



**UNITED STATES MARINE CORPS**

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IN REPLY REFER TO:  
5800  
MJO/ED  
11 Feb 11

From: Trial Counsel  
To: Defense Counsel

Subj: TRANSCRIPTION OF CERTAIN AUDIO RECORDINGS IN THE CASE OF  
UNITED STATES V. CAPT DOUGLAS WACKER, XXX XX 3913 USMC

Ref: (a) MCM (2008 ed.)  
(b) Western Judicial Circuit Rules of Court

Encl: (1) Transcript of 21 June 2007 recording of University of  
San Diego "Critical Issues Board"  
(2) Transcript of 4 April 2007 voicemail from Jessica  
Brooder

1. The purpose of this letter is to provide notice of the government's intent to offer certain audio recordings, and transcripts thereof, in the subject case.

2. Please review Encls (1)-(2) immediately and notify me if you have any dispute with the transcription provided. My intent is to identify and resolve any issues with regard to the accuracy of the transcription in advance of trial, in order to avoid undue delay at trial. If I do not hear any response from you, I will assume that you have no dispute with the transcripts provided.

//s//  
E. S. DAY

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on detailed defense counsel by electronic mail on 11 Feb 11.

//s//  
E. S. DAY

Speaker 1: If you want to just introduce the board ----

Speaker 2: I'm sorry. Could you speak up a little bit because of the fan?

Speaker 1: Yeah. Counsel (inaudible) I am sorry. I am Debbie Tahmassebi, the faculty administrator.

Speaker 3: I'm Merrick Marino, I'm an assistant dean.

Speaker 2: My name is Rhett Buttle, I'm a student representative.

Speaker 1: So I just want to read a couple things that are important for you to know about the process.

Speaker 2: Okay.

Speaker 1: Then there are some questions to ask. First, is the ---- the hearing of any witnesses is the only participants that are to talk in this process (inaudible).

So this hearing process is an administrative process that seeks to determine whether you've -- -- violated university policy and if so then appropriate sanctions are recommended to the Dean of Students.

You're reminded that this is an administrative process. No one's placed under oath. However, the university expects members of its community to be honest and forthright and being otherwise would be considered a violation of section 2.2 of the university code of conduct.

The board has reviewed the file and we are going to ask questions of you. That about covers it, just about.

I can start. Since there was no statement in here by you is the first at task: What would your statement be? Because there is no recounting of the events by you so ----

WACKER: I had spoken to by my brother who was an attorney at that time. He didn't know what the situation

involved. He advised me to just check my rights and to not make a statement at that time. I just declined to do that. After that I didn't hear anything till I received a letter from Dean Minnick after school had ended.

I am willing to fully cooperate now and basically my statement would be. We went -- 21 students went down to New Orleans we were going to do pro bono legal work down there. The groups were split up into four teams in different areas. In the evening we would come back to our hotel and congregate and then basically go out for dinner or for the nightlife.

On April 3 we decided to go out and there were basically three different groups of seven students. Two of us ended up at the same restaurant and we ended up eating together, went out, had dinner, and then after dinner, I think that was about 7 o'clock at night, after dinner we split up into a smaller group of about seven students.

The two women and myself with about four other students were there. We went to a jazz club down at the far end of Bourbon Street and that's where Becky Barker got pulled up on stage. We were probably there for about an hour or so, maybe an hour--and--a--half. We left there and went on up to another dance club and we were there for pretty much the remainder of the evening.

For the most part everyone was buying their own drinks. If someone had bought me a drink, and that's when I bought someone else a drink, but that was about the extent of it. And then at about, I think it was about 1:30 in the morning, people started - some people had left earlier, but at about 1:30 everyone basically decided that, to take off out of that nightclub.

I remained with the two women, Jessica and Liz, and we went, when we left there we were heading home and then they decided that they wanted to go to another place, that we should stop at the Daiquiri Stand.

At the Daiquiri Stand Jessica bought drinks for all of us. And then - I think in the statements they were talking about the guy in the yellow shirt. That's where we saw him. Until they pointed him out I didn't notice him. At the Daiquiri Stand, basically a conversation about threesomes had come up and at that time the three of us engaged in a three--way kiss. And then the two girls were each kissing my neck and blowing from either side. We had talked about going back and I said if you want I'll get another hotel room.

And that's when we started walking back. We all agreed that everyone was going to go up to get another hotel room. So we walked back to the hotel which was probably around 5 blocks I walked ---- I think this was about 3:30 in the morning, so a couple hours after we had, like, an hour to two hours after we left the dance club.

We got back to the hotel and I went up and got a hotel room. They were waiting in the lobby. The clerk was there. At no time did they say, "Hey, we want to go back up to our room." The three of us went into the elevator and went up the new room which was at 1008. We came inside, everyone on their own, basically took their clothes off and we were kissing and petting each other.

Then, it was probably in that first twenty to thirty minutes of just kissing and petting that everyone was just wearing basically wearing their underwear and bras. We were in the room on one bed of the two beds in the room and then Jessica got up to go to the bathroom. And Liz and I were hooking up. And then Jessica came back and then Liz went to the bathroom.

And then when she came back Jessica and I were on the bed together basically making out and touching each other. That's when Liz decided - she said, "I can't do this." She decided to leave, and she left the room. And basically, at that point she asked Jessica if she wanted to go and she said, "No." And so we stayed in the

room.

And then Jessica and I - I mean I can't deny that there was sexual contact. Both of us had been rubbing each other and basically masturbating each other but at no point was there any statement, "No, I don't want to do this." There was no force whatsoever.

I know that there's, basically, allegations of a date rape drug used. I am a Captain in the Marine Corps and I have never used drugs myself and there is absolutely no way that I put any type of drug into someone else's drink.

About somewhere between 30 and 90 minutes later Liz came back down so I am guessing this was probably about 4:30 in the morning. She came back down and she was knocking on the door and I answered it. I was wearing my jeans at the time and she came in. Jessica put her clothes on and then she took Jessica back down to the room where the three of the girls were staying.

About an hour after that, then, I think it was about 5:30 or 6:00, Liz came back to the room and knocked on the door. At this time I had fallen asleep and was awakened. And she was kind of getting angry with me and was asking, like, "What happened?" And I told her, "What are you talking about?" And then, like, "What did you and Jessica do?" And I go, "Jessica -- And she said, "Jessica is upset." And I said, "Jessica's upset then I'll talk to her, but I am not going to talk to you about it." And then she got mad and that's when I think her statement says that, "I can't believe I stood up for you." So it was a very short conversation there.

She went back down and that's when the text messages -- I am not sure. You can't see the times on those and I don't know for sure exactly when all the times were but I believe it was between -- in a short period of time basically. Because at that point I knew that they were upset and so I was willing to talk but I was willing to talk with Jessica. And I didn't hear anything

back from them.

And then I ended up leaving at about 7:30 or 8:00 in the morning to go to work. I went to work and at about 9:15 I received a voicemail message and I have a copy of it, I transcribed it. And it basically says at approximately 9:15 AM I received a voicemail message from Jessica.

Quote, "Hi, Doug. It's Jess. I know I need to talk to you. I talked to Justin, my boyfriend, and I don't know really what happened at all last night. So I had to tell him whatever (inaudible). I told him what Liz told me."

And basically, from our conversation later that morning I found out that Liz had basically said that, Jessica was naked, and that we probably had sex. And it goes on:

"He wanted your phone number so I gave it to him. He was upset so I just wanted to, like, warn you. I mean, I know I should have talked to you first. I think I am going to go home today so I don't know. I don't know. That's it. Bye."

And when I received that message I knew she was upset. I knew we needed to talk so I left work and went back to the hotel room and knocked on the door. And both Jessica and Liz were in the room.

We sat down for probably about twenty to thirty minutes just discussing the events that had gone on the night before. And I told them exactly what had happened. I told them - they asked me if we had had sex and I said, "No." And I basically said that it was kissing and petting. That there was sexual contact but there was no sexual intercourse.

During that conversation Jessica stated, "Well, I knew it" when we were talking about whether or not there was sex Liz was the one who was asking that question. And Jessica was like, if it doesn't feel like, I've had sex, like, that gross feeling. And she's like, "I am not blaming you."

I know it takes two to tango."

And at that point -- everything up until that night -- during the night they appeared aware of their -- we were all having a conversation about exactly what we were going to do. We all agreed. At no point was there any type of -- any coercion or anything that could try -- for me trying to get the two girls come up to another hotel room that I had just gotten. Basically, I was saying, if you guys want to do this then I want to do this. But obviously if the two of them wanted to go back to their own rooms, then we were in the hotel lobby and they could have gone right there.

And then later that morning I received an email message through MySpace -- an email message that -- I received a MySpace message and basically it was from -- it must have been about 11:00 in the morning, and apparently Jessica told him that Liz said that we had probably had sex. And so Justin's messages basically read - the subject line said, "You sick fuck." And in the body it said, "they teach you to rape girls in the corps you sick stupid fuck."

I called Jessica to let her know that I received this but that I wasn't going to reply to it since we had already talked. But I wanted her to know about it but I told her again, and this is something that we had talked about in the room, was that I felt very sorry that they were very upset about this but at no time did I ever think that they weren't consenting to what we decided to do that night.

And I said -- I told her that if she wanted to -- that if she wanted me to talk to Justin that I would and, that if he called me again that I would accept his call. He had made one phone call to me, but I didn't want to -- without finding out what- how she was dealing with her situation with her boyfriend, I didn't want to deal with that. And so I just left it at that.

He never called me after that. He did see me on campus one day and basically said that, "You

better watch out. I'm coming after you." And I told Dean Minnick about that. And that was during finals.

So I am very sorry about what happened and the fact that they were so upset. I have no idea that at the time that they wouldn't remember what was going on, and I thought that they were able and willing to engage in those activities. And I think that basically sums up what I have to say and if there are any questions.

SPEAKER 3: Yeah, I'd like to just hear about some of the events. You talked about some of these in your statement, but just to specifically ask you some of the questions about some of the details. One detail would be mentioned that you had - that you had purchased a round of drinks or shots. Did you do that?

WACKER: That was at the dance club?

SPEAKER 3: At the dance club.

WACKER: I don't usually just go buy drinks for people. And so someone had given me a drink and I think that I bought about three or four drinks and just brought them over to the table. I remember buying drinks at the dance club. That was the only time that I bought drinks there.

SPEAKER 3: Okay. I think the mention was a specific drink. It was shots I think.

WACKER: No. There weren't any shots. Just (inaudible) glasses --

SPEAKER 3: Okay.

WACKER: -- with vodka/tonics. I think someone specifically asked for a cranberry/vodka.

SPEAKER 3: Okay. Okay. And then another statements had mentioned that their state of mind changed drastically after that round of drinks -- that first round of drinks. Did you notice anything different?



WACKER: No. I mean throughout the night everyone was drinking, but no one appeared to be out of it. Even after that point we all walked and it wasn't, like, any of, like, two of us had to carry one other person or anything like that. Everyone was walking between bars on their own and we made it back to the hotel.

I mean if I -- when I purchased the room that night I think it was probably about 2:30 in the morning, but there was a statement about the text messages, the specific times, and that's incorrect. It would have been about 5 o'clock in the morning, for the text messages. And when -- I am not sure if you travel with your cell phone but it switches the time zone, but we got back around 3:30 and if the girls had been so out of it I'm sure that the hotel receptionist would have basically said, "Hey, what's going on here?" At no point did we get any questions of what was going on.

SPEAKER 3: Who did you buy drinks for that night? That round of drinks that was referred to is kind of the round of drinks in suspect. Was it just for those two or -

WACKER: No. There was, like I said, three or four. So I can't remember exactly who, but the other people that were there were - the whole statement that was Rebecca - Becky Barker, not Baker or Backer. Becky was there. There were two girls named Susan. There were two guys named Forrest Merithew and Bobby O'Brien. And I can't remember, I think Bobby was drinking Jager's. But I am not sure if Forrest had one of those vodka/tonics or actually if one of the other girls had one of them. So -

SPEAKER 3: So how many drinks did you buy in that round?

WACKER: I believe it was four.

SPEAKER 3: Okay.

WACKER: I think I made two trips.

SPEAKER 3: So two for the two-

WACKER: Right.

SPEAKER 3: -women and two additional drinks.

SPEAKER 3: Okay. I'll just ask you the direct question. Were you aware of anything being put in those drinks either by yourself or by anyone else?

WACKER: No. It was - I went from the bar to the table and I don't - I don't think that anyone could have put something into those drinks.

SPEAKER 4: I just had- you said that - as you guys were making your way from the club there was a conversation about, like, threesomes and there was, like, a lot of flirtatious things going on, was anyone else who was with you aware of kind of what was going on between the three of you?

WACKER: At the time it was just it was just the three of us.

SPEAKER 4: Okay.

WACKER: We had left, I think the club was called Razoo and that's where there were seven - a few people from another group - coming and going. So it might have been up to seven to ten people. Sometime between, I'd say between 10:00 and 1:00, and then at the end -- as everyone was leaving, then we left the three of us. Other people had just left prior and hey, you guys can make it all back all right. So we were all good. That's when we talked about maybe if you wanted to stay out or do you want just stopped at the one Daiquiri Stand. I'm not sure if you're familiar with Bourbon Street, but basically they're little shops that basically only go back maybe fifteen feet and they have - it's, like, going into an ice cream shop, and they make the daiquiris there and they might have a table or two. So we just stopped in there and we were sitting at a table and that's when the discussion came about. We were probably in there for thirty minutes, at

least, and that was the discussion, the kissing and stuff went on.

SPEAKER 1: So do you remember when you - how did that discussion start?

WACKER: I don't remember who said it. It was just the three of us there. It was- It started off in, like, a joking manner of, hey, there is three of us here and the question were raised of have you ever been in a threesome. And they asked me and I just kind of - I didn't say anything and they inferred that I had been. And then I asked them and they said no. And then I was, like, well if you guys want to then I'll get another room. And the conversation kept on going.

And that's when we had decided and then we started walking back to the hotel. Basically, we talked about it again and do you guys want to go through this or do you want to just go to bed.

SPEAKER 1: Was it typically your - did you get the impression that were either one of them ever making suggestions about - how they would do it while you talked about having a threesome? Were either of them kind of involved in the planning how they would (inaudible)?

WACKER: No. It was just, "Do you want to get a room?" "Sure, let's do it." One thing, I think it was in the Daiquiri Stand when we were talking about it, it was one of those things where, whether or not to do it and Liz said ---- making a joke on the Las Vegas motto of "what happens in New Orleans stays in New Orleans." That was stated at the Daiquiri stand (inaudible) and we kind of got a chuckle out of that.

SPEAKER 4: You guys departed from the group as - were there other group members with you who saw you guys leave as - the three together?

WACKER: No. We were the last ones to leave. People had left us.

SPEAKER 4: Who was the last person - Who was the last

group of people or the last group to leave you?

WACKER: I think Becky and Bobby had left the earliest. And I think that Forrest walked back with the remaining women that were there.

SPEAKER 4: In one of the statements there was a claim made that one of the girls felt super hung--over and in pain. From the story you're telling us I just wanted to clarify that you said that she said that she didn't feel at all like she had had sexual intercourse so she does have a -

WACKER: She said I didn't feel gross and I don't - I am not a woman, but I didn't feel gross as if we'd had sex. So she was under the impression - she said that she couldn't remember what happened and I basically told her that, "hey, we didn't have sexual intercourse." And I don't know if I- I don't think we went into detail as to the particulars but what had happened was basically she was masturbating me, and I was masturbating her. That was the extent of it.

SPEAKER 5: I think one statement there was a mention that one of them was sick or throwing up, something like that. Were you aware of that happening?

WACKER: I mean I didn't see anyone throw up. I don't remember particularly as to when that happened.

SPEAKER 5: So you didn't know?

WACKER: No, sir.

SPEAKER 5: What - if you could just describe kind of your level of awareness, it sounds like you have a pretty specific recall of what happened that night, what level of intoxicification, you know, you would say had and your state of mind. And also if you could, describe what your sense of theirs was.

WACKER: I mean I thought their state of mind was basically the same level as mine. I definitely would not have driven a vehicle. And, but I mean I wasn't to the point were I am out of control

and I need to get home and put myself to bed. That's kind of a broad spectrum, but it was being buzzed where you could still make decisions, but you're not operating heavy machinery. I don't know how else to describe it other than that. But at any time I had gone to that point then I would have taken myself home. If I saw one of my friends in that same position I would have made sure that they went home.

The night was over and at no point was anyone inebriated ever to that point.

SPEAKER 5: There is a statement -there are several statements about their condition and possibly being kind of incoherent, not making sense. Was that your observation?

WACKER: No. I mean we conversations. Both in the dance club, at the daiquiri stand, back in the hotel room. At no point were they incoherent.

SPEAKER 4: Sorry to get extremely personal, but you said that the physical contact or the masturbation, would you describe that as rough or --

WACKER: No. That's just not my style.

SPEAKER 4: At what point would you say that you notice that the girls were upset or -

WACKER: I didn't -- They weren't upset until - even when, I went through it, ---- but basically, Liz came back down and got Jessica and even then she wasn't upset. She just wanted to get her roommate back down to her room. Then Liz came back up to talk to me and that's when - that was after I had fallen asleep---- that was when I knew that Liz was concerned. I wouldn't say necessarily upset and then definitely in the morning when I got a voicemail and went back and talked to them I knew they were upset about what happened. And that was after, I guess when as soon as they got back they made a phone call to their boyfriends and they didn't know what - from what they said-they didn't know what had gone on. And so that's when basically during that

conversation at about 9:30 Jessica said, "I didn't come to work." She didn't say exactly when that happened or that was but, but that's what Liz had told her, basically - basically that she had been naked in the room assuming that the sex had occurred.

SPEAKER 4: There was a series of text messages that went all between - would you just talk about those a little bit?

WACKER: I would say that (inaudible) without the times it makes it difficult but, Liz had come up and basically, she was mad and I told her that I would talk to Jessica but that I wouldn't necessarily talk to her about what had gone on. If Jessica was upset, then I'd talk to Jessica. Liz left and I am not sure if these are all from Liz but I'm not sure. I texted her, "If she wants talk to me, let me know." And then Liz sent back, "She did not. If you were worried you'd let her know without subjecting her to more pain." And then I replied to that and told her that Liz was mad at me "I am not trying to mean, but she needs to talk to me if she is concerned." And then I didn't hear anything back after that so I sent, "Are you guys doing alright?" We need to talk. That could have been - I am not sure how these are all -- if they are on order or not. And then I said, "If you want to talk, please call me." And that's as far as letting them know were I was at if they wanted to talk in the room and talk with me. And then the final message is, "I hope you aren't mad." I am not sure if that is from both (inaudible).

SPEAKER 4: Were they responding back at all?

WACKER: Not - I mean just judging from the (inaudible) which way it went. After Liz's last one, she did not (inaudible) on that. And then, after I talked to them that morning they accept - they had mentioned that they were - Jessica wanted to go back. That she was concerned about her relationship with her boyfriend. And I said if that's what you feel is best then I understand. Just giving you a heads up if you are. I never

received any word back.

Obviously I found out that they had taken off. I think it was later that day. I didn't find out until a day or two later. Just because I hadn't seen them. I didn't contact them until we came back to school on Tuesday, and then on Wednesday - on Tuesday and Wednesday they weren't in class and so that's when I had sent another text message - actually a voicemail, I called Liz and she didn't have a voicemail. It cut off and so I didn't leave a message there. This was about maybe 2 o'clock in the afternoon that I called Jessica and that's when I left a voicemail. I was just calling to see if you guys are all right, I haven't seen you guys and please just give me a call back and let me know what's going on.

Later that afternoon I received a phone call from Dean Wilson at the law school and I am not sure which one came first but Dean Wilson and Lieutenant Kawahara asked me not to contact the girls. And when I talked to Dean Wilson she said that she couldn't discuss the matter. I haven't contacted or tried to contact either of the two since that time. And I met with Lieutenant Kawahara, I believe it was within the next two days or next week. And that was when I heard about the allegations but I declined to make a statement at that time.

SPEAKER 6: Going back to again the night in question and in the hotel room, what were your indications of mutual consent? Was everything - was there anything that you were kind of either leading or were they seeming to engage, you know, kind of there own, willingly?

WACKER: Well, the first part was going up to the room and the next part was - everyone took off their own clothes down to their underwear. And I was down to my boxers at the time. The two girls had their bras and panties on. And then it wasn't - there was kissing and touching going on on both sides. So -

SPEAKER 6: Was that initiated by you or was that just kind of mutually initiated?

WACKER: It was mutual. I mean with a kiss it can't just be just one way. For that part I mean but then everything that - I mean it was all reciprocated either way and I don't know exactly who was the first to touch who on that.

SPEAKER 1: What was - I mean this was at the end of the trip? This was -

WACKER: It was. I think I arrived on Saturday morning. I am not sure - I know people arrived on Sunday. I'd have to look at the calendar but I think that the third was either a Tuesday or a Wednesday, so they left either on a Wednesday or a Thursday.

SPEAKER 1: What was the plan? I mean what was the schedule on this trip, like, how long was everyone supposed to be there?

WACKER: We'd leave on Friday or Saturday.

SPEAKER 1: (Inaudible) that everybody had gone down there? I mean what's that schedule?

WACKER: Everyone was doing different things. In my group, the four of us, we work with what's called the Pro Bono project. And basically it's low-- income people can come and get legal assistance for bills, title transfers. So we were processing that. It was basically a 8 or 9 to 5 everyday and that's pretty much what everyone worked. Some people worked at a law clinic at one of the universities. There were some people who didn't want to do law stuff for their spring break so they did Habitat for Humanity or picking up garbage throughout the city, going around with a dump truck.

SPEAKER 1: So what if, do you know, what the girls were doing(inaudible)

WACKER: I don't know exactly what they were doing and I'm not sure if they were all together. I think they were doing something law related but I don't



exactly what but it wasn't at the same place that I was at.

SPEAKER 1: So were you friends with the girls before? I mean did you guys end up going together on this trip?

WACKER: We had all talked about it. It wasn't - I mean there were larger group projects like, 15 to 20 girls in my section. I am not sure if you're familiar with the law school, how it's set up, but in the incoming the class there are four (sections) A, B, C, and D sections. So the three day sections -- there are about 90 people and they are broken up into A-1 through 3; B-4, 5, 6; and C-7 through 9; and both Jessica, Liz, and myself where in B-5. Basically, all of our classes were together.

So we knew each other since the beginning and we've become pretty cohesive. We've gone out in the evenings together in groups but we've been friends for an entire year before this. And Becky's in another small section but we are all in the -same section or probably 15 or 20 of us in the section talked about doing it and I think that we probably had five to seven people from our section end up going on the trip.

SPEAKER 1: (Inaudible) When you were hanging out with them. Were either one of them discussing their boyfriends during these plans or was that not part of the conversation?

WACKER: (Inaudible)

SPEAKER 6: Had you gone out with them previous times? Have you seen them intoxicated?

WACKER: Yes, sir.

SPEAKER 6: And were there anything different about this night in their behavior or ---- did they seem excessively intoxicated as compared to previous times you may have gone out?

WACKER: No. And that's - that kind of goes back to if I

were to see someone who was - if there was someone who is incoherent that I would make sure that they get back to where ever they are going. If someone's able to alertly have a conversation with you then you're under the impression that they have all their faculties and they know what's going on. And that's the way that they were that night.

SPEAKER 1: There are a couple things that should (inaudible) but I'll mention them now - go ahead.

SPEAKER 4: It kind of relates to one of the statements --- - you have all the - one of the statements that she made was that, he tampon was pushed really deep inside of her and that was one of the reasons that she thought that there possibly was sexual intercourse and I was just wondering if you think that could have happened through -

WACKER: I didn't- when we were hooking up. My hand was down there but I'd have never noticed it, she had a tampon in. So I don't know what style the tampon was. If it was a small or the larger kind, but I didn't notice it. I didn't feel it when we were engaged in that activity.

SPEAKER 1: The only thing that you didn't mention to me (inaudible) have reviewed the file -- just make sure you did have the opportunity at the end of this to look at things and comment on them.

WACKER: Just that it seems like something comes throughout this is that they think they were drugged and the drug test did come back negative. There was absolutely no way that I would put a drug in someone else's drink. If I were to be found with a drug on me then that would basically ruin my career. And I do not - I don't take that lightly.

There's - there's no way that I put anything into anyone's drink. As far as that was concerned I can't think that there was anything else that was ambiguous or (inaudible).

Basically, at no point in that evening did either

of the women appear to be upset about what was going on. I realized they were upset once - after they had talked to their boyfriends and they came back to try and discuss what went on to make sure that everything was clear between all of us. And not till I came back here that I realized that it was - that it had developed into something maybe that may become more serious. That's all I can say on that.

SPEAKER 1: The only thing is just to go through the process that's gonna happen. So following this witnesses and advisors are going to be brought in and just so ---- you're going to be here, but it's only the board that's gonna ask the questions of the witnesses.

And then after that, while we're deliberating we can excuse you and then you can be brought back in so that you we can communicate the findings. And I'll determine if you are responsible or not responsible for violating university policy. And if then you are responsible, we will excuse all the board (inaudible) violations and determine sanctions and those will be recommended to the committee.

I just want to make sure you understand the policies that you are accused of violating.

WACKER: Now is the three that are there. I am curious about the first one.

SPEAKER 7: When we make allegations, we make them as broad as possible. So it's, like, it could potentially be a violation of the law, but right now we are just making this as broad as possible. Not knowing what would happen between you and (inaudible).

SPEAKER 1: Your last questions ---- before we bring in the witnesses, you - your last chance at forwarding question that you would like the board to include. We may or may not include them, but there are things that having read through all of those that you would like to be asked (inaudible).

SPEAKER 8: Sir, I can also share with you - they've got statements so they can be read out loud from two people who were interviewed by public safety, but I wanted to make sure that everything they had communicated was communicated since they and't, I guess, seen the final public safety reports.

So you probably - if you want to read it out loud (inaudible) go into the record. So this is from Rebecca Baker - Barker, sorry and it's wrong in there too. I apologize.

SPEAKER 7: This is a statement other than what we have -

SPEAKER 8: Yeah. Of the student about seven went out to eat. Stopped at the Hurricanes, went to a jazz bar, and then dancing at a club. Everyone was drinking except for me because I had become ill the night before.

We were dancing at the club for about four hours. At the beginning of our dancing only the girls were dancing together. At one point, Jessica told me no boys were dancing. As the night went on Jessica's behavior changed, and by the end of the night she was dancing with Doug. Also, Liz became more flirty and danced more flamboyantly than usual.

At about 2 A.M. I wanted to leave so I asked another male from the group to walk with me and whoever else wanted to leave back to the hotel. He agreed. The entire group then gathered around the bar while the male closed out his tab and decided who wanted to stay and who wanted to go.

Liz and Jessica decided they wanted to stay and Doug said he would stay with them. Jessica stated that she could barely see and then threw up at the bar. Liz then took her to the bathroom. I told Doug to make sure Jessica closed out her bar tab and to make sure they all got back to the hotel safely. I fell asleep in my hotel room around 2:45 A.M.

At 3:45 A.M. I was awakened by Liz coming into

the hotel room. I initially thought Liz was laughing but then realized she was crying. I initially thought, that's a typo, Liz was laughing but then realized she was crying and on the phone with her boyfriend. I asked her what happened. And she said she was in the hotel room and Doug was kissing her and she said she couldn't do this and ran out of the room, but that she couldn't remember any further details.

She was also not being as coherent or alert as I knew her to be in everyday life. I asked her where Jessica and Liz - I asked her where Jessica was and Liz said that Jessica was having sex with Doug in their room. I told Liz to go get Jessica right away. A few minutes later Liz brought Jessica back to the room.

I tried to talk to Jessica but she was very upset, crying and wasn't making any sense. She was intent on calling her boyfriend and walked from the hotel room to the hallway. In the hallway I convinced her to talk to me a little bit more. Of course she called her boyfriend and to come back into the room with me. She stated that she couldn't go back into the room because there were too many people in there.

I told her that there was no one in the room, that it was our hotel room, and that she just been in - that she had just been in and after fighting with her about something that didn't make any sense I was able to get Jessica back into the hotel room. Jessica continued to be very upset and cry and say things over and over but our conversation didn't make any sense.

Jessica also asked me if I had any concerts. I few minutes later I realized that she meant pajamas. For the next two hours I tried to get Jessica to go to sleep but she wouldn't stop talking; saying the same nonsensical things or crying. Finally, at about 5:50 A.M. we fell asleep.

At 8:00 A.M. I woke up to get ready for our job and asked Jessica if she was going to work with

me. Both times she said yes but didn't move and  
fell back to sleep.

And this is a statement of Donald Cook.

I, Donald Cook, residing at 2034, San

End of audio

**WIT1:**

\_\_ I am also Elizabeth Easley's boyfriend of two years and 10 months.-- I've been asked to give this statement regarding my knowledge of the events in New Orleans, Louisiana, during the early morning of April 4 involving Elizabeth Easley and Jessica Brooder. The statements made by me are voluntary without promise or threat and is based on my recollection of the events and conversation.

On the night that this happened I was living in Tucson, Arizona. At about 08:00 Arizona time, which was 10:00 New Orleans time, Elizabeth called me to tell me that she was at dinner with her friends. After a short conversation, she told me she was just going to have dinner and she was going to go back to the hotel to sleep because she had to wake up early in the morning at the place she was volunteering. Two hours later she had not called me and I started to get worried because it's not like her to not call me when she told me she would. And she should have been done with dinner by then.

So I called her on her cell phone and she didn't pick up. I called her a few more times and she still didn't pick up. By now I was getting really worried because even if I decided to go out drinking or do anything else -- if she had decided to go out drinking or do anything else, she always had her phone on her and always checked it to make sure she doesn't miss any calls. So I kept calling. I called her at least 15 times and I text messaged her a couple of times, but she still didn't answer.

Finally around 1:30 Arizona time, or 3:30 New Orleans time, she called me. Right away I said, Liz, what's wrong? Are you okay? She responded by saying, Yes, now I am. I asked her what happened and she said she wasn't okay. She tried to explain to me what happened, but all she could say was she woke up in a room and she thought it was her room, but there was a guy straddling her on the bed. Then she realized it was Doug. After she told me that, she said she looked up and saw Jess coming out of the bathroom, and then

Doug went over to the other bed, took his clothes off, then got on top of Jess and started lowering himself on her.

When Liz was telling me this, she sounded extremely disoriented and didn't seem like she really knew what was going on. She was crying and asking what she should do because she felt bad for leaving Jess there. I told her she should go knock on her hotel room door and ask Becky what she should do. She said okay and she told me she would call me back after she figures everything out.

About a half an hour to 45 minutes later, Elizabeth called me back. At this point, she sounded a little more there, but still really out of it. At first I thought she was just really drunk, but I have talked to her when she had been drinking and she never seemed as out of it as she was during these two conversations, especially during the first one.

When she called me the second time, she told me that she went back upstairs to the room and that Doug and Jess were in and knocked. It took Doug a while to answer, but he finally did. She said that she barged in and told Jess, who was lying on the bed completely naked to get dressed because we're leaving. Liz said that when they left the room, Liz asked Jess, "What were you doing? Why were you having sex with Doug?" Jess then told Liz, "What are you talking about? No, we weren't." Then Liz said, "Jess, I'm pretty sure you two were having sex." Then Jess started crying and could barely walk and said, "What? I don't remember any of that at all."

I asked her if she remembered anything else, and she said that she barely remembers any of the night and that she just has flashes of everything that happened, but that after dinner they all decided to go to the club and have a couple of drinks. She remembered that her and Jess had a hand grenade drink that was supposedly really strong because it was made with Everclear, and that she only remembers having one other drink.



But that she and Jess got really drunk off it. She said that she remembers Jess going to the bathroom at the club because Jess felt sick.

Liz went with her to make sure she was okay and Jess threw up everywhere. Liz felt bad, so she said that she cleaned up all the throw up and when she and Jess got out of the bathroom, no one was in the club but Doug. Then she had a flash of drinking daiquiris, but she doesn't remember how she got there. Then all she remembers next is waking up with Doug straddling her with his legs on top of her.

I asked her if she remembers anything more of when she was in the hotel room, but she said, "No, the only thing I remember thinking was that I was in my room but where was Becky." The she said that that was when she realized Doug was on top of her and she realized she was in the wrong room. Then she told me she also remembers that when she woke up her pants were off but her underwear was still on. She told me that she thinks that before she got into bed, she was still out of it. But since she thought she was going into her own bed, she just took off her pants because she normally sleeps without pants. She said that she doesn't remember her taking her pants off, though, she just assumed that's what she did.

At this point, I still didn't think she really knew what was going on. I told her that she should go back in her room and just try to sleep and we would figure everything out in the morning. And then he signed it.

[inaudible]

So what I'm going to tell you is a little bit about the process just so you know. The other thing I would like to remind you in here is that noone's placed under oath, but the university expects members of its community to be honest and forthright. [inaudible]

Let me just introduce the members of the board here.

I'm Debbie Tahmassebi, I'm a faculty administrator.

I'm Merrick Marino, I'm an assistant dean.

I'm Rhett Buttle, I'm a student representative.

I would say that you can start with questions and then - I would start with questions.

**SPKR1:** Earlier there was a statement by Doug [inaudible] but just to clarify some of the [inaudible]. Douglas has stated that the nature of the sexual contact did not include intercourse. It was mutual masturbation between Doug and Jess. What I really want to ask about is the comments that you were reading here saying that you observed Doug straddling Jess. Jess did not have any clothes on. There are some questions about clothes being completely off, underwear still being on, and what you were observing so if you could just tell me exactly what you remember and what you saw. I want you to address that.

**EASLEY:** The only thing I remember with that is seeing Doug naked and lowering himself, kind of doing like a push up, like lowering himself onto Jess. She was I think somewhere under the covers. It was dark. It was like a quick three-second flash. I believe she had her bra on but nothing else. And then I remember the flash when I came back to the room, she was completely naked and had to put all of her clothes on.

**BROODER:** I never got my underwear, like I never found those. One night when Becky said I was asking for concerts, and I meant pajamas, I was wearing - she put shorts on me, but I didn't have underwear. I don't know where those are.

**SPKR5:** I'd like to go back a little bit earlier in the night. There was a reference to a specific amount of drinks, and that was kind of the point at which memories start to become fuzzy. I

believe you were - that was the round of drinks that Doug had purchased I think a vodka tonic and a vodka and cranberry juice. Could you describe kind of that moment and what happened after that. Did either of you observe anything that was put in drinks? And then in statements we've also heard to kind of your state of mind had changed at that point.

**EASLEY:** What I remember is he asked me if I wanted a drink and then if Jess wanted one. And I said, Yeah, she drinks vodka tonic or vodka cranberry. But I didn't -- I was just watching Jess and Becky and everybody on the dance floor. And then he came back and I was already feeling pretty buzzed, like, happy and I have a really sensitive stomach too, so I took a drink of the vodka cranberry [unintelligible] wow, I'm feeling dizzy and my stomach hurts. I need to stop. So I didn't drink anymore. I put it down on the table. There were a bunch of plastic cups on the table. And I started drinking water.

And then I just kind of remember drinking water and watching things and that's just when things started getting fuzzy. And my next flash is holding Jess's hair back in the bathroom.

**BROODER:** I don't really recall - I recall - my memory stops while I'm at the dance club and dancing with Becky on the dance floor. I don't recall seriously drinking the drink they gave me or drinking anything and then something happened. All I really remember is I was on the dance floor - at the dance club dancing with Becky and then everything was blank until the next day.

**SPKR5:** Do either of you have a recollection of seeing him go get the drinks? Do you recall whether he purchased drinks for other people in addition to both of you?

**EASLEY:** No. I definitely wasn't paying attention. I just remember watching Jess and Becky because earlier in the night some guys were trying to dance with them and they were trying to just dance with each other. So I told them like, we

all have boyfriends, go away. So I was kinda like watching them. I wasn't paying attention to anything else.

**SPKR6:** Do either of you have recollections of being at a Daiquiri Stand?

**BROODER:** I don't.

**EASLEY:** Yeah. [inaudible] The second that I got to New Orleans, I actually went to the Daiquiri Stand. It looks like Icee machines, just a bunch of Icee machines but with daiquiris. And the flash that I have of that night is mainly I am sitting at a table and Jess is across from me; and Doug is, like, on his chair and I can see Daiquiri Stand on my right out of the corner of my eye. Like, if I hadn't gone to the bar before, I would have thought they were Icees. But it was the daiquiri place. That's all I remember.

And then in another flash I remember seeing a guy in a yellow shirt talking on the phone and looking through the bar at us and that's all I have there.

**SPKR1:** Do you recall when you were at the Daiquiri Stand, who bought the drinks?

**BROODER:** Mm-mm.

**EASLEY:** I don't even remember explicitly drinking.

**SPKR1:** Do you remember when you were buying drinks at the bar were you using cash or credit card?

**EASLEY:** I was using a card and she was - we both left them at the jazz club, and I went back to get mine and they told me she had left hers. And then she also opened it at the other dance club. I didn't open mine again.

**SPKR5:** Do either of you remember any conversations around the Daiquiri Stand specifically talking about threesomes? Do either of you recall mutual kissing?

**BROODER:** I don't recall anything until the next morning [inaudible].

**EASLEY:** The only flashes I have are what I've told you. I don't remember anything else.

**SPKR1:** What happened - so you walked from the daiquiri stand back to the hotel. Do you recall at all standing in the lobby for a while and then [inaudible].

**EASLEY:** I just have a flash in the hotel lobby of talking to - I see Jess's face next to the elevators - the elevators are behind her and the bar to the right. That's all I remember. I have no sense of time or how long it was.

**SPKR6:** Do you remember any of the conversations that you had amongst the three of you before you arrived at the club?

**BROODER:** We weren't really talking to Doug much. I mean it was more like Becky and - there was a large group of people. So it wasn't like - in the group we may have just said a few words to him, like, normal, like "oh, we're going to go here." But other than that, we didn't have much - it was more like - me and Becky and Liz were always hanging out all the time. So we were kind of staying together.

**EASLEY:** I don't remember like the three of us like explicitly having a conversation. I remember talking to Doug before going into the Funky Pirate, the jazz club, sitting and hanging out and him, like, taking pictures with Becky's camera, talking to him about like, you know, school and stuff, the people down the street, and drinking the hand grenades and that kind of stuff. But I don't remember just the three of us having a conversation. We were kind of, you know - it was a big group of seven people. We just all kind of talked to whoever.

**SPKR6:** Do either of you remember when the rest of the group left and Doug chose to stay around with you guys?

**BROODER:** [inaudible].

**EASLEY:** I just remember the flash of - I remember us all on the dance floor and then the flash of pulling back Jessica's hair while she's throwing up. And then I have a flash of looking at the dance club and I was confused because it was empty. So I don't -- I have no idea.

**SPKR5:** In your flashes of memory, do you recall anything around the moment of securing the additional hotel room, entering the additional hotel room -

**EASLEY:** I just have a - seeing Jess in the hotel lobby with elevators behind her.

**SPKR5:** One question I have about some of the, some of that happened after this was there were additional tests to find out if there were drugs in your system. The initial test came back negative and then - we referred to an additional hair follicle test, but there was no indication of what the results were.

**BROODER:** Right. What happened was I received the results from the lab on the telephone that said it was positive for the drugs, the benzodiazepines, just like the class of drugs that date rape drugs fall under. And then the next day after I found out - or that test [inaudible] the school. And then after that, the lab called back and said, oh, no, actually they're inconclusive. Because when I went to get the test it had been three days since the incident, and they said that it definitely stays in your system 24 or 48 hours anyway, so there's no way to give you a yes or no answer. And then we did want to go get a hair follicle test, but we don't know much about that. Like, we were dependent on, like, the police to do that; but everything from jurisdiction problems with [unintelligible] here or San Diego [unintelligible] New Orleans. I mean, I don't know where to go to get that kind of stuff done or really have the money to pay. I think it was inconclusive, basically, it said.

**SPKR6:** Do you remember any of the conversations after, the next morning, that you had in the room?

**BROODER:** With Doug?

**SPKR6:** Uh-huh.

**BROODER:** Yeah.

**SPKR6:** Could you kind of give us a recap of that?

**BROODER:** Yeah. I had - well, just to recap starting from when I woke up, kind of. I'm not sure what time it was [inaudible]. But we were - Liz was trying - it was just Liz in my bedroom, Becky had gone to work, and Liz was trying to tell me what was her version of the flash, what she remembered went on that night. Kind of dumbfounded, I'm falling and crying. I called my boyfriend and told him what I had thought had happened, that I thought I had sex with Doug. That's just according to what Liz was telling me. I didn't remember anything.

At that point, my boyfriend had asked me for Doug's phone number. He was very upset, and I gave it to him. And Doug had been calling me while I was on the phone with my boyfriend. So I called Doug because I didn't know what had happened -- and I didn't know what happened last night. I gave him your phone number. So, you know. And it was just kind of a hysterical message and I hung up. And then Doug came to our room immediately after. And he comes in and he's very calm, sitting there. And he kind of recounted the events of the evening or what he - what happened, claimed to happen. And it was, you know, he was very sorry and it was awkward to talk to Justin and apologize and understood if Justin wanted to beat him up or whatever. And said if you need me to talk to him, I will. He told us he had a lot of respect for us and he disrespected us.

And he said that he went to the -- starting at the dance club - like went to there, but he knows I know that. But at the dance club he said, I'm

starting to lose my balance dancing. And then he spotted us throwing, and I tried to throw up in a glass at the bar. Finally Liz and I went to the bathroom and Becky told him to make sure we get home safe. And he said okay and then he said we went to a daiquiri place. And then he said we were talking about threesomes, which is shocking to us. And then we went to the hotel and he bought another room and we went up there instead. And then he said Liz- we were all making out, that's what he said.

And then he said that Liz left and she came back and, he said, well then I asked him what happened with us. And he's like, nothing happened. We were making out or whatever. And Liz was kind of, like, well, I came to talk and she didn't have any clothes on, so well, more clothes came off, but nothing else. And I was real, like, relieved at that point and I thought nothing more had happened [inaudible]. And so I was, like, oh, I just told my boyfriend the worst thing happened and he said, no, now you can tell him nothing happened - or nothing - not nothing, but less happened.

And I told him, you know, I gotta go home. I don't feel - I gotta leave today. I don't know if I might come to school. And he was, like, I wish you wouldn't. And then Liz and I booked a flight home and we went from - like, the only flight we could get was from New Orleans to North Carolina to Vegas to San Diego. It took me, like, ten hours.

So when I was in the airport in North Carolina I had started my period the day before and when I went into the bathroom it was probably like 8:00 p.m. I think in North Carolina, and I walk out of the bathroom and I'm bleeding. So I went to like - I didn't remember [inaudible] - I thought, like, these things happen, you know? My tampon was in there and it was, like, shoved really far. Like, it took me forever to get it out in the bathroom. And at that point in time, I was like, something really bad happened, more than what Doug told me.



**SPKR6:** Do you recall making a statement to him about how you felt the next day, of whether or not you felt like you had had intercourse before or anything specifically addressing that?

**BROODER:** Like, after - when he came in and told me that nothing happened, and I was, like, relieved, and I was so [inaudible] and Liz was looking, like, skeptical about it and I was like trying to convince her, like, no, you know. Nothing happened. I don't feel like anything happened. But at that point it was, like, it was more of a - I feel like it was more of a convincing myself as much as, like, you know. I've been in a relationship for like five years knowing that nothing like this ever happened. Like, I was really trying to believe that he was telling the truth.

And then at that point in the morning, like, my whole body was kind of, like, throbbing, just felt sick. I couldn't tell you, you know, anything about how my body probably really felt. But I just say that.

**SPKR6:** -- what happened at the airport. Was there any other kind of physical sensations that you had that made you feel like you either had or had not had intercourse the night before?

**BROODER:** Aside from the, like, the gut feeling, that I wanted to get home so bad. And, I mean, I felt like -my body felt like I had been, you know, hit by a train or something. And I stayed in bed that day until 4:00 p.m. So I just booked my flight. Liz and I got to the airport and barely got there at 5:30. Jumped on the plane. I mean, I didn't feel like one way or the other, really.

[unintelligible] but I don't have no memory of anything. [inaudible] I just knew I had to get home.

**EASLEY:** [inaudible] I'm assuming so. I remember putting on my pants to get out of the room, so I don't

see why, logically it doesn't seem like I would have taken them off and put them back on.

**SPKR1:** [inaudible] you got back to your room, were you undressed? Do you remember? [inaudible].

**EASLEY:** I don't even remember if I went to sleep in my clothes or something else. I don't.

**SPKR1:** Did you notice when you were going up to the hotel room that it wasn't your own room?  
[inaudible]

**EASLEY:** I don't remember going out - going up into the hotel room. I remember after putting on my pants saying, like, either I'm not into this or I can't do this. It had a this. But I went out and I turned around because I was confused because I thought I was in my hotel room, and I remember it was room 1008, 10-0-8. I remember that because I used to volunteer with law enforcement and they used the code 10-8 all the time. So it stuck in my head. I remember I grabbed my phone wanting to call my boyfriend, but I don't remember actually talking to him.

Also, in regards to Doug talking to us the next day, I don't remember a lot of the conversation, because I don't remember telling my boyfriend or Becky that, like, that Doug had been kissing me. And I don't remember that and I still don't remember that. So when you said we that, like, we were all making out, we were kissing, he was like, rubbing our stomachs, that floored me, because at that point I thought that nothing had happened. I didn't even know I told my boyfriend and Becky that we had kissed. I just kind of like hid under the covers and I was like, why am I [inaudible]. I don't remember the rest of the conversation. It was mainly between Jess and Doug.

**SPKR1:** [inaudible].

**BROODER:** Well, we got there Sunday. We were supposed to be there until Saturday. And this was Tuesday

night because we left Wednesday. And we left at-  
trying to figure the time [inaudible].

**SPKR6:** So the flash that you do remember, you do  
remember him having his pants off, you could say  
that with confidence?

**EASLEY:** Yeah, when I see him lowering himself onto Jess -  
mainly just because I- yeah, I can definitely say  
that with confidence. And Jess was- possibly  
under the covers, I can't see all of hers.

**SPKR5:** Do you remember kind of [inaudible] if she was in  
control, her actions, at that point, or was she  
passed out or anything about her condition?

**EASLEY:** I remember - can I close my eyes? I have a  
visual memory, so it's easier when I close my  
eyes. I remember her being on the side of the  
bed near the aisle, and I believe that the bra  
straps were kind of going like this. I can't  
tell if her eyes are open or not. It's really  
dark. I can see like a light kind of shining on  
this part of the bed, so I think that the  
bathroom light must have been on. But I can't  
really see her face or anything like that.

**SPKR2:** Can you guys maybe just step out for a couple of  
minutes and I'll let you know if we're done.

Yeah, just go out that way and I'll find you over  
there.

So before we let them go, I want to make sure, if  
there are any questions that he has.

Are there any questions that you have that you  
would want asked of them?

**WACKER:** The clothes off, the question you just asked her.  
My clothes did not come completely off until  
after she had left. And that's when Jessica took  
all her clothes off. I had my boxers on up until  
that time. When she came back down, I had my  
pants on. So at no point did Liz ever see me  
completely naked.

We're talking about dancing and a couple of the other guys Bobby and Forrest were standing up on- there was a ledge that was elevating about three feet. They weren't dancing, but I had been dancing with the girls. And when they talked about other guys trying to dance with them, those were people that were outside of our group and they were actually using me as a shield in some instances so that the guys would understand, hey, they didn't want to have anything to do with them.

And then I think she was talking about throwing up at the bar, and I never saw that. I noticed they went into the bathroom and when they came out of the bathroom all they said was "everything's OK now." So I didn't know whether she had thrown up or not. So when she came out, everything was just fine.

**SPKR4:** So I want to clarify, do you have any more questions for them?

**WACKER:** I think that was - I just wanted to clarify those points.

**SPKR4:** So does that create any more questions for you guys? Let me turn this off -

Okay. So if you guys have other questions? So, then, Doug, you'll step out. Just take about 30 seconds to go up the stairs. If you'd like to make a statement -

**WACKER:** I would just like to reiterate from the time that I found out they were upset, I was very sorry about it. I told them I was sorry for disrespecting their boyfriends; but at no time did I ever think that they were not able to make the decision. I thought they were willing to do it, to go up to the room and to participate. At no time was there any statements made, no, I don't want to do this. The one time when Liz left on her own, she decided to let Jessica, let her best friend stay. If she would have felt that there was something going on, then at that time she would have probably grabbed Jessica and

taken off, if there was something inappropriate going on.

At no point during that time was I ever aware of any reason to believe that it wasn't consensual, all the things that we participated in. And that's all I have to say.

**SPKR4:** Okay. So go ahead and --

**AUTOMATED VOICE:** Saved message.

**BROODER:** Hey, Doug, it's Jess. I know I need to talk to you. I just want to... I talked to Justin, um, and I don't know, um, my boyfriend, and I don't know like really what happened last night so I had to tell him like whatever it's crazy I just wanted to remind you that Liz told me and um, he wanted your phone number So we gave it, I gave it to him, and he was upset so I just wanted to, like, warn you. I mean, I know I can talk to you first, but I think I'm going to go home today. So I don't know. That's it. Bye.

**AUTOMATED VOICE:** End of message.