way?
- Q.** The way you were feeling on the morning of April 4<sup>th</sup>.
- A.** No. Not based on what I - I'm sure there's a level of alcohol intoxication someone could get to that would make them feel very terrible, but based on what I was drinking, no.
- Q.** What were you drinking?
- A.** The drinks that you listed here.
- Q.** You are mixing drinks, wine, vodka, and a hand grenade that we don't know what it's made of. What were you drinking? Do you know? You can't say, can you?
- A.** Just the hand grenade I don't know. But based on, I've mixed wine and alcohol before. It's just unlike any other drinking experience I've had, the way that I felt the next morning.
- Q.** I'm going to move from the drinking. When you came back to San Diego, Justin wanted you to take some tests,

- right?
- A. When I came back to San Diego?
- Q. After April 4<sup>th</sup>?
- A. Well, I talked to his mother about it, and she suggested it.
- Q. Then why did you take the tests?
- A. They thought that that sounded reasonable?
- Q. They wanted you to take the tests?
- A. They suggested it. They wanted me to. I don't know if -  
- I would say they wanted me. They suggested it.
- Q. It wasn't your idea, was my question?
- A. No.
- Q. And when those tests, or at least the urine test came back negative, you lost the trust of your -- of Justin's mother and Justin?
- A. No. I wouldn't say I lost their trust. I feel like it was a confusing time. And at that point I've had subsequent, you know, conversations with Justin's mother, and she decided to kind of -- she felt she was too involved between everybody, with me and Justin as her son and I am not her daughter. And she kind of backed off a little bit, and that was upsetting to me. But we've reconciled that and Justin never --.
- Q. At the time, is my question, she began to disbelieve what you were saying?
- A. No. I would say she wasn't -- she backed off a little.
- Q: Well, how do you mean by backed off? Backed off on supporting you?
- A: Well, she was actually -- I was with her a lot, and she took me to the university to talk to them. She was very -- she took me to the -- I was spending more time with her than anybody else, and she just kind of backed off in that role if you understand what I'm saying. I didn't spend as much time with her.
- Q: She wasn't as supportive?
- A. I felt that way at the time.
- Q. And that was coincidental to the test results coming back?

- A. The test results coming back the second time, when they came back inconclusive or negative, yeah -- about.
- Q. And Justin, in fact -- you said he was still supportive, but he sent either a message or e-mail to you saying be careful what you say about Doug. Was there a conversation between you and him about, you know, don't ruin a man's life? Do you remember that? I don't remember the exact --
- A. I don't remember that either, the conversation.
- Q. You don't remember Justin telling you that you had to call the school right away so you wouldn't ruin Doug's life?
- A. I -- I'm sorry. Continue.
- Q. And then you called Kerry, the Dean?
- A. Yeah, she's the assistant Dean.
- Q. And told her the new info about the test coming back negative so it wouldn't upset Justin?
- A. So it wouldn't upset Justin?
- Q. So you would do what Justin asked you to do.
- A. Oh. Well, I felt compelled to as soon as that information came back I was -- the first thing I did was call Kerry. I was crying again because I didn't want them to think that I was lying to them about test results or something.
- Q. My question to you was: Do you remember Justin telling you to do something like that, and you said no?
- A. No. I never said no. Never. He might have been like, you have to call the school. And I would have agreed with him immediately about it.
- Q. That was my question to you. Do you remember a conversation where Justin told you to do that and you said you don't remember that. Do you remember it now?
- A. To call the school about the test results coming back negative?
- Q. To not ruin a man's life. To make sure that you're sharing information.
- A. I don't remember the not ruining a man's life. If he could have said, you've got to make sure you call the school, and that's fine. I would agree with that.

- Q. Okay. I'm confusing things. What did Justin tell you?
- A. I don't remember what Justin told me. I remember getting a call or Justin getting a call from his mother or something happening where they found that the test results were inconclusive is what they told me. And so they were -- I don't remember about you need to do anything. They might have said you need to call the school. I remember being as soon as I heard that news, wanting to call the school immediately which I did.
- Q. Why do you care?
- A. Because I didn't want false information out there.
- Q. What was the false information that you were trying to get rid of?
- A. Well, if the results were not what they -- I said they were before, I wanted to make sure they had the most current information.
- Q. Did the results change your view of what happened to you?
- A. No.
- Q. So what does it matter?
- A. Because it's still -- that would probably make, you know, some sort of impact on something somewhere. I just didn't want -- why would I want inaccurate information out there?
- Q. At the time, in your mind, you believed you had been raped?
- A. Yes.
- Q. Okay. And my question is: These results come back negative. The school didn't do the test, right?
- A. No.
- Q. Did you tell the school that I thought I was drugged?
- A. Yes. And I told them I had this positive -- I got phone call confirmation that it was a positive test result. That's what I told them.
- Q. Okay. So that's what you communicated to the school, and then you called back to correct that information.
- A. The next day.
- Q. Okay. My question and maybe I wasn't very articulate.

My question is this to you: If you believe that you had been drugged or you believe that the only way that you could've had sex was through incapacitation caused by him, what do you care what the test results say?

A. I don't care what they say, personally. I just didn't want the school to have false information.

Q. Got it. So you still believe that at the time you were drugged?

A. I believe that, yes.

Q. And you still believe that today?

A. I do.

Q. Okay. When you call the school to say the test came back negative, did you tell Kerry that, I still believe I was drugged?

A. No. I was crying and hysterical, and I said, "Kerry, I got another phone call." You're not going to believe, like, I couldn't believe that this testing facility would call someone and tell them that this came back positive and then would have to, you know, would have to say later it was negative. But I just said, no. I was crying. I told her it came back negative, and she said, okay. And then we hung up. But it was just a hysterical conversation on my part. I didn't say, I still think anything.

Q. Please tell me how you were feeling about the drugs that he allegedly somehow caused you to consume at the time those results came back?

A. How I was feeling about the drugs? I don't understand what you mean.

Q. Yeah. You said that you felt that you must have been drugged.

A. Right.

Q. They tell you the results came back negative. What are you thinking at the time?

A. I honestly thought that it had been three days or four days since between the time that this happened and the testing happened, and that it wouldn't have picked it up anyway.

Q. How did you know that?

A. Because after we took the test, I was like googling it

and to see, you know, what, you know, what kinds of -- I was interested in the date rape drug stuff so I just looked online.

Q. What did you find out?

A. That it usually leaves your system too quickly.

Q. 24 hours, I believe. 24 to 48 hours; isn't that correct?

A. I think there are differences. But, yeah, 24 to 48 maybe.

Q. Why did you take the test?

A. Because I thought if this is the earliest time I have a chance to take it if for some reason something happens where it comes back positive, then that'll be helpful. I didn't see the harm in taking it I guess.

Q. I guess what I don't understand is, why are you looking for independent verification of what you already knew. I don't understand that if you could explain that to me. I don't understand why you're looking for something to independently support what you already personally believe that you were drugged?

A. Just for --

Q. To satisfy Justin?

A. No. In case I went forward with any criminal kind of charges. Like I had saved my pants for some reason. It was the same type of thing.

Q. Okay.

A. I thought it would be helpful maybe.

Q. That's great. I'm glad you told me that because that was kind of my next point. When did you call the police in New Orleans to report the rape?

A. I believe I might have called the San Diego police first.

Q. You called the San Diego -- the USD Police Department and they told you to call the New Orleans Police, right?

A. I don't know. I don't know if they said to call San Diego or New Orleans. There is a lot of mixing of information around that.

Q. Okay. When did you call 911 in San Diego to say I was raped at the non-emergency number?

A. Within like a couple of -- like a week or two weeks - I'm



not sure. Within that month I think of April.

- Q. As you were contemplating what? Why are you delaying the report? Let me back up. I understand sometimes victims just don't speak. There are many sexual assault victims that just keep it in. Some that never report. But some need some time and then report to the authorities. You told Justin. You were getting information from Liz. You were saving evidence and doing your own testing for a what? An investigation that was going to happen but you didn't bother to call the police?
- A. Well, I was -- it was a difficult thing for me. I spent a lot of time just in those initial couple weeks of like just going to see therapists. The reason I went to the school right away is because I was having to miss school. And I'm a first year law student and I didn't know what that was going to mean for my degree or, like, I didn't know how many classes I could miss. I was nervous about that. So I went to the school. Beyond that, I wasn't even thinking about going to the police yet. I wasn't in the frame of mind to be ready for that. I spent weeks not eating and sitting in bed alone -- or not alone but sitting in bed at home and was really disturbed.
- Q. You were also nervous about Justin believing that you had consensual sex?
- A. I wasn't -- I never got that impression that it was ever a question. I wasn't nervous about that.
- Q. That wasn't my question. My question was: Were you worried about what Justin would think?
- A. No. It didn't cross my mind like that.
- Q. Really?
- A. It was like a -- I never thought -- of course I want to be believed.
- Q. Didn't you just say on direct that if you wanted to go back for Justin? Didn't you say that on direct?
- A. That I wanted to go back?
- Q. On direct you said you wanted to go back home for Justin.
- A. Oh. I wanted to be with him because he's my comfort person.
- Q. Do you remember telling the NCIS agent that if -- that you were concerned that if Justin found out something

consensual happened, he would break up with you?

**A.** No.

**Q.** We'll hear from him tomorrow. He's going to be here.

**A.** Okay.

**Q.** When you say you were at home. You didn't go back to school, and it is your testimony that you had no concerns regarding your relationship with Justin?

**A.** While I was -- I was concerned. I didn't think he was going to break up with me if that's what you're asking.

**Q.** That is what I was asking. And you put it more distinctly. What were you concerned about?

**A.** Just what this was going to -- the impact something like this was going to have on our relationship and not just the act but my reaction -- he had to take care of me for a long time, like, I was just crying all the time and like, wasn't going anywhere. I was depressed and, like, I was worried what the whole thing was going to have on us as a couple.

**GC (LtCol Sullivan):** Are you alright, Ms. Brooder?

**WIT:** Yeah.

**CC:** Do you think it would be a good idea to maybe take a lunch break now?

**IO:** Do you still got a ways to go?

**CC:** I've got a ways to go.

**IO:** Government?

**GC (LtCol Sullivan):** Well, Ms. Brooder -- I'd rather -- can you continue answering questions? Do you want to get through this?

**WIT:** I would rather get through it and done with it.

**GC (LtCol Sullivan):** I'd rather do that then, Judge. I'd rather, out of respect for her, I'd rather wait for the lunch and you just keep going.

**CC:** All right. Not a problem. All right.

**Questions continued by the civilian counsel:**

- Q. Now, when you were dancing at Razzoo, do you remember telling Rebecca Barker that, We're just going to dance girls alone and no boys allowed? Do you remember saying that?
- A. I don't really remember saying that. I know we were all dancing, just girls. I might have said that.
- Q. Okay. Is that out of respect for Justin?
- A. No. It was just a fun, like, girls dance.
- Q. Eventually you began to dance with Captain Wacker, Doug Wacker?
- A. That's what Becky told me. She saw that; so, yeah.
- Q. And she thought you were dancing pretty suggestively?
- A. She told me - that's not what she told me, but I don't know.
- Q. What did she tell you?
- A. She said that, you know, she didn't think a lot of it at the time, that it was friendly.
- Q. You don't remember her telling you that your bodies were touching, your legs were intertwined, going back and forth, up and down, slower than the rhythm of the music?
- A. No. I don't remember her telling me that, no. Or I haven't heard that before.
- Q. Or that when you were dancing, your eyes were closed?
- A. She told me at one point I was dancing and my eyes were closed. I was just kind of rocking.
- Q. And she had to jump in and separate you because you were dancing dirty and it was gross looking?
- A. No.
- Q. No. She never told you that?
- A. No.
- Q. Is she a truthful person to your knowledge?
- A. Yes.
- Q. Did she drink a lot that night?
- A. She didn't drink at all.
- Q. So she said that in her statement to the NCIS, would you

believe that that would be a true statement or do you have some reason to doubt it?

A. I don't believe she would lie in her statement.

Q. So if she said that that's probably true?

A. I --

Q. Well, how do you feel about that? Is it like you to dance slow --

A. No. I don't remember that at all. That's news to me. That's shocking to me.

Q. Inconsistent with something you would do?

A. Inconsistent?

Q. Yes.

A. Yeah.

Q. Dancing really slow -- slower than the rhythm of the music and as she describes it, gross?

A. Right.

Q. And dirty?

A. Well, with, yeah, with a person not my boyfriend or probably not even with my boyfriend.

Q. So is the idea of a threesome being inconsistent?

A. The idea of a threesome is not something I would ever do.

Q. You would never do this with a guy or just a buddy?

A. It's not something I would -- I remember doing or anything.

Q. Alcohol can make you do some stupid things?

A. So can other drugs.

Q. Ms. Brooder, Lieutenant Colonel Sullivan asked you some questions about your statements to Lieutenant Calahara of the USD Police Department?

A. Yes.

Q. And he asked you some questions about having reviewed it. Have you had a chance to review that statement, again?

A. I have seen it, yes.

Q. Is there anything in there that's a lie or not the truth? I don't want to say a lie. It may be missing things, but

is there anything that's not --

**A.** There's things that aren't correct in them, and I would have to review it. The statement that I have given to NCIS is correct that I wrote myself. The one that Lieutenant Calahara wrote, there are things in it that are incorrect.

**Q.** Like what?

**A.** I would have to look at it.

**Q.** Is there anything that jumps in your mind right now that you thought, I really have to correct this because this is inaccurate?

**A.** I just never really thought that it was that -- because I didn't write it myself and I didn't review it and change it. I can't think right now of those glaring inconsistencies. But if I saw it, I could tell you.

**IO:** Tango? Is that the proposed --

**CC:** I believe it is --

**IO:** Okay. You're going to give it to her to review now?

**CC:** Yes.

**IO:** Okay. Government, you object? This hasn't been admitted yet, --

**GC (LtCol Sullivan):** No, Judge.

**IO:** But I suppose it will come in at some point as an investigative exhibit. He said, no.

**CC:** Okay. I'm going to approach the witness?

**IO:** Sure.

**GC (LtCol Sullivan):** If you need that to reinforce -- I can give her my copy so you have your -- It's tango?

**IO:** It's tango.

**CC:** I can give her this one. It's not a big deal.

**GC (LtCol Sullivan):** I got it right here.

**GC (LtCol Sullivan):** Here you go and for the record I've handed --

**CC:** I was about to do the same thing.

**GC (LtCol Sullivan):** Well, she --

**CC:** Okay. I'm just going to give you this.

**GC (LtCol Sullivan):** Can I see that then? I just want to make sure it's the exact same thing I've got in my binder. Thank you. I retrieved --

**IO:** University of San Diego Department of Public Safety Officer's Report pages --

**GC (LtCol Sullivan):** Well this is what was handed to her is only two pages out of a nine-page document.

**IO:** Nine.

**CC:** Well, it's not all of it is hers?

**GC (LtCol Sullivan):** Okay. So you have five and six of nine? I got you. Roger. And then for the record then, it's two pages.

**CC:** We're looking at page five of nine of the USD Police Department Officer's Report.

**GC (LtCol Sullivan):** And the second page is titled, "six of nine." Roger.

**Questions by the civilian counsel continued:**

**Q.** Okay. Miss Brooder, once you take a look at -- Sir, you may sit down. Thank you.

Jessica Brooder --

**A.** Okay.

**Q.** Please take a look at that. It ends on the next page.

**A.** Okay.

**Q.** Just review it and I'd like you to tell the IO, the investigating officer, what you would like to correct.

**A.** Okay.

- Q. So take your time, and when you're done just look up at me and speak whenever you are ready.
- A. The hand grenade part was at the -- was not on the way to the nightclub but on the way to the jazz club. It's on the first page. And I remember getting the two drinks for Liz and I. And the shot, like I said before, I don't know where that was exactly. As far as not remembering anything after drinking the shot the waitress was bringing to everyone, that's not correct. That's just -- I think it's the last thing I told him was that, somewhere in there I remember drinking a shot.
- Q. And we're still at Razzoo, right?
- A. Well, that shot I'm not sure where that was. But it was the last thing I think I told him. And he said it's the last thing I remember.
- Q. Okay. I want to be clear.
- A. Okay.
- Q. That's fine. Your testimony earlier that the last thing you remember or your memory began to fade at The Funky Pirate --
- A. Right.
- Q. -- or at Razzoo is that still accurate?
- A. Right, correct.
- Q. Regardless of what it says in there. And in there I'm referring to your statement to Lieutenant Calahara.
- A. Which -- the part that says Brooder told me she does not remember anything after drinking the shot the waitress was bringing around?
- Q. Right?
- A. Right. That's the part I'm saying is incorrect because I didn't know -- I think that's just the last thing that I told the lieutenant was that at some point during the night I remember drinking a shot. I can't remember where that was.
- Q. I understand.
- A. Okay. And this sounds to me like it says that Brooder stated she remembers Easley and Baker looking very upset and wanting to call her boyfriend Justin. That sounds like they wanted to call my boyfriend, but that's not

what it was. That part is the flash that I had where I remember seeing Becky's face. And that was in the room way later, but it's just like an image. And then Becky and Liz told me, or Becky told me later that I was wanting to call Justin that night, and she was just, like, call him in the morning --

Q. Okay.

A. -- to clarify that. And everything seeming fuzzy the next day. I mean, I couldn't remember. But I don't know if that's important. And I think it -- I don't remember saying about the, I felt really bad about even kissing Wacker because I had a boyfriend because I could have said that easily. I don't remember that specifically.

Q. Okay.

A. So just from here to here?

Q. Right.

A. Okay.

Q. I'm retrieving the exhibit -- a part of the exhibit. And we will submit those to the IO at a later time. So just to summarize it, you've already said you're not clear on when you consumed the alcohol. You know what you consumed but don't know exactly where it was, whether it was at Razzoo or Funky Pirate; is that correct?

A. That one shot?

Q. Right.

A. Yes.

Q. And the other part you wanted to make sure that was accurate was the part about, what appears to be, you calling Justin because you thought Becky and Liz wanted you to call him, and you said that's just a flashback you had, right?

A. No. The flash I have is just an image of Becky's face. I don't have any memory of wanting to call Justin at all. And that sounds to me like they wanted to call Justin when they informed me that I was trying to -- I wanted to call Justin. And they said no, no, no. Just wait until the morning when you're making sense.

Q. I understand. Any other corrections?

A. I mentioned whatever it was. I don't remember.



- Q. Okay. Do you normally have shots when you go out?  
A. No.
- Q. Why did you have a shot that night?  
A. Because Liz was kind of like, Oh, yeah. It's a dollar. I'm a bartender. There's nothing in this thing. It's probably all water, or something like that.
- Q. When you say no, is it a firm no, or sometimes no?  
A. No. I was like -- you mean, when I say no to drinking usually?
- Q. Yes.  
A. No. It's not a firm no, but typically --
- Q. You had lunch in a place called Café du Monde in New Orleans?  
A. I believe so. That's the name of it. It was a French, famousy [sic] kind of French café place. I believe that that's the name.
- Q. Okay. Does the following menu sound familiar: beignets, coffee, espresso, that type of thing?  
A. I would assume so because it's a French café.
- Q. And nothing else on their menu; does that sound about right?  
A. No. No. But I don't know what would be on the menu.
- Q. Could you have only had like a beignet that day and some coffee?  
A. I could've maybe. I don't know.
- Q. I just want to be clear.  
A. Mm-hmm.
- Q. Okay.  
A. Yeah.
- Q. Because there's a lot of -- we heard a lot of things. You don't remember anything in the room, right?  
A. Right. I don't --
- Q. In 1008?  
A. I'm sorry?
- Q. You have no memory of anything in 1008?

A. No, right. Correct.

Q. Right?

A. Right.

Q. You don't remember clothes coming off?

A. No.

Q. You don't remember clothes being put back on. You don't remember Liz coming back. You have no memory of 1008?

A. Nothing.

Q. Has that changed at all?

A. No.

Q. Did you remember and then forget?

A. No.

Q. Okay. And when Liz tells you stuff, that doesn't cause memory to come back?

A. No.

Q. Okay. I'm going to move on from what we were just talking about.

A. Okay.

Q. Before you came today, what documents or evidence did you review to prepare for your testimony?

A. I saw the statement I gave in I think it's January 2009 to and NCIS.

Q. Okay.

A. I saw that statement from Lieutenant Calahara. I saw my counseling records. I saw the USD redacted transcript. There might have been -- I am not sure what else, sorry.

Q. Okay. And when did you see those?

A. I reviewed them probably once two weeks ago and then once this weekend.

Q. Okay. I apologize. I told you I'm going to move on. There's something I remembered.

A. Okay.

Q. I'm going to jump back. You opened up a tab at Funky Pirate?

A. I don't remember if I opened up a tab at Funky Pirate.

Q. At Razzoo perhaps?  
A. At Razzoo, I did open up a tab.

Q. Did someone go back and close your tab that you left open? Do you remember that happening at Funky Pirate?  
A. That could -- maybe. That sounds kind of familiar.

Q. Do you remember the credit card you used?  
A. Not specifically. I have a couple -- I have, like, five credit cards. I don't know which one it would have been.

Q. Would you agree to allow the government to get the records --  
A. Sure.

Q. -- to get the records of the credit card and see what you have on the tab?  
A. Yeah.

Q. And to the best of your recollection, you only bought one round of two drinks for you and Liz?  
A. That's what I remember buying, yes.

Q. Wherever that was?  
A. That was at Razzoo.

Q. Okay.  
A. And at Funky Pirate, I'm just not sure who paid for what, but Liz and I had a drink there, a regular vodka drink.

Q. Okay. Now we're going to move to the next one.  
A. Okay.

Q. I think I got everything I need from there. Where did you grow up?  
A. Here in San Diego.

Q. Were you born in San Diego?  
A. Yes.

Q. Did you go to school in San Diego?  
A. Mm-hmm.

Q. Do you have a childhood friend?  
A. Do I have a childhood friend?

Q. Yes, that you keep in touch with?  
A. Yeah. Well that I -- yeah.

Q. Do you still keep in touch with her?  
A. Well, define childhood. Like, high school or --

Q. Let me ask you a better question. Do you have a best friend that you have had for a long time?  
A. Yeah.

Q. Who is that person?  
A. Probably my friend Kristen.

Q. What's her last name?  
A. Norman.

Q. Did you share any of this with her?  
A. Yes. I told her about what happened.

Q. And are you currently employed?  
A. Well, I'm finishing my last year of law school so -- and I work kind of part time, but I've stopped that now that finals have gotten closer.

Q. Where do you work part-time?

GC (LtCol Sullivan): I'd object to this just because -- we can communicate to counsel outside the presence. But there is -- but I'm not so sure with the presence of the accused here. I'm just trying to, out of an abundance of caution, make sure we focus on relevant materiality and not --

IO: Your objection, it's relevant? Or are you concerned about --

GC (LtCol Sullivan): Well, safety.

IO: All right. That's what you're concerned about?

GC (LtCol Sullivan): Yeah, absolutely.

IO: Okay. Would you be -- you are saying you don't want the defense to have that at all or just not on the record?

GC (LtCol Sullivan): No. I can provide that to Mr. Faraj. I have absolutely no --

**IO:** Let's keep this moving. Would you be willing to provide that off the record?

**WIT:** Yeah.

**IO:** Is that acceptable to you if the address of the employer is off the record, or is there some reason it has to be on the record? Without even getting to whether or not that's an appropriate way to handle this, I am not suggesting that the government is correct in that. I am just trying to keep this moving. Is there reason --

**CC:** I understand. I'm not looking for any -- I mean we have her home address. It's not like --

**IO:** So is it acceptable that we give you that information off the record, the name and address of the employer?

**CC:** That's fine.

**DC:** Do you want Captain Wacker to step outside, sir? He's more than willing.

**GC (LtCol Sullivan):** No, no, no. We've already answered this.

**CC:** We're not going to step outside. And --

**IO:** No. We're just going to make that question moot and just move on.

**CC:** Well, I actually have an objection to that objection. I am not sure what it's based on. There is no MPO issue here. There is no --

**IO:** I am not taking anything from that. I'm not taking it in that there's any reason to be concerned. I am just trying to get us past that.

**GC (LtCol Sullivan):** I have certain VWAP responsibilities. That's how I'll put it. I'm not trying to, you know --

**IO:** I understand.

**GC (LtCol Sullivan):** First of all, if we want to talk about the critical relevance of that with regard to the

investigation we're investigating but I have -- I know Mr. Faraj. We served together. I think that I can answer that mail and also comply with the VWAP responsibilities.

**IO:** Okay.

**GC (LtCol Sullivan):** That's all. I am not trying to test her patience either. I've got a couple roles here that I need to --

**IO:** And that's fine.

**GC (LtCol Sullivan):** Okay.

**IO:** Like I said, and for the record I make -- I'm taking no consideration of any reason as to why we're doing that. Let's just do it and move on.

**Questions by the civilian counsel continued:**

**Q.** What is the job that you currently have?

**A.** Well --

**Q.** What do you do?

**A.** -- that I just stopped working for finals?

**Q.** Yeah.

**A.** A law clerk.

**Q.** Okay. With a judge?

**A.** No, with a firm, a law firm.

**Q.** And what type of law do they practice?

**A.** It's, like, corporate and business and civil litigation kind of mixed in. It's about 10 attorneys -- or less than 10 attorneys. I'm sorry.

**GC (LtCol Sullivan):** Let's take a moment. Just for the record there is a beeping going off in the courtroom.

**IO:** Is that a fire alarm?

**GC (LtCol Sullivan):** I don't know?

**DC:** It sounds like a car outside in the parking lot.

GC (LtCol Sullivan): Okay.

IO: For the record, the beeping noise is a vehicle outside.  
Continue, please.

**Questions by the civilian counsel continued:**

Q. You are currently at Loyola?

A. No. I am currently at USD.

Q. At USD. Have you held any other jobs while in law school?

A. Yeah. At different law firms in Los Angeles. I law clerked [sic] at another firm, and I think that's everywhere I have worked.

Q. Have you held any legal jobs that have to do with criminal law or firms that do criminal law?

A. No. Criminal law? No.

Q. What was your degree in, in college?

A. Philosophy.

Q. Have you had any specialized training, classes, or experience regarding sex assault or sex assault victims?

A. No. I mean I've gone to therapy but no --

Q. Okay. And did you have any training in law school? Did you take criminal law in law school?

A. We were taking criminal law when we left for New Orleans. So it was during -- we were in the middle of that class. So I had to leave, but I did end up taking it subsequently at Cal Western.

Q. Okay. Did you have any -- do you have any training or education regarding date-rape drugs or their effects? And I'm talking about formal training or education.

A. No.

Q. You said that you went on the Internet and did some research; is that right?

A. About the amount of time something like that stays in your system, yeah.

Q. Okay. Did you learn the types of drugs that are used?

A. I've seen like roofies is what I hear. That's kind of what I would generally -- I know there's other kinds, but

that's what I would call probably anything just because that's the only name that I really know.

Q. Did you read about the symptoms that those drugs cause when they're induced?

A. I'm sure it was on there. I don't remember, like, reading it on there. I'm sure -- I feel like I know from general knowledge about date-rape drugs before ever looking on the website about the time period that they make you not remember things.

Q. You weren't curious to compare your symptoms with what may be on those websites?

A. I don't know if curious -- I don't know. I might have seen them and looked at them. That's possible.

Q. I know you said that you've undergone some therapy regarding this incident?

A. Well, yeah. I started seeing some counselors.

Q. Now is that a nurse psychologist?

A. I am not going to know their credentials all each, like, I went to one that my boyfriend's mother had recommended initially because she could see me right away like that weekend. And then I went to a person at the school who's a Ph.D. Like, she's there in the counseling center at school.

Q. What's that person's name?

A. At school it's Adriana Molina, and I saw her pretty regularly probably about once a week.

Q. Did you keep a journal?

A. No. I didn't keep a journal.

Q. Do you keep a journal?

A. No. I never kept a journal.

Q. Did you write down your feelings or your impressions of any of the things that were going on anywhere for your records?

A. No.

Q. Did you communicate how you were feeling during these -- besides to Adriana Molina to anyone?

A. Yeah. Well, to my --



Q. I am sorry. In writing?  
A. No. Not that I remember doing.

Q. Okay. Now who is the doctor that you were seeing, the Ph.D.?  
A. That's the -- She's the Ph.D., Adriana Molina.

Q. Okay. And who's the other person that you are --  
A. The person I saw initially, I've given that information out, her name -- I really only saw her like two times or something. I know that I've given that information to the military. I just don't recall right this second.

Q. That's fine.  
A. I did see another woman when I moved to LA at Loyola. Her name is Rebecca Denelski[ph].

Q. Denelski?  
A. Yeah. And she's like an LCSW I think is her credential.

Q. And how often did you see her?  
A. I saw her -- Loyola had a policy where you could only see them a certain number of sessions before you had to go privately pay outside of the school. So I saw her, I want to say, maybe like, 10 times -- 8 times at the school. And then I couldn't find an affordable person outside of school, so she let me go see her privately at a discount. And I want to say I only saw her like five more -- four more times because I couldn't really afford to go that much.

Q. When did you begin seeing Rebecca Denelski?  
A. Well, after I moved to LA when I started school there, so that would have been the spring of '08.

Q. When you say spring, you're referring to the spring semester?  
A. Spring semester. I'm not sure exactly where in this -- I know it was somewhere in the spring semester.

Q. So some time between January and May of '08?  
A. Yeah.

Q. Okay. And when did you stop sessions with Ms. Denelski?  
A. Before I left LA which would have been May of '09, and I want to say I didn't see her very much that spring, the spring '09 semester. So I would say winter possibly

trickling into spring of '09.

**Q.** Would you have had any sessions with her during the summer break or just during the semester -- or school year, I should say?

**A.** You know, I don't think -- I am not sure actually. I don't remember.

**Q.** Are you still dating Justin Micklish?

**A.** No.

**Q.** Why did that relationship end?

**A.** March of 2009.

**Q.** Are you engaged, married, or single right now?

**A.** I am single.

**Q.** Do you have any children?

**A.** No.

**Q.** Have you ever been diagnosed with any mental conditions, mental health conditions or issues?

**GC (LtCol Sullivan):** I'm going to object. I think that's --

**IO:** What's the relevance of that question?

**GC (LtCol Sullivan):** And it's also going to be something of privilege. I also think it would be something, subject motion practice. I mean, she's been --

**CC:** I can't do motions unless I discover information.

**GC (LtCol Sullivan):** Well, she just went through a mental health provider list. She's been very accommodating.

**IO:** I agree with you. So let's get an answer. What is the relevance?

**CC:** I'd like to find out if she's been prescribed any medications that would have impacted her ability to recall, to testify, or even at the time she was -- when she consumed alcohol, sir.

**IO:** Are you on any medications now?

**WIT:** I have never been prescribed any medications for any kind of mental health issue.

**Questions by the civilian counsel continued:**

Q. Were you on any medications on or about April 7, 2007?

A. No.

Q. Did you undergo a medical exam after the alleged rape?

A. No.

Q. Do you know why?

A. Do I know why I didn't undergo a medical exam?

Q. Yeah.

A. I was just feeling too -- I just wanted to get home, and I was too distraught to think of doing anything but being home and safe.

Q. After you got home, did you think about it?

A. Not really. Well, after I got home, I didn't really think about it either. I mean after a couple of days went by if I had thought about it, I would've thought it would be useless.

Q. Did you undergo any testing for STDs as a result?

A. Yes.

Q. When?

A. Not for -- it was probably several months later. I don't recall exactly when it was, but I went to Planned Parenthood and I did a full, like, STD and HIV testing.

Q. When you say several months, do you recall when?

A. I really -- I can't remember exactly. I know I went -- I'm sure they might have a record of that, and I'd be more than willing to, like, find out.

Q. That's okay. I just want to get an idea of when. Now, what caused you to go to Planned Parenthood?

A. I just wanted to. For my own peace of mind I think.

Q. Okay. I guess my question is: Did it have anything to do with this, or was that something you wanted to do?

A. No. It was because of this.

Q. And you just thought about it on your own, or did someone give you the suggestion that you should do that?

A. No. It was something I think I was putting off doing and

I thought I should do. I might have talked to Liz about it about her doing it maybe, and that it got me thinking I should do it. And it was something I didn't want to do and just thought I should.

Q. Okay. Let's talk a little bit about the environment at law school?

A. Okay.

Q. Any law school, and more specifically USD. You said there's a lot of alcohol drinking.

A. It just seemed like there were a lot of events where -- like, for example we have the Dean's keg party like once a month or something where the dean hosts like a drinking in the patio. Or it just seems like it's something where alcohol is involved in a lot of events.

Q. Okay. And what's the -- your impression of the interpersonal relationships between students as time goes on?

A. They're real close. I think a lot -- I mean certain people, not everybody of course, but I feel like you forge sort of a deep friendship because you're doing a lot of things, difficult things together, like, compared to people that aren't in law school and your friends maybe that can't relate to that. You have these new people where you're in it together sort of, I would say.

Q. So people in the same section are going through the same difficult times --

A. Correct.

Q. -- and spending a lot of time in the library or studying?

A. Right.

Q. Okay. I know we all know this but I've just got to get it on the record. So you develop a different bond than you would if you were just in college having a random class with someone?

A. Yeah. Well, just especially with my experience in college, you're just -- it's a smaller group.

Q. In law school it's a smaller group?

A. Right.

Q. Have you ever heard of the term "hooking up"?

A. Yeah.

- Q. What does that mean?  
A. I think it depends. But like something involved with a romantic interaction.
- Q. Would you say that that's pretty prevalent in that same environment that we're talking about in law school, people randomly hooking up?  
A. I don't know if I would say that it's prevalent. I am sure it happens. I don't think it's rampant or something. I don't really understand.
- Q. Okay.  
A. I mean, I understand what you are saying, but I wouldn't say -- I would say that it's you know, it occurs.
- Q. Okay. When you went to that Halloween party in '08 -- '06, October of '06, and you describe how you were up and you and Doug were wearing costumes. And I think I remember you saying that he acted like he was going to spank you, but then he did.  
A. Yeah.
- Q. Okay. Did you discuss it beforehand?  
A. It was real loud and we were talking about, what should we do. We were about to get on stage. And we were like what should we do -- something funny to like, when they call our names to like do something to set us apart. And he was like, I'll twirl you around and then we'll do like a spanking thing. but we weren't really talking because it was really loud. So it was like, yeah, I'll turn you around and like this kind of thing. And then that was it. Then we went up there. It was real quick because we had to go right up on the stage.
- Q. And you weren't offended by that?  
A. No. Not at all.
- Q. Even when he did it, you weren't offended by it?  
A. No. I went down there and saw my boyfriend. And I was like, I didn't know he was going to hit me, but laughing and like nobody cared.
- Q. How did your boyfriend look at you? Was it a look? Was it something he said? What caused you to provide an explanation?  
A. No. I didn't have any reason to provide an explanation.

- Q. Okay. I know I said I'm going to move on. In direct examination, you used the word that when Doug -- I just remember this -- that when Doug came to your room on 4 April, you used the word that he said, "I took advantage."
- A. mm-hmm.
- Q. Now I never read that in any other statement. Is that something that you just threw out there today or --
- A. No. I actually think I have seen it before, but I remember in the things he was saying, he said, he took advantage and he disrespected us and that he had a lot of respect for us.
- Q. Do you remember him saying that he disrespected you or that he respected you and he disrespected your boyfriends and he wanted to fix it? Was it something like that?
- A. I don't remember he disrespected my boyfriend at all. I remember him saying -- it was in the context of him calling our boyfriends.
- Q. Okay. And I just want to understand the context of that conversation. Is it fair to say that he was trying to help the situation so he wouldn't ruin your relationship with your boyfriend and Liz's with her boyfriend?
- A. I don't know what he was trying to do. He was just calm and telling us what he was telling us. I don't know what his agenda was.
- Q. My question is: What was the impression that you got about what he was trying to do?
- A. I didn't think he was trying -- I didn't know what he was trying to do. I can't answer that question. I mean he was telling -- he was answering my question which was what happened. I thought that he was trying to just say what happened, and I thought he felt like he disrespected us, he took advantage and he was really, you know -- I felt like he meant those things if that's what you're asking.
- Q. When he's talking about calling your boyfriends, I'm saying what are you thinking or feeling at the time?
- A. Just that no good is going to come of that. That calling boyfriends and talking to -- I just kind of dismissed that like that's going to happen. You don't -- you know like, this is something I can handle with my

boyfriend. I don't need to involve that. I kind of dismissed the whole, I can call your boyfriends and apologize.

Q. Did you respond with anything like - you're saying you took advantage of me and you want to call my boyfriend; did you say anything like that?

A. I was just crying and rocking on the bed and I was listening. I was just crying.

Q. How many interviews did you give to NCIS Agent John Burge?

A. How many interviews?

Q. Right.

A. I think -- I'm not sure. I think just that one, and then I wrote the statement later.

Q. Did he ever talk to you about attending an Article 32 hearing, the previous hearing?

A. I think I had an invitation that I could have come to it if I wanted to.

Q. Did he ever tell you, "If I were you, I wouldn't go"?

A. No. He said you had a choice to go.

Q. What exactly did he say to you?

A. I don't -- I really don't remember. I mean, I know I never felt like I shouldn't or should go. It was like I knew that I --

Q. What changed your mind about coming to this one?

A. I don't know. I had reservations about being here, but now it's my -- I just feel like I've been waiting for this for a long time.

Q. Okay. So I want to go back to what you specifically remember Burge telling you.

A. Okay. I don't really remember specifically.

Q. You said -- tell me what you remember him telling you.

A. Well, I don't even remember exactly -- I know I got an invitation to the last one because I sent it back. I don't remember even really any conversations specifically about it. I just remember that I knew I had the opportunity to go or not go.

Q. Okay.  
A. And that --

Q. How did you know that?  
A. I was informed that --

Q. By whom?  
A. I don't remember who. I don't know if Lieutenant Colonel Sullivan was even involved at that point. I don't remember. Everything has changed so many times for me with --

Q. I don't think he was involved back then. He may have been, but I don't think so. So it would have been -- I think it was Burge. Do you remember if it was Burge?  
A. It could have been.

Q. The invitation was a letter?  
A. Yes.

Q. Inviting you to come?  
A. Right.

Q. Did you get a letter like it for this one?  
A. Yes, yes.

Q. Okay. How did you know you didn't have to come?  
A. I think it's on the form, and in addition to that I think I was told that I didn't have to come if I didn't want to or I could come.

Q. By whom?  
A. I don't remember. I'm sorry.

Q. Could it have been Burge?  
A. It could have been. He's somebody that I had contact with.

Q. Did you have his phone number and called him a couple -- on any issues before?  
A. I had his phone number here, yeah, at the base. And we had exchanged phone calls.

Q. Okay. Do you remember maybe calling him and asking him if you had to come or what you thought you should do?  
A. I could have done that, yeah. I mean I didn't know. I don't really have a lot of experience with the way



military things work so I could have done that.

**Q.** You have no independent recollection of calling him to ask him anything?

**A.** Not really.

**Q.** About not attending?

**A.** No.

**Q.** Has he talked to you -- have you had any conversations with him after the last Article 32 hearing?

**A.** No. I haven't spoken with him in a really long time actually.

**Q.** Okay. Do you recall him telling you anything about your participation in this investigation or the previous investigation? And when I say investigation, this is an investigation.

**A.** Okay. The pre-lim hearings then?

**Q.** Yeah.

**A.** Not really, I don't.

**CC:** May I have a moment?

**IO:** Are you okay?

**GC (LtCol Sullivan):** Do you want five minutes?

**CC:** No. We are fine.

Can we take five?

**IO:** You want to take five? Okay. We'll take a recess.

[The Article 32 investigation recessed at 1313, on 12 April 2010.]

[The Article 32 investigation reconvened at 1420, on 12 April 2010.].

**IO:** We are back on the record. All parties present when we recessed are again present. Continue, Mr. Faraj.

**Questions by the civilian counsel continued:**

- Q.** Ms. Brooder, do ever recall telling the counselor at USD that you're concerned because of pressure you're receiving from your boyfriend and your boyfriend's family to pursue testing?
- A.** To pursue testing? I remember -- I have read in my counseling records about the pressure from my boyfriend and his family. I don't know if it was with respect to pursuing testing.
- Q.** Do you remember my questions earlier about Justin and his mom not being as supportive?
- A.** Mm-hmm.
- Q.** And you said that they continued to be supportive, but that Mrs. -- Justin's mom backed off. Do you remember that?
- A.** Right.
- Q.** Okay. You don't recall ever telling a counselor that you were concerned because of the pressure you received from the boyfriend and his family, specifically Diane Micklish, to pursue the testing and that you felt they were no longer supportive due to the results that came back?
- A.** Well, I remember talking to her about my feelings about Diane backing off and how I interpreted that as being not supportive. And it coincided with the results coming back negative, yes.
- Q.** So fair to say that at the time you were concerned that they were no longer supportive because of the negative test results?
- A.** They?
- Q.** Being Diane and Justin.
- A.** And Justin? I felt initially there was -- when the results first came back initially there was a troubled air, like this was upsetting. But then -- and with Justin's mother, yes. I felt not as supported or not -- she was backing off. I didn't feel as supported. Justin though, I felt supported continuously. I felt, you know --
- Q.** So when she says that they -- that now they are no longer supportive due to results. Do you know who the "they" in

- that statement refers to?
- A.** I didn't write that. I think that she may have thought -  
- I felt like initially that Justin and his mother were -  
- the whole issue was upsetting to both to everyone  
involved, me included, him, her -- and I don't know.  
Justin was real supportive almost immediately after those  
test results came back. His mother, I felt, backed off  
and was unsupportive. So I don't know if maybe that just  
got misinterpreted in there.
- Q.** Okay.
- A.** Those were very teary sessions, and I don't know how  
clear it was, so --
- Q.** Did you feel like the counselor was concerned about your  
welfare?
- A.** I felt like she was doing her job. Concerned about my  
welfare? I guess so as far as, like, doing her job.
- Q.** Okay. Do you believe, like, she was paying attention and  
taking notes based on what you were saying?
- A.** Yeah. I don't -- I am not sure what her process is. She  
doesn't really take notes while we're doing the session  
so those are probably after.
- Q.** All right. Did you take a look at your credit card bill  
after you came back from New Orleans for your charges in  
New Orleans?
- A.** Not that I remember. I mean, aside from my check card or  
bank card in my regular banking account, not that I  
recall.
- Q.** I'm sorry. You know, I made an assumption that you use a  
credit card. Did you use a bank card, a check card?
- A.** I don't -- I am not sure what I used there. But if it  
was my credit cards that I -- I never look at my charges  
on my credit cards. My bank cards or my ATM debit card  
is what I'm talking about. I don't really do that  
either, but that I would see more often. And I would  
view those. I don't remember necessarily looking back at  
my charges.
- Q.** Now, when you went to do the testing, the drug testing,  
you weren't truthful regarding your identity, right? You  
used somebody else's name?
- A.** I don't know what was going on with that. I was just  
being -- I didn't talk to anybody there really.

**GC (LtCol Sullivan):** Well, I'm going to object to the characterization of untruthful. I believe the facts, when we get into it, it was recommended for privacy's sake -- and I'll refer to the captain here that they use a blind; is that what it was?

**GC (Capt Day):** I don't believe that's accurate, but --

**IO:** Is that -- is there some reason that she can't --

**GC (LtCol Sullivan):** All right.

**CC:** It's a question that she can answer.

**Questions by the civilian counsel continued:**

**Q.** You used a --

**A.** I'm unaware of what was used.

**Q.** Okay. I'm going to give you a note that you wrote to J. R. Burge, right?

**A.** Mm-hmm.

**Q.** There is some highlighted portions. Please review it and when you're done, look up at me.

**IO:** Is that at least a proposed exhibit?

**CC:** It will be when I'm done with it.

**GC (LtCol Sullivan):** Can I just have a copy of it so I can take a look at?

**CC:** I'm just refreshing her recollection. She's going to be able to testify?

**GC (LtCol Sullivan):** Can I just see what the document is?

**CC:** It's not an exhibit. I can refresh her recollection with anything.

**GC (LtCol Sullivan):** Well, I have an opportunity as counsel to at least see the exhibit.

**IO:** Let's slow down for one second though. Is it in this proposed binder?

**CC:** Is it in there? It is.

**IO:** Okay. So what is it proposed as? It's not marked yet.

**DC:** It's part of the CD that everybody has, the NCIS/ROI CD; and it's attached to the back of the Jessica Brooder statement that she gave with Mr. Burge.

**IO:** So we don't have hard copies of it. He wants to use it to refresh her recollection.

**GC (LtCol Sullivan):** Yes. And what I would like to do is see the document before it's tendered to the witness as standard trial practice.

**IO:** And then if you don't mind, if I could see it.

**GC (LtCol Sullivan):** Absolutely. That's exactly what I was going to recommend next.

**CC:** I've handed the exhibit to the trial counsel. And -- it's not an exhibit. I've handed the document to the trial counsel and the IO.

**GC (LtCol Sullivan):** And for the record, what it is, is a handwritten note from Jessica Brooder to Special Agent Burge.

**CC:** We haven't established what it is yet, Lieutenant Colonel Sullivan.

**GC (LtCol Sullivan):** Well, we're going to put on the record what it is.

**CC:** We will as she reviews it.

**GC (LtCol Sullivan):** All right.

**CC:** I know how to handle documents, Your Honor.

**IO:** Gentlemen, let's relax; okay?

**CC:** I didn't get up once while he was up here.

**Questions by the civilian counsel continued:**

Q. Please take a look at this and look up at me when you're done.

A. Sure.

Q. I retrieved the document. Now, this is a note from you to Special Agent Burge?

A. Special Agent Burge, I believe. Yeah.

Q. And it was an explanation from you, correct, as to why there may have been some additional records of treatment that may have been in the record that he received; is that correct?

A. No. I don't know anything about additional records of treatment. I don't know what you mean by that.

Q. Well, tell me what you meant by this note.

A. Well, because it didn't have my name on it -- if I looked to the document, it didn't have my name on it. And the reason I went to that testing facility was, like I had mentioned, Justin's mother was formally directed a drug and alcohol rehabilitation center. And so at this time when we went to go get the test it was late afternoon on Friday, and it was somewhere she knew that she could get the test done before the weekend. And so I just went with her to this place. And when I went to go get the results, I had to get the results from Justin's mother. And she explained to me that in order to get me in there quickly, they had me under -- they put me under their, like, business number or something like that.

Q. Someone else's name?

A. I don't know someone else's name. I thought -- I didn't.

Q. A dummy client number?

A. Number, I think. I'm not sure if it was --

Q. So you had no hand in this? It was Diane Micklish -- or not in this but in the process. It was Diane Micklish's idea?

A. Her idea about the dummy number?

Q. Yeah.

A. I didn't know about the dummy number until I saw the record, which was several months later.

**Q.** Okay. You are not listed as a client and lasting recovery in order to get the testing done?

**A.** Well, I think that's what the dummy number was for. That's what I gathered from after. I was never a client there.

**Q.** I understand. But you misrepresented to the --

**GC (LtCol Sullivan):** Your honor, I'm going to object -- I'm going to object to that characterization --

**IO:** Hold on.

**GC (LtCol Sullivan):** -- Sir. That's not based upon evidence --

**DC:** It's a question.

**GC (LtCol Sullivan):** It's not a question. You just made a statement that she --

**IO:** Government --

**GC (LtCol Sullivan):** -- misrepresented.

**IO:** Let me rephrase the question, okay. It was your understanding that the -- was this all in an effort, in other words, not using her name, was this in an effort to avoid having to pay for the test?

**WIT:** It was in an effort to expedite getting the test done.

**IO:** Did you have to pay for the test?

**WIT:** I didn't -- I'm not sure if she paid for the test. I did not pay for the test. So I don't know.

**IO:** Okay. So you were aware that the test was going in as a -- your name wasn't going to be assigned to --

**WIT:** I didn't know that my name wasn't going to be on it. I just knew that Diane was taking care of it because she knew --

**IO:** Did you fill out any forms when you took the test or did you just provide urine?

**WIT:** I'm not sure. I don't remember. I may have filled out like, something, but I don't remember doing that.

**IO:** Is it possible you didn't fill out any forms?

**WIT:** It's possible.

**IO:** Did you go in during normal working hours to do this?

**WIT:** It was late afternoon Friday; but yes, it was normal working hours.

**IO:** Okay. Was anyone else involved between -- besides you and her? In other words, did a technician come and --

**WIT:** Yes. Yes. She didn't take the sample, if that's what you mean.

**IO:** All right. And you don't remember ever taking out an ID or anything to show them who you were?

**WIT:** I don't remember doing that, no.

**IO:** Signing a waiver or anything about being able to use your --

**WIT:** I don't remember doing that. I'm not saying it didn't happen.

**IO:** So it's possible that it did happen?

**WIT:** It's possible.

**IO:** Okay.

**Questions by the civilian counsel continued:**

**Q.** Did you see the laboratory tests from San Diego -- from the lab?

**A.** From the lab?

**Q.** Did you see the results?

**A.** I got a phone call or Justin's mother received a phone call confirmation of a yes, positive. And then later she received a phone call on the negative. I didn't see the lab results until way later -- the actual paper when, I



believe, when J. R. wanted them for the investigation. I just was going off phone calls.

**CC:** Is this in our exhibit list? It's Exhibit Y of our submission. I'm handing the -- it's part of our Exhibit Y of our submission?

**DC:** It references the CD-ROM, sir.

**IO:** With her signature, yeah. Thank you.

**CC:** I am showing the witness --

**IO:** Let me see that.

**CC:** I am sorry.

**IO:** It's all right. All right.

**Questions by the civilian counsel continued:**

**Q.** Ms. Brooder, I am showing you the -- I think that's the lab report from the drug test that you took. Do you recall this document? Do you recall the results?

**A.** I don't recall the document, but that's my name and signature that I wrote.

**Q.** Okay. And on the top in the upper left corner what does that say? Client number 231, lasting recovery?

**A.** Yes.

**Q.** Okay. So when you signed this document, did you read it?

**A.** I just signed it.

**Q.** You didn't read the rest of it?

**A.** No.

**Q.** Which year of law school were you in at this point?

**A.** First year.

**Q.** Do you always sign documents without reading them?

**A.** No.

**Q.** So when you saw client -- lasting recovery -- or you said you didn't even look at the top?

**A.** I didn't look at it.

- Q. When you sent this message that I showed you earlier, this message to J. R., John Burge, and since you just testified that you didn't know what had happened there, that you didn't know it was a client, a dummy client, how did you come to find out that they weren't referring -- that the report wasn't referring to you as a dummy client?
- A. It was a dummy client.
- Q. I'm sorry. As a lasting -- what did they call it, lasting recovery?
- A. Well, I had to find out from Justin's mother.
- Q. How did you find out?
- A. I just spoke with her, I think, on the phone.
- Q. So was it then that you looked at the report?
- A. I don't know if I even -- I guess so, yeah. I mean, about that time. I didn't think much of it.
- Q. How did you get the report?
- A. I think Justin's mom helped me get it somehow. I know that there was some trouble because I think they might have moved facilities or something had happened. And so I was having difficulty locating the report, and I'm not sure how I ended up getting it. I think it was Justin's mom, but maybe J. R. got in contact with the facility and got it that way. I don't know.
- Q. So you have no independent recollection of you getting it? Did you ever see the document before, and the document I'm referring to is the lab report?
- A. I'm sure I did because I signed it. I don't remember really reviewing it.
- Q. After the results came out, do you remember seeing this?
- A. Not specifically, I'm sorry. No.
- Q. So how -- why did you send this other message that you tell Burge that the person referred to on the report was a dummy client?
- A. I'm sure then I was trying to explain to him what was on that report. If I sent that with that, which I don't remember doing, I'm sure I saw and had to figure that out from Justin's mother that it wasn't -- that number 231 was me or whatever it was and then sent it to him.

- Q. I hear you say, I'm sure I --
- A. I just don't remember it directly that I had seen the document. I don't remember that specifically.
- Q. What made you sign -- What made you send a note to John Burge?
- A. That he requested the lab results and I could -- I must've gotten those from Justin's mother.
- Q. Okay.
- A. -- and then I was just sending them to him.
- Q. So you don't have a recollection of receiving them from Justin's mother?
- A. Not exactly. No, not specifically. I don't remember receiving them. I'm assuming that's what happened.
- Q. Okay. So I'm going to go with that assumption. You received them from Justin's mother. What causes you to send the memo to John Burge?
- A. Well, I think because it -- just to explain that I wasn't in lasting recovery, maybe. Just to explain why there was that number there. Because it didn't -- that wouldn't make sense because I am not a client there.
- Q. Let me make sure. Let me see if I got this right. You receive this, you believe -- you receive the report from whom you believe you think now is Justin's mother, or you think you got it from Justin's mother?
- A. Mm-hmm.
- Q. Okay. You're not sure, but you think you got it from her?
- A. Mm-hmm.
- Q. You then reviewed the report?
- A. I don't remember reviewing the report because I knew that it was coming back negative. I didn't really see much point in --
- Q. How did you know to send the lasting recovery dummy client message to John Burge then if you didn't review the report?
- A. Well, I reviewed the heading on the report, yes. You are right. I reviewed it, sorry.
- Q. And so then you spoke to Justin's mother to ask her what

was going on?  
**A.** I believe so.

**Q.** You don't remember?

**A.** Not specifically, but that's the only way I could've got that information.

**Q.** I asked you some questions about this next topic, but I want to be more specific. Have you ever been diagnosed with a bipolar disorder?

**A.** No.

**Q.** Schizophrenia?

**A.** No.

**GC (LtCol Sullivan):** Well, you know, again, I'm just going -

**DC:** Any type of personality --

**GC (LtCol Sullivan):** Stop. Please, sir. I'm going to renew the objection.

**IO:** Again, I'm going to renew my response is the relevance.

**CC:** Those would affect her ability to recall and testify and her ability to be clear in her recollection. And I am specifically referring to disorders that would have that impact.

**IO:** Well, you've already listed three. She's already said no to those. How many more do you have on your list?

**CC:** Just personality disorder.

**WIT:** No.

**CC:** Thank you.

**Questions by the civilian counsel continued:**

**Q.** Do you know what the distances between Razzoo and the St. Charles Hotel?

**A.** No.

**Q.** You walked it during that day --

**A.** I --

- Q. -- before you began to forget, right?
- A. I don't -- I mean, we walked to there because we ended up there. I don't remember -- I don't know the distance between -- I think it was walking distance.
- Q. About how long -- what is the distance; do you know?
- A. I couldn't tell you.
- Q. How long did it take you to get there walking?
- A. Well, I don't know because first we went to dinner and then we went to the jazz club and then we went to -- so I wouldn't be comfortable saying.
- Q. Did you ever ask Elizabeth how you got from Razzoo to the St. Charles?
- A. No. I mean she told me what she remembered, the flashes that she remembered, and whatever she didn't remember or didn't include in that I assume she didn't remember.
- Q. Did you make any assumptions about how you got there?
- A. I assumed we walked back as a group or whatever, like, it was walking distance. And everyone else had gone back that way, so I assumed we went by street without a vehicle.
- Q. Did you ever inquire from Elizabeth as to what you did during the period when Wacker got another hotel room? What you did in the lobby during that time? Or do you -- did you inquire about that?
- A. No. I think Liz might have had a flash of seeing the lobby elevators or doors or something, but that was it. And that was all that I got from her on that, and I didn't ask.
- Q. I guess I'm asking if you'd asked her anything?
- A. No. I mean --
- Q. Did you ever go back and do any independent investigation of what happened, those periods of memory loss that were involved?
- A. Like, what do you mean?
- Q. Did you ever ask anybody else, -- do you remember me walking? Do you remember me being carried? Do you remember me -- did you talk to anybody else about those issues?

**A.** Well, I talked to Becky, but Becky -- it was my understanding that it was just the three of us alone and so there was no one else to ask.

**Q.** Okay.

**CC:** Sir, I have no further questions.

**IO:** Thanks. Government?

**GC (LtCol Sullivan):** I'm going to defer to you, sir.

**IO:** All right. Ms. Brooder, first of all, let me apologize for not introducing myself at the beginning. I have an option of the ways I can handle this, and I can interrupt and ask questions as the counsel go or I can wait to the end. So I opted in this case to wait to the end. So I'm going to ask you some questions now. And it sounds like there was another 32, so you are familiar with the fact that I am not a judge -

**WIT:** Right.

**IO:** And I'm just trying to find out some information whether there is reasonable grounds to believe the case will go forward. So -- first off some of my questions are going to jump all over.

**WIT:** Okay.

**IO:** Because I just want to fill in some holes. My first question for you has to do with your availability for trial. You've now -- it looks like you've testified at least twice. I guess you've testified at some sort of -  
-

**GC (LtCol Sullivan):** Your Honor, I don't mean to interject, but she did not -- she declined the invitation to the first one.

**IO:** All right.

**GC (LtCol Sullivan):** So I apologize, Your Honor. I should have made that clear.

**EXAMINATION BY THE INVESTIGATING OFFICER**

**Questions by the investigating officer:**

Q. I misstated that. Anyway, you are here today. It looks like you've given a number of statements to police. You do understand that if this was to go to trial, you would probably be subpoenaed back.

Q. Are you available to do that?

A. Well, my only problem -- I am taking the bar in July, so that's the only issue I have.

Q. Okay. But would you be willing to come, though, other than that?

A. Yes.

Q. I want to know, do you know if Captain Wacker, did he have a roommate in his room as well -- the original room he had?

A. Mm-hmm.

Q. And how many roommates did he have in that room?

A. I'm not sure. I know one of them was Bobby O'Brien, I believe. I think there might have been another, but I'm not entirely sure.

Q. And was Mr. O'Brien -- he was one of the gentlemen that was out with you that night?

A. Mm-hmm.

Q. Now, there's been some talk about where you had lunch that day and what you may have eaten. Having been stationed in the New Orleans area for three years, I'm kind of familiar with the French Quarter. So I think some of the points that was made was Café du Monde is famous, but it's famous for two things: its coffees and its little doughnuts. That's all they sell. Do you recall when you had lunch that day if you had something more than that, or is it possible you just had some coffee and what they call beignets, which is a French word for a powdered doughnut?

A. I don't recall what I had --

Q. Do you recall if you had a meal though, or do you think you would have just went for beignets and coffee for lunch?

- A. I think I could have done either.
- Q. Okay. Now, I'm jumping around like I told you. I want to talk about the grenades. And you had mentioned that Captain Wacker had paid for those. Did he offer to buy them for everybody who was standing there, or was it just specific people?
- A. I thought it was just Liz and myself.
- Q. Are you clear on that?
- A. That's my understanding.
- Q. Okay.
- A. And himself, obviously.
- Q. And it's fair to say that you wanted it at that point? You wanted to --
- A. I accepted it.
- Q. You accepted it? Okay. And was it fair that you at least had some idea that, you know, that's it's not your typical drink. It's got the name grenade. It's shaped in a big jar that looks like a grenade. And at that point were you aware that it was proclaiming itself to be -- I forgot what the signs said -- it called itself -- excuse me -- something to the effect of the most powerful drink? Is that at least the theme of it, though?
- A. I understand that that's what -- that is now. At the time, I just -- it was in a funny glass and it was that or a hurricane. I didn't really contemplate the alcohol content. I just thought it was a big, slushy alcoholic drink, like anything.
- Q. But would you agree that you knew it was something that was probably known for being pretty high in alcohol content as opposed to just a normal thing?
- A. Well, I knew it was more than probably, like, a drink I'd order at the bar.
- Q. Okay. Now, when you went out that evening, did you expect to get buzzed or drunk? Was that the plan?
- A. I wasn't planning to get really drunk because we had to get up and go to work the next day. And, like, I was really into that. I wouldn't have wanted to be, you know, hung over at my clinic opportunity the next day. I was excited -- this was going to be the evening of the week that we went out -- so far as I saw it -- because I



was planning on studying the next day with Bobby for school finals because Liz and I were involved in a mock trial tournament that was coming up, and we had stuff going on for that. So this was going to be the evening that we experienced, you know, the urban street thing and the New Orleans thing. So I expected to go, you know, out with friends.

Q. And part of that experience you expected to drink --

A. Right.

Q. -- to some extent?

A. To some extent, yes.

Q. All right. Is it fair to say that -- you had mentioned once that Liz was the one who was pushing the shot on you.

A. Well, she wasn't pushing the shot. The waitress came around to us and offered it to us. And I was like, shots. I don't do shots. And she was like, they're nothing, you know. Because she had been a bartender in college or something.

Q. Would you agree, if not for her encouragement, though, that you wouldn't have had that one shot at least?

A. Probably. I mean if --

Q. Probably not or probably?

A. Probably I would not have got it.

Q. Any point during the evening was Captain Wacker pushing drinks on you? And that's my word, but was he encouraging you to drink at all?

A. Aside from buying the hand grenade that I accepted and then I understand he told me and Liz, told me later that he purchased a drink for us at Razzoo.

Q. But you don't remember that?

A. I don't remember that.

Q. So do you have any recollection of him ever bringing you a drink that you didn't ask for?

A. No.

Q. Now, when you get to Razzoo, you open up a tab?

A. Mm-hmm.

- Q. Do remember that?  
A. Yeah.
- Q. Was your intent then to buy more than one drink?  
A. Well, I'm kind of -- I feel like if I go out somewhere, I will buy everybody a drink. That's kind of -- that's normal for me. And so I anticipated maybe buying one or two drinks but -- rounds for whomever.
- Q. Okay. So when you went into Razzoo, in your mind anyway, you were thinking that you may have two or three drinks while you're in there?  
A. I might have more than one, yeah. I didn't know how long we'd be there.
- Q. Now, when you were dancing on the dance floor with the girls, how much time in your head can you remember being out on that dance floor?  
A. I would say I mean, it's hard to say but for several songs.
- Q. For about 15 minutes you -- your recollection is still clear?  
A. Yeah. At least 15 minutes, if not more.
- Q. Okay. And how would you describe your dancing with the girls?  
A. Just like -- I wouldn't want to say I'm a good dancer or anything, but, like dancing in a circle and standing away from each other and then just kind of group.
- Q. Well, do you recall if the alcohol was having an effect on your inhibitions on the dance floor with the girls, do you think?  
A. I feel like I, you know, was dancing probably, you know, more than I would if I had zero drinks, but I didn't feel like it was lowering my inhibitions to dance if that makes sense.
- Q. Do you think you were drawing attention to yourselves by the way you were dancing with each other?  
A. No.
- Q. Nothing out of the ordinary?  
A. No. Nothing -- it was really innocent [sic] type of thing.

- Q. Okay. When you described waking up the next morning -- and I'm quoting you here -- you said that you felt like you were walking through water. And what I want to know is if you can remember, are those your -- is that something you came up with, or is that something you read or learned about?
- A. No. That's something I came up with that I have mentioned, I think, to someone, describing it before where I just felt like a wadding kind of through it -- like, just like -- I don't know. It's hard to explain. Like a drag almost.
- Q. And in your entire life -- at that point you were 24 years old -- did you ever describe any condition you've had before that as feeling like you've walked through water?
- A. Not that I can recall.
- Q. Okay. Well, I guess what I'm getting at is I'm trying to find out if that's something you read about when you were doing your research on date-rape drugs, or whether --
- A. No.
- Q. -- that's just an honest feeling of how you felt and that's your description.
- A. That's my description of it.
- Q. Now, when you wake up in the morning, is it fair to say you had no physical pain other than feeling groggy? But I mean, your body, no physical pain?
- A. Like, acute physical pain in a certain area? I felt, like, really sick.
- Q. Okay. Basically in the lower part of your body. Did you feel like anyone had forced themselves inside you?
- A. No.
- Q. Did you have any chaffing on your inner thighs?
- A. No. Not that I noticed.
- Q. Okay. Any, you know, I don't know if there's a technical term, hickies or bite marks, or anything on your neck or anything like that?
- A. Not that I noticed, no.
- Q. Anything with your hands, any marks or bruises that force had been used on you?

A. No.

Q. And any fluids whatsoever out of the ordinary anywhere on your body when you woke up in the morning?

A. Not that I noticed, no.

Q. And you did not shower before you got on the plane?

A. Uh-uh.

Q. In your conversations with Elizabeth afterwards, did she ever say anything to you about -- she said she mentioned she saw Captain Wacker on top of you?

A. Mm-hmm.

Q. It looked like he was about to engage in sexual intercourse, but did she ever tell you that you looked like you weren't consenting to it? Did she ever say anything like that?

A. She said -- she mentioned that in our administrative hearing. She talked about what I looked like at the time in the --

Q. In the room. Let's focus on the room.

A. In the room she said I was just laying there.

Q. Did she ever say, though, that it didn't look like you were --

A. She didn't go into it one way or the other.

Q. Did she ever tell you in that morning, April 4, that it looked like he was raping you and you were passed out while he was --

A. She didn't say he looked like he was raping you.

Q. She never said anything like that?

A. She said that he was lowering himself onto you. And it implied that I was just -- she said that you were just laying. That's it though.

Q. Okay. Now you use the phrase that you called your boyfriend because you were frightened and scared. Were you frightened and scared that you had been raped or were you frightened and scared that you lost --

A. Because I didn't know what happened.

Q. Okay. Let me finish the question; okay?

A. Sorry.

**Q.** That's okay. Were you frightened and scared that you had maybe drank too much and now you can't say for sure what happened?

**A.** No. It was just that I didn't know what happened and someone was telling me something that I couldn't even try to recollect, and I was scared about that because I didn't know what the extent of what I didn't know was, and I just wanted to be home.

**Q.** You had referenced text messages you got. Do you remember what those text messages said?

**A.** Yeah. And I have given them, I think transcripts of them, to the -- they were in the USD police report, so I think that they have them somewhere here. I'd given that over, but they said there were some of them that said, "I hope you're not mad," and, "we need to talk," and stuff to that effect.

**IO:** Are they proposed exhibits, government, the text messages?

**GC (LtCol Sullivan):** Captain Day?

**GC (Capt Day):** I can provide those, sir. I don't believe they're in any of our proposed exhibits.

**GC (LtCol Sullivan):** They will be.

**IO:** They will be? You've see those? Okay. So I will see those at some point. Okay.

**Questions by the investigating officer continued:**

**Q.** Now, at the daiquiri bar, do you have any idea who bought the drinks of the daiquiri bar?

**A.** I have no recollection of being there at all.

**Q.** Okay. Have you checked your bank statements to see if you purchased the daiquiris?

**A.** No, I haven't. I have no idea what it would be called even.

**Q.** What would your conclusion be, if you had in fact been the one who bought the daiquiris at the daiquiri bar, about your state of mind when you got to the daiquiri bar?

**A.** That someone else purchased -- I don't know. I can't

even state that.

- Q. Well, I'm filling that in for you. I'm saying if you go back at your bank records and that showed you purchased the daiquiris, what conclusion would you draw from your state of mind at this point? I mean, would you be able to buy daiquiris with your credit card?
- A. No. Absolutely not. So I would say someone else would have to use my credit card to purchase them.
- Q. Is that something your friends would have done? Gone into your purse and gotten out your credit card?
- A. I don't know, like, under the circumstances, but my friends typically probably not. I just --
- Q. Okay. So is it fair to say that you would be surprised?
- A. I would be surprised if I had it, but I would be -- I don't know. I didn't even remember that at all, so I would be surprised.
- Q. Do you think it is more likely than not, if your receipt showed that you purchased the daiquiris that somebody took them -- do you think it's more likely that somebody went ahead and took your card, or is it more likely that you did it as a voluntary act on your own part?
- A. I don't think it -- it couldn't have been a voluntary act.
- Q. You're more certain that somebody probably, you know -- where did you have your credit card?
- A. Right. In my pocket or just on my person.
- Q. Okay. And you think it would be more likely that somebody, one of a group that was there -- I guess at that point there was three of you together?
- A. Just Liz, Doug, and myself.
- Q. Right. So you're saying either Doug or Liz would've had to take your credit card out of your pocket in order for that to happen?
- A. I just don't remember it at all, so I can't picture myself doing it at all voluntarily.
- Q. Okay. Now, when Captain Wacker tells you that nothing happened in the room, you didn't take that to mean nothing happened at all; is that correct?
- A. I took it to mean just kissing because that's what he

said immediately afterward.

Q. Okay. So just kissing. So you did not think that meant any other type of petting or anything like that?

A. Right.

Q. It was more than him saying we didn't have sex. Other than kissing, we didn't do anything.

A. Right. He said nothing happened. You can tell Justin that it was just kissing.

Q. And when he tells you nothing happened and in your mind you accepted that at that point, it was just kissing, how do you envision that it happened in your mind? Was it on the bed? Was it fully dressed? What are your thoughts when you say, I'm glad that's all that happened. In your mind, what do you think happened?

A. I don't know. I didn't think about -- all I heard was what this didn't happen of what I already told my boyfriend. I didn't really envision the what did happen.

Q. And the kissing -- would you -- I guess it would have had to have been consensual in order for it to be kissing? Would that be fair in your head that it was consensual kissing?

A. Do you mean is that what he was trying to tell me?

Q. Well, did you accept that? At that point, before you knew anything else and he says, you know, nothing happened, just kissing, in your mind, did you accept the fact that you could have been kissing him consensually and just don't remember it the next day?

A. I didn't really think about it. I just -- all I could hear was that he said the sex and nothing happened, and that's all I really -- I didn't really go to the whether or not I was consensually kissing him.

Q. Okay. I want to back up for a second.

A. Okay.

Q. When you go running that day and you have to stop because you're having some problems, do you think it was possible -- did you discuss it -- you called them "the boys" -- when they got back?

A. I didn't. I didn't -- I don't remember discussing that with them.

- Q.** So in your mind, there is no way that he could have known that you were having, you know, you know, that time of the month, so to speak, had come up for you when you went out later in the night? No one discussed why it was -- they never made a joke out of it? It wasn't anything like that he would've been aware of?
- A.** I don't recall that happening.
- Q.** You in general -- we've talked about how much you drank that night and how much you drank previously. How would you describe yourself when you drink? Do you get more to be the party person --
- A.** I don't really drink that frequently. It would be sort of the type of thing where if we are out at, say, the Halloween party or with this group, that I would drink, you know, more than a couple of drinks. But those times it's always just fun and good friends and everybody is talking and excited. I wouldn't characterize -- up to that point it was very ordinary to the point I remember.
- Q.** The only incidents that I know of are what I've heard of today. The one incident was the Halloween party in which you got up on stage and were willing to dance around a little. And then this incident where you go to the dance club and you're willing to get out on the dance floor and dance. Is it fair to say that when you go out and you're having a good time, you're willing to have a good time?
- A.** Yeah. Yeah. Going out and dancing with groups and whomever, that would be all normal.
- Q.** Now, when you start getting an explanation from Captain Wacker, if he had said to you point blankly -- excuse me, point blank, look, we had sexual intercourse. I was drunk. You were drunk. I thought you wanted it. And maybe that's not the way to say that. Just we both made a mistake. Anything to refute that even now?
- A.** What do you mean?
- Q.** I'll rephrase it. In other words, if he had said to you, Look, I was drunk. You were drunk. I thought the whole thing was mutual. Anything that you recollect that you can refute that?
- A.** Well, he told me that he saw me throwing up at the bar at Razzoo and then that I couldn't keep my balance dancing and that Liz couldn't walk. And so I just don't understand -- Becky asked him to get us home safely. I just don't understand why -- and then if he was able to



get us home to where we needed to go, someone would engage in sexual acts after seeing someone throw up and not able to walk.

Q. You don't remember throwing up at the bar though, do you?

A. No. I don't remember throwing up at the bar.

Q. At any point do you remember finding any throw up in your hair or anything like that?

A. Well, I had my hair back so, no. On my shirt I don't remember looking or seeing.

Q. Now, you talked about walking back from, I guess it would have been either the daiquiri place back to the hotel. Do you think it's possible for Captain Wacker, if he had to drag both of you back, I mean, literally -- if you were both under, you know, so drunk, or is it more likely than not you were able to walk and he just had to assist you?

A. I don't know. I don't know about dragging if you mean, like dead weight dragging.

Q. Right. That's exactly what I mean. If you basically were dead weight. He would have had a hard time, you'd agree with me, to get you both back and --

A. Right. Probably. Liz weighed about 115 pounds at the time.

Q. Okay. And were you sharing drinks at all?

A. With Liz or Doug?

Q. Anybody. Right. Were you switching drinks off?

A. Not that I recall doing, no.

Q. Okay. So if the estimation is accurate, it would have to be that he put drugs in two girls' drinks and he would then knowing he'd have to get both of them home, or try to get them back in a position; is that fair?

A. I suppose so.

Q. Okay. Now, I think Mr. Faraj asked you this question, but I'm going to ask it again anyway. If you had gotten too intoxicated and ended up having consensual sex with Captain Wacker, how would that have affected your relationship?

A. It would've been something I would've told my boyfriend about and tried to deal with him about it and say that it

was a mistake and I -- if I'm assuming it's consensual sex. You're putting it in that --

**Q.** That I assumed, right.

**A.** Then it would be something I would have tried to talk to him about and, you know, like, in a normal -- I wouldn't know the outcome, but I wouldn't think that it was a foregone conclusion that we would break up.

**Q.** But it was a possibility?

**A.** I mean, of course it's a possibility. Just knowing Justin and my relationship, I don't think that that would be the case.

**Q.** At what point in your mind did the word "rape" come into your head?

**A.** When I was in the bathroom with the tampon.

**Q.** Okay. These are some questions that are a little difficult for me to ask for you to explain them. In terms of distance, how out of place was the tampon? If you can't do it in inches, if you can recall --

**A.** I had to -- it was hard for me to even, like, touch and, like, the string to push to the side and try to, like, pull it down.

**Q.** Right.

**A.** So I would say it would have to be like, at least the size of my finger or so.

**Q.** I hate to ask you to hold your finger up -- okay.

**A.** So this is where the bottom of the string was.

**Q.** Is that about four inches?

**A.** I don't know. That's about it.

**IO:** Government? Is 4 inches good for you?

**GC (LtCol Sullivan):** That's fair.

**IO:** Defense?

**CC:** 3 to 4 inches.

**IO:** 3 or 4 inches. Okay.

**Q.** Now that amount of dislodgment, is it more likely than

- not that that could have happened from digital penetration, or do you think it had to have happened from penetration with a penis?
- A. I don't think that digital would've done it because I think it would've -- I think your finger would've gone around it, if you know what I'm saying. And this is the bottom of the string, so like the tampon, the string is this long too. And so it's like, at this time the tampon actually isn't up here. So it was -- the bottom of that was so high that it was longer than the finger, you know what I am saying?
- Q. Mm-hmm. So you don't believe that it would have been possible for digital penetration to do that?
- A. I don't believe it would have been possible based on my experience wearing tampons.
- Q. Well, I'll ask -- yeah - I don't know if I can ask you this question, but I'll ask it: You don't have to answer it. Do you have experience with that happening with digital penetration that you can compare it too or --
- A. Well, with the -- just like the -- where the string was at the top of my finger, and then the tampon is above that, like a -- it's just too far of a distance.
- Q. Okay. So you're quite certain that there was no way that that could have happened?
- A. I am quite certain.
- Q. Okay. And when you withdrew the tampon, did you notice any fluids other than blood on it?
- A. There was like a fluid. It was wet. I couldn't see it. There was not like a color to it or anything, but there was a fluid, and I can't say what it was.
- Q. But it was a -- I'll call it a foreign substance from which you would normally see?
- A. Right. I mean, sometimes there is like, in menstruating, there is like the different kinds of fluid in there, so I can't say exactly what it was. The tampon was squashed so --
- Q. But you're certain that there was some additional fluid there that you had never seen before?
- A. There was additional fluid that I'd never seen before. I can't say, like, because it's different blood and discharge comes with the menstruating, you know what I'm

saying.

- Q. Now, a few months later you go and you have, you go to Planned Parenthood and you get tested for STD's. You said it was a few months later?
- A. I'm really having a hard time nailing down when that was. I think it was a few months later.
- Q. Okay. If the results had come back positive, would that have one hundred percent pointed to Captain Wacker?
- A. Yes.
- Q. And if you would have been pregnant, it would have been one hundred percent --
- A. Well, not if I had been -- I mean, my boyfriend and I had been --
- Q. That's what I'm getting at.
- A. Yeah. Are sexually active regularly.
- Q. Well, were you after?
- A. Were we after?
- Q. Right. Before the STD test?
- A. Yeah. Less so than regularly, but yes.
- Q. Okay. But then the test -- when you went to get the test then, the results would not have been -- would not have conclusively proven that it was Captain Wacker that gave you an STD; is that correct?
- A. Well, so far as I -- I mean, so long as Justin had not been sleeping with anyone else because I had STD tests before that when it was just Justin and I.
- Q. Right.
- A. So, yes. I mean the fact that there's two people, then yes, it's not conclusive.
- Q. I guess what I'm getting at: Did you take this test just as the normal course of your own health checkup or --
- A. No. It was because of this event, but it was something I was dreading doing; and I was just putting it -- I kept putting it off because I was scared of the results.
- Q. But even still, even if the results had come back bad, however you want to define that, you still wouldn't have been able to know for sure, you know, what was the cause

of the problem.

**A.** I would be assuming because I have had STD tests done before with just my boyfriend and I. And if he had not been with anyone else, it would've been Doug, but I can't say that for sure.

**IO:** I have no further questions at this time, but believe it or not, the government and defense get to follow up. Any questions?

**CC:** A few follow-up.

### **RECROSS-EXAMINATION**

#### **Questions by the civilian counsel:**

**Q.** Ms. Brooder, you said that if you had bought the daiquiri, someone else had used your credit card -- or someone else would've used your credit card?

**A.** I just can't -- it's hard for me to answer that question because I can't even -- it's hard for me to say that it was even possible that I -- I can't say that it was possible that I voluntarily purchased it. So yeah.

**Q.** Why isn't it possible?

**A.** Because I don't remember it at all.

**Q.** You don't remember anything after the club.

**A.** I know.

**Q.** You don't remember getting to the hotel. You don't remember going to the room. You don't remember being carried or walking. You don't remember having sex or not having sex.

**A.** Mm-hmm.

**Q.** So when you say -- I mean, is it that you don't drink daiquiris?

**A.** Well, I've never had a daiquiri, but I don't think that's --

**Q.** In fact, have you ever had a grenade before New Orleans?

**A.** Right, no. So that's --

**Q.** I want to clarify something.

**A.** Okay.

- Q. You were pointing at it, and I just want to clarify it for the record. The discharge that you're talking about, you are also saying that part of menstruating, there is other, besides blood, there's other liquid; right?
- A. Sometimes -- and especially I feel like in the initial first, you know, day or two.
- Q. And this was the first tampon you put in?
- A. Yes. Since that problem with the --
- Q. So as you sit here today, you cannot rule out that that other liquid was from you?
- A. I didn't really inspect it, so I can't rule that out.
- Q. Okay. Well, how did you know there was another liquid?
- A. Just looking at the tampon, there was something wet on it other than blood, so that's all I am saying.
- Q. And that wetness other than blood is not inconsistent or is consistent with other discharges during menstruation - - or during the menstrual cycle?
- A. It's possible. Yeah, because of -- yeah.
- Q. It's consistent with other liquids during a menstrual cycle?
- A. I suppose, yeah.
- Q. I don't want you to suppose. You would know. Is it consistent or not consistent?
- A. It's consistent.
- Q. Okay. And you said you went and had the test with Planned Parenthood?
- A. Uh-huh.
- Q. But you were sexually active with your boyfriend?
- A. Yes.
- Q. So -- and you also testified that you're concerned as a result of any interaction that you had with Captain Wacker?
- A. Uh-huh.
- Q. Were you not concerned about passing something that he may have given you to your boyfriend?
- A. I was. We didn't -- we, our sexual activity was reduced to really low, and we used condoms all the time. And I

was just safe about that.

**Q.** My question is: Were you concerned or not concerned?

**A.** I was concerned.

**Q.** Okay. Because condoms break sometimes; right?

**A.** Right.

**Q.** And you can get, you know, it doesn't protect from everything; right?

**A.** Well, if they break --

**Q.** It doesn't protect from all?

**A.** Yeah.

**Q.** Okay. So despite your concern, you still did not believe that you should have gotten a test before engaging in sexual activity again with boyfriend?

**A.** Well, I had talked to Justin -- we talked about it and we decided together -- Justin and I, about having sex after the fact because it wasn't something we were doing very much because I was just upset all the time. And we used condoms and thought that was safe. Maybe that was just bad information on my sex education.

**Q.** I just want to be clear.

**A.** Okay.

**GC (LtCol Sullivan):** You know, the one thing - and I'm going to impose a 412 objection. I knew the testing. I knew the relevance of those questions. I think you covered it. Before you go into other sex-related questions to sex outside the interaction with the accused, I'm going to impose a 412. I tried not to object to it because I understood the timing -- it was a timing question. I understood the relevance of that question that he just asked.

**CC:** I haven't asked a question.

**GC (LtCol Sullivan):** Well, I guess what I'm looking for is an affirmation that we're not going to go into the 412 area.

**CC:** I haven't asked a question.

**GC (LtCol Sullivan):** Okay. Well, ask a question and then --

**IO:** I'm cognizant of that and I'm prepared to hear the question.

**Questions by the civilian counsel continued:**

**Q.** You cannot, as you sit here today, you cannot say whether you consented or you did not consent to sex with Captain Wacker on the evening of April 3 and the morning of April 4, 2007?

**A.** I did not consent to sex.

**Q.** How do you know?

**A.** Because it was impossible for me to consent to sex.

**Q.** Why is that?

**A.** Because I was completely incapacitated.

**Q.** How do you know that?

**A.** Based on the fact that I don't recall anything. I was throwing up at the bar. There's all of these issues.

**Q.** Do you know the difference between a blackout and incapacitated?

**A.** The difference between them? No, I don't know what you mean by that.

**Q.** Okay. You don't remember anything happening. After a certain point, you don't remember anything at Razzoo?

**A.** Right.

**Q.** By the look at the IO, I think he knows what I'm getting at.

**IO:** I know exactly -- without stating, I understand where you're going and the point is made. She doesn't remember, and I understand what that means under the law.

**CC:** Okay. As long as you know what I'm talking bout. All right.

**IO:** Arguments are for closing.

**CC:** Okay. Thank you.



**REDIRECT EXAMINATION**

**Questions by government counsel:**

**Q.** The one question I have is: Do you know whether the lab -- that one area of questioning dealt with these lab tests. Do you know whether they even tested for the date-rape drugs?

**A.** I didn't know that. I found out, you know, that they did not test.

**Q.** You found out later that they didn't eve test for date-rape drugs?

**A.** Right.

**Q.** They made a mistake?

**A.** Right.

**Q.** So these lab tests we've talked about for hours really don't rule in or rule out anything for us?

**A.** Right.

**GC (LtCol Sullivan):** Do you have anything else? I have nothing further.

**IO:** Anything else?

**GC (LtCol Sullivan):** One thing -- I am sorry, Your Honor.

**IO:** I was just going to -- thank you for your testimony.

**WIT:** Sure.

[The witness was excused and exited the courtroom.]