

Elizabeth Easley Cook, a civilian, was called as a witness by the government counsel, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the government counsel:

Q. Could you please state your full name, spelling your last name for the court reporter?

A. It's Elizabeth Marie Cook, C-O-O-K.

Q. You're formerly Elizabeth Easley?

A. Yes.

Q. Ms. Cook, how old are you?

A. I am 26 years old.

Q. What do you currently do?

A. I'm a law student at the University of San Diego.

Q. Are you currently married?

A. Yes, I am.

Q. Who's your husband.

A. His name is Donald Paul Cook.

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

A. Yes. That was my first year.

Q. At that time, did you have the opportunity to meet Jessica Brooder?

A. Yes, I did.

Q. How did you get to meet Jessica?

A. The first day of the law school orientation, I met her. We were on the same tour group.

Q. And we've had some testimony earlier about law school classes were broken down into sections and things like that. Were you a section mate with Jessica Brooder?

A. Yes, I was. We were both in section B and the small section also, section B5.

Q. How many members were there in section B5?

A. Section B5 was about 30, I believe. Section B, I

believe there was, I don't know, 90 or so.

Q. Did you also, during the first semester of law school in 2006, get to meet Captain Douglas Wacker?

A. Yes, I did.

Q. How did you get to meet him?

A. He was in the same section.

Q. Was he also in the same --

A. Small section B.

Q. All right. Roger that. As part of that small subsection, did you attend classes together with Jessica Brooder and Captain Wacker and have certain, like, core subjects that sub-section would take as students?

A. Yes. We had all the same sections but also the learning skills section, that was a smaller one. That was just the 30 of us. We also had that small section together.

Q. I don't want to go into a lot of detail in the exam. I'm going to focus, first of all, in the first semester of law school, August of 2006 through the end of December 2006. How would you describe your interaction with Captain Wacker during that period of time?

A. He was my class mate. We weren't friends outside of school. I would see him at, you know, functions and classes. I would talk to him if I saw him. We were acquaintances, friends. Not close friends.

Q. How about Jessica Brooder? How would you describe your relationship with Jessica Brooder toward the end of the semester? I know you first met her in August. But as we get into the end of your first semester, how would you describe your relationship with her?

A. She was one of my closer friends in law school. We did see each other outside of school. We went and did other things outside of school together.

Q. In the first semester of law school in 2006, where is Donald Cook at this point? I know you're married now, but during that time, where was Donald?

A. He was still my boyfriend at the time, and he was back in Tucson, Arizona. He was working as a

manager in a restaurant there.

- Q. All right. And we go into the spring of 2007. That is your second semester of your first class law school year. Opportunity arises to go to New Orleans during, I believe, your spring break during the first week of April 2007, to participate in providing free legal aid services to the residents of New Orleans following Hurricane Katrina, which I believe took place in October of 2006; is that correct?
- A. Yes, sir.
- Q. Did you go on that trip to New Orleans to provide legal aid services?
- A. Yes. I went with a group called the Student Hurricane Network.
- Q. And Jessica Brooder also went on that along with some of your other classmates; is that correct?
- A. Yes.
- Q. Do you recall what date you actually arrived on New Orleans?
- A. I believe it was April 1. It was a Sunday.
- Q. Do you know where you stayed, physically stayed in New Orleans.
- A. Yes. At the Hotel Royal St. Charles.
- Q. In that hotel, did you stay in a particular room?
- A. Yes, I stayed in a room with our friend Becky Abdullah and Jessica Brooder, the three of us.
- Q. And at the time it was Becky Barker?
- A. Becky Barker. Yes.
- Q. She's also married now?
- A. Yes.
- Q. Monday, April 2, did you actually participate in the provision of legal aid?
- A. I actually did not get a chance to. We were assigned to a certain group and their office was closed. They didn't know we were coming, I guess. So I just walked around with some friends around the French Quarter.

- Q.** Tuesday, the day of April 3, did you do work that day? Did you provide legal aid services?
- A.** Yes. We were all reassigned to different groups. I went to one that was helping with death penalty cases. I don't know if it was Innocence Project or something similar to that effect. I was just updating their case file folders, Shepardizing. Just doing that.
- Q.** Full day, morning, then lunch break, and then in the afternoon?
- A.** Yes.
- Q.** During that day, during that day itself, did you interact with Captain Wacker at all?
- A.** Not that I can recall. Not during the work day. Afterwards, but not during the work day.
- Q.** We're going to get to after work, but just for clarity for the investigating officer's purposes, prior to the evening of April 3, 2007, is it fair to say that your interaction with Captain Wacker was as a law school student from August 2006 up to 3 April 2007?
- A.** Yes.
- Q.** During that nine-month timeframe, prior to the evening of 2007 that I'm going to get to, that I'm going to ask you about, of April 3, 2007, first of all, had you ever had any personal interaction with Captain Wacker in which you either expressed any sort of romantic desire, physical attraction to him and same question, whether he ever expressed to you any time prior to the evening of 3 April 2007, during these nine months of law school in your first year, where he had ever expressed to you a personal desire, a finding of you personally attractive, anything like that?
- A.** For me, no. We never had any of those kinds of discussions. I was never attracted to him in that way. To be completely honest, I'm only attracted to men who are a couple inches or more taller than me, which he is not. So he was kind of off my radar, you I might say. But in regards to him, I can't remember anything specifically. I remember once at a party he took a picture with me and Jess and said that's every man's dream, taking a picture with us, about being in the middle of the two of us. But

that was about the only --

Q. When did that party take place?

A. I believe that took place in the beginning of the second semester of that year. It was -- I think he called it a rebel party, I believe. It was at his apartment.

Q. So that was at the beginning of the second semester of your first year of law school?

A. Yes.

Q. How many people were present at this party?

A. A lot. There were -- I don't even want to guess. Way more than 50 it seemed. It was in the courtyard, it was on the steps, it was up in his apartment. There were numerous people.

Q. Was that the only comment he made to you then at this party?

A. Yes.

Q. All right. After this, any other interaction whatsoever that would be outside of the norm of student classmate within the same personnel section attending law school?

A. No. Not at all.

Q. All right. Let's get to April 3 of 2007. After you completed your work day in New Orleans that day, did you have the opportunity to go participate in the workout in Audubon Park in New Orleans?

A. Yes. We decided to go for a run. Jess and I were training for a marathon, so we decided we should go and keep training at the park with numerous other students.

Q. Who else went to the park that evening to get a workout?

A. Jess and I ran with a girl named Susan and there was also Forrest and --

Q. For the record when you say "Forrest" --

A. Merithew. I'm not quite certain of the pronunciation.

Q. That was a male classmate of yours?

A. Yes.

Q. Also a section mate?
A. No, he was not. I actually hadn't met him before this trip.

Q. Who else was present?
A. There was Bobby O'Brian.

Q. Was he in your same section?
A. Yes, he was. I knew him before. He was a friend. And then Doug.

Q. Anybody else?
A. Those are the main people that I interacted with.

Q. Did Becky Barker go?
A. Yes. Becky did go, I believe. Just give me one second. She was sick that day, so I know that she wouldn't have ran with us.

Q. So you don't have a memory as to whether she was there or not?
A. No.

Q. How long were you at the park before you returned to the Hotel St. Charles?
A. Well, we were going to go for a longer run, but Jess started her period that day, and she was feeling sick.

Q. How did you become aware of the fact that she was starting her menstrual cycle?
A. She was asking people if they had anything, a pad or a tampon, and she had said that she was feeling really sick.

Q. When you say "people" --
A. Other women.

Q. I'm not making -- I'm not trying to be imprudent. What I'm trying to do is set the stage so we understand, was this a conversation that she brought up to just the women in the group?
A. Yes, it was just the women.

Q. Okay. Because I guess the follow-on question would be do you have any personal knowledge as to whether it ever came up, either while at the park, in discussions with the men, or even later on that

evening, anything about the fact that Ms. Brooder was not able to complete the run because of the fact that there was an onset of her menstrual period?

A. I don't remember us ever specifically saying it was because of her period. I know that people knew that she was sick. When we kind of finished the run, she felt very nauseous. I don't remember ever telling the men about that. I don't think we would be comfortable doing that at all.

Q. At some point, you return to the hotel after the run and then the group decides to go to dinner; is that right?

A. Yes, sir.

Q. Where did you go to dinner?

A. We went to dinner at a place called -- it was called the Trudder's House (ph). It was off of Bourbon Street, down a side street in the French Quarter.

Q. And who went?

A. Originally, it was just seven students. It was Forrest and Bobby and Doug, me, Jess, Becky, and Susan. First, it was just us that went out. When we got to the restaurant, however, the rest of the Student Hurricane Network was there. So we all ended up eating together.

Q. So the remainder of the group from USD?

A. Yes.

Q. How many people was the total group then?

A. I don't know. It was pretty large. At least 20.

Q. And did your subset of the group that you discussed actually sit down to have dinner?

A. Yes.

Q. Did you eat a meal?

A. Yes, I did.

Q. What about alcohol intake at the restaurant? What did you drink?

A. Well, we tried to order a bottle of wine, but they didn't have a full bottle. So I only had a glass from that. And then I ordered another glass of wine. So I had about two glasses.

- Q.** How about Ms. Brooder?
- A.** She was another woman that I was going to order the bottle of wine with. Was her and Susan. So I know that she had a glass from that. I don't recall if she ordered another one or not.
- Q.** Did you have any particular interaction with Captain Wacker at this restaurant? I'm now concentrating my questioning just in this restaurant. Any particular unique discussions with him, or interaction?
- A.** No. He was sitting at a different part of the table. I was sitting at the end. It was Bobby and Becky and Jess and Susan. And he was sitting at the other end of the table.
- Q.** Within your observation, did you see Jessica Brooder have any particular special or unique interaction with Captain Wacker while you were at the restaurant?
- A.** Not that I saw.
- Q.** How would you describe -- first of all, what time did you leave the restaurant, to the best of your approximation?
- A.** Well, I know that we went out late. To me it was 8:00 o'clock, but that was San Diego time. It was like 10:00 o'clock New Orleans time. So we were there for a couple of hours because they were quite slow. We had a very large group and they weren't prepared for us. We were there for a couple of hours. Probably left there about after ten San Diego time, maybe after twelve New Orleans time.
- Q.** When you leave, could you describe for the investigating officer, first of all, your level of intoxication?
- A.** I wasn't feeling anything at that point. It was two glasses of wine in a two-hour period. I ate a full meal. I was feeling completely fine.
- Q.** Did you see any indicia from Jessica Brooder indicating what her level of intoxication may have been?
- A.** She seemed sober as well. She wasn't acting any differently.
- Q.** Where do you go after you leave that restaurant?
- A.** We decided we wanted to go to a jazz club. So we

were walking and we passed by -- I don't remember the name of the bar, but it was a place that sold a famous New Orleans drink called "hand grenades." I believe Doug and Forrest were familiar with them because they had been to New Orleans before and Doug bought himself, Jess, and Forrest a drink. And I bought my own drink, and Bobby bought his own drink.

- Q.** And do you recall whether -- first of all, did you drink the hand grenade?
- A.** I drank most of it, not all of it. We were going to find the jazz club. And we found one called the Funky Pirate. We couldn't take the hand grenades in, and I can't drink quickly. So Forrest helped me finish mine. I probably had about a half to two-thirds of it.
- Q.** Did you observe whether Jessica Brooder drank hers?
- A.** I don't know if she finished it or not.
- Q.** How about Captain Wacker, did he drink his?
- A.** I saw him drink it, but I'm not aware if he finished it all or not.
- Q.** Prior to going to the Funky Pirate, was there a period of time when you were drinking the hand grenades where you actually were kind of just -- were out on the Bourbon Street walkway -- correct me if I'm wrong, there was no auto traffic. This was a walking pedestrian only?
- A.** Yes.
- Q.** And they authorize there the ability to drink in public with these hand grenades?
- A.** Yes. You can have alcohol in the street.
- Q.** For the period of time that you're drinking the hand grenades out on the street prior to going into the Funky Pirate, first of all, how long were you outside before you go up to your next venue?
- A.** Outside, it did not seem that long. Maybe 15 minutes.
- Q.** During that time period, did you have the opportunity to observe as to whether Jessica Brooder used her cell phone?
- A.** Yeah. I saw that she was -- she had called someone, so did Susan. I don't remember who they were

talking to.

Q. Were you able to hear Jessica Brooder on the phone?

A. No, I was not.

Q. How about photography? Did anybody take photographs during this time period where you finished your meal and left the restaurant, you had the hand grenades, but you had not gone on to the Funky Pirate for the jazz music?

A. Yes. Doug had Becky's camera and was taking pictures with it of Bourbon Street. Took some pictures of me sitting on the curb, taking pictures of the group.

Q. Did you see him take a photograph of you?

A. Yes.

Q. Did he say anything to you when he took the photograph?

A. At first no, but then he said that he was trying to get the people down the street. It seemed like he was trying to take sort of an artsy type of photograph. I wasn't sure what was going on.

Q. All right. How about, did you see as to whether he took any photographs of Jessica Brooder?

A. I didn't notice specifically. I just saw him taking pictures of other people, but I don't recall exactly that it was for sure of Jessica Brooder.

Q. I probably asked this already, but you didn't hear -- did you know if Jessica was gone?

A. No.

GC (LtCol Sullivan): Your Honor, just one moment. Do we have IE -- Exhibit 24?

GC (Capt Day): Sir, that was probably the color copies.

IO: Twenty-four.

Questions by the Government counsel continued:

Q. Okay. I'm going to ask you to take to a look, and for the record, I'm just going to show her the exhibits.

IE 24 is a series of photographs that I believe you've had the opportunity to view in one of my pretrial interview sessions. And I just wanted for you to quickly just take a look at those and -- here are the color photographs. And please just take a look at those, and once you've done that, take a look at me. I want to make sure that I'm going to ask you quickly if those are the photographs -- the first photograph was taken not on the evening of the 3rd of April, but I believe it was the 1st of April.

The second photograph -- third photograph -- the second and third photographs, initially in the park area in running gear, are those photographs of yourself and Jessica Brooder and the other personnel at the park area where you went running in the early evening?

A. Yes.

Q. Okay. Now, for the record, I'm looking at what has been marked as IE 24(f). Who's identified in that?

A. On the right is Douglas Wacker and on the left is Forrest Merithew.

Q. And is that on the evening of 3 April 2007? Was that photograph taken when you started to go out as we talked about?

A. Yes.

Q. All right. Can you look at the next one after foxtrot? Do you recognize the picture of yourself?

A. Yes.

Q. And was that taken in the evening -- is that a hand grenade in your hand?

A. Yes, it is.

Q. Is that the photograph that was taken by Captain Wacker that you were discussing when you said he was trying to get some people down the road?

A. That was one of them. I believe he took more than one, but he deleted the remainders of them, but, yes.

Q. Okay. And if you can continue then reviewing. Hotel, IE Exhibit 24 -- I think that's an H. Hotel. Do you recognize who that is?

A. Yes. That's Jessica Brooder.

- Q. Okay. And so there's a back shot of her -- do you know who took that photograph?
- A. All that I recall taking pictures outside the Funky Pirate was Doug. I don't remember Becky taking any of them.
- Q. Okay. Next photograph after that would be India. Again, is that Jessica Brooder?
- A. Yes, that's Jess and there's Susan in the background.
- Q. Okay. Again, the next photograph in order is -- I believe this is -- wait one.
- Is that an L? Let's just go to this one specific photograph here. Is that Captain Wacker?
- A. Yes.
- Q. One of the questions that came up was there's a sign that he's pointing to that says "hand grenades, New Orleans' most powerful drink." See that?
- A. Yes.
- Q. I'm going to retrieve those photographs from you now because I want to ask you about the hand grenade that you drank. Were you formerly a bartender?
- A. Yes. I was a cocktail waitress and I also did some bartending.
- Q. Tell us a little bit about the hand grenade. Do you know what was in there?
- A. I don't recall exactly what was in there. I know there was a lot of sweet and sour of tasting that. I believe that Forrest told me that there was Everclear in it, but that's just from him. I don't know if that was definitely in there.
- Q. Did you know whether it had -- you've mentioned you drank alcohol before; right?
- A. Yes.
- Q. You've had alcohol. Have you had drinks where there's very little alcohol and have you had drinks in your experience where there was a lot of alcohol?
- A. Yes.
- Q. What would you say about the hand grenade? Was it a strong drink, medium drink, weak drink?

- A.** It wasn't a weak drink, but they had a lot of sweet and sour in it to counteract the alcohol. But I would say that it was between a medium and a strong drink. It wasn't, you know, on the rocks straight up or anything. But it was decent.
- Q.** How much of your own hand grenade do you think you drank?
- A.** I drank between a half to two-thirds. I couldn't finish it all. It was a really big drink and I drink liquids that quick.
- Q.** There comes a portion of the evening when you're finishing the hand grenade and you want to go into the Funky Pirate; is that correct?
- A.** Yes.
- Q.** How would you -- could you describe for the investigating officer how you are feeling? What is your level of intoxication at this point as you are about to enter the Funky Pirate?
- A.** At that point, I was still feeling the same as I was at where we ate dinner. Because we just finished the drink, it hadn't had any time to get into me or anything. I was sober.
- Q.** What about Ms. Jessica Brooder? As you're going into the Funky Pirate, are you seeing any evidence or indicia from her that she's starting to feel the effects of alcohol, her intoxication level is increasing?
- A.** No. She seemed the same.
- Q.** When you get into the Funky Pirate, do you sit with her? Can you describe what happens now once you get into this next memory? What do you do?
- A.** Well, once we got into the Funky Pirate, I went straight back into the bathroom, and the rest of the group went to the bar. After that I came out and I opened a tab and bought myself a vodka seven with a splash of cran, and Jessica a vodka tonic and brought those back to the table; and we sat down and started drinking those while waiting for the band.
- Q.** Who's sitting at the table?
- A.** There was Jess, there was Becky. All the tables were really close together. It's hard to say exactly who was at which table. But there was Jess

and there was Becky near us as well, and the rest of group -- there were many people that I was talking to.

Q. And when you come back with the drinks -- I believe you said you had a vodka cranberry and you bought -- what did you get for Ms. Brooder?

A. I had a vodka seven with a splash of cran, and then for Jess, I got her a vodka tonic.

Q. And is this a normal-size drink now with --

A. Yeah. Just, you know, a plastic cup with ice in it. A normal drink.

Q. When you sit down with Ms. Brooder, how is she acting?

A. She was still acting fine. She was just talking to everybody and she was still acting normal at that time, to me.

Q. Okay. Anything -- any expression from her that you found out of the ordinary, indicative of the fact that maybe she's now beginning to feel the effects of the glasses of wine at the restaurant, the hand grenade and that type of thing?

A. No. I don't recall her making any statement or doing anything that I was thinking that she was starting to get intoxicated.

Q. How much did you drink at the Funky Pirate? It was her testimony that I think Ms. Barker gets a tip jar, Big Al is a large person that asks -- takes her kind of into the show that night because she's diminutive in stature and she passes around the tip jar. How long are you actually at the Funky Pirate where people sit, socialize, Big Al does a show and we bring the tip jar around? How many minutes are we talking about?

A. Well, we were only there for one set and then just a few -- one set of their music. I believe it was probably 45 minutes, an hour. It couldn't have been more than that.

Q. During that 45 minutes to an hour that you're at the jazz club, the Funky Pirate, could you relate to the investigating officer, first of all, how much did you drink? Break it down by drink and how much, whether you drank the whole drink or whether there

were any shots involved. Let's get, first of all, your own personal consumption of alcohol at the Funky Pirate.

A. I had a vodka seven with a splash of cran. I didn't end up finishing that drink. I only had about half of it. Again, I just don't drink quickly. If I want to get intoxicated, I need to take numerous shots. They had, above the bar, a sign that would flash when there were dollar shots. It flashed and so we went -- I don't recall exactly -- it was pretty much everybody, I don't think Becky did, got kamikaze shots. They were test-tube shots. They were probably about the width of my index finger and about the same length. They weren't anything --

Q. All right. For the record, approximately, what, 3 to 4 inches? How many of those shots did you get?

A. I got one.

Q. Okay. Did you have any other alcohol while you were at the jazz club?

A. No. That was it.

Q. So if I understand correctly, your personal consumption is the one vodka cranberry with 7-Up?

A. Vodka seven with a splash of cran, yes.

Q. How much of that did you drink?

A. About half.

Q. Half of that. How long between drinking that and how long are you at the Funky Pirate before you do your one shot?

A. It started flashing while the band was playing, so it's probably about, I don't know, half the time into there that we were --

Q. Is it fair to say 20 to 30 minutes into your time at the Funky Pirate you then do one kamikaze?

A. Yeah.

Q. What about Jessica Brooder?

A. I know that I bought her that drink. I do not recall if she bought any other drinks for herself, and with the shot I believe that she may have taken one as well. But again, I wasn't really paying attention. We all got up and --

- Q.** Do you have any knowledge as to whether Jessica Brooder opened up a tab at the Funky Pirate?
- A.** Yes.
- Q.** How do you know that?
- A.** That was because after we left the Funky Pirate, we went to go dance, I realized I left my tab open. And I walked back and they told me Jessica had left hers open as well. So I closed it for her.
- Q.** Well, let me ask you about that. If Jessica Brooder opened a tab at the Funky Pirate, did she buy you a drink?
- A.** Not that I recall, no. I mean, I know that typically when we go out, I would buy one round and then she would buy the next round. I don't recall.
- Q.** Do you have any knowledge as to whether anybody else bought any rounds at the Funky Pirate?
- A.** Not that -- I can't remember.
- Q.** Okay. Now, an hour into the Funky Pirate, you've had a vodka cranberry with a splash of seven and a kamikaze shot that you did 30 minutes into it. It's now 30 minutes into that. I'm approximating. Were you getting ready to leave the Funky Pirate? How would you describe your own personal state or level of intoxication at that point?
- A.** At that point, I was feeling -- I guess you would say more happy, talkative. I felt like I wanted to go dancing, but I wasn't numb in my fingertips, I wasn't slurring or had blurry vision. I didn't have any of those types of problem. I was just a little more talkative.
- Q.** Now, do you think you're starting to feel that, you know -- the alcohol that was in the hand grenade, do you think that's now starting to enter your system?
- A.** Yes. That's what I believe it was that because I didn't drink that much of the vodka seven or the -- or the shot. Of course that added up to probably another drink in my system.
- Q.** Well, let me ask you this: You come to the point of the evening where you now leave the Funky Pirate to go to another dance location, to go dancing, to go to another location within the Quarter; is that correct?

- A. Mm-hm.
- Q. At this point, before you leave the Funky Pirate, I want to ask you about -- well, first of all, your observations of Jessica Brooder. At this point now, now that we're 45 minutes or an hour into the post-hand grenade drinking, you bought her one drink, you're not sure as to whether she had a shot or not. What do you recall with regard to her level of intoxication, how she was acting, what are you seeing from her with regard to her motor coordination and things like that?
- A. She did seem that she was feeling the effects of the alcohol, but she was -- not significantly. Again, she was talking more than usual, talking a little bit louder than usual. But she wasn't stumbling, she wasn't uneasy on her feet or slurring her words, just maybe a little buzzed.
- Q. All right. Captain Wacker, was he interacting with you at the jazz bar at all?
- A. I don't recall having any significant conversation with him there now.
- Q. Okay. Up to this point then, if I understand correctly, at any time during the evening, has he had any personal conversations with you in which he's indicated any sort of sexual interest in you?
- A. No.
- Q. How long did it take you to go from the Funky Pirate -- I think it's called Club Razzoo?
- A. I never knew the name of the club. The Funky Pirate is at one end of Bourbon Street, and we started walking down. The dance club was more like in the middle from where we were to the main street.
- Q. Approximately how far, then, from the Funky Pirate was that? Can you give us an estimate of the distance?
- A. I would say -- I walked back there too. Two or three blocks. It wasn't very far.
- Q. All right. So you get to the dance club. Does everybody go to the dance club, or does anybody leave from the Funky Pirate and decide to go to the hotel?
- A. When we first got to the dance club, everyone I

remember was there was still there talking; so at that point, we were still all there.

- Q.** All right. Describe, then, for the investigating officer what happens when you get to the dance club. Walk us through the same type of questions that I've asked. First of all, what do you do? Do you drink? If you do drink, what are you drinking? How much do you consume and that type of thing?
- A.** Well, we walked in there and as soon as we got in, Jess and Becky wanted to start dancing. That's when I remembered I forgot my tab, left it open. So I walked back.
- Q.** Did you walk back alone?
- A.** Yes, I walked by myself.
- Q.** Okay.
- A.** When I came out of the Funky Pirate, Forrest had followed me and told me you shouldn't be walking around New Orleans by yourself. And I told him, thank you. I was very impressed. I didn't think that, you know, people usually did that, even though I thought he was overreacting because there were tons of people, but I was still grateful.
- Q.** Let's talk about when you get to the Funky Pirate to close out the tab. First of all, do you recall what your tab amount was, what it reflected you had actually purchased on that tab?
- A.** No, I don't. I don't recall what the amount was. It was -- I think it was less than \$20.
- Q.** What about the day -- you said, if I remember correctly, that there was a second tab they asked you to close out?
- A.** Yes. I closed out Jessica's.
- Q.** How do you know it was Jessica's?
- A.** She told me that your friend left it open. I said, "What's her name?" And she said, "Jessica." Oh, Jessica Brooder. I'll take it back to her.
- Q.** Do you have any recollection as to the amount that was on that tab?
- A.** No. Again, it wasn't -- I know that it wasn't anything significant. I just remember leaving more than a 20 percent tip for the bartender, which I was

mainly focused on, on both of ours, and then walking back. I don't remember the amount.

- Q.** Once you closed the tab and you come out of the Funky Pirate, is that where Forrest is?
- A.** Yes.
- Q.** And then you returned, then, with Forrest to the dance club?
- A.** Yes.
- Q.** What happens, then, when you get back into the dance club, now entering for the second time?
- A.** I come back to the dance club and Jessica and Becky and Susan were dancing. I remember standing there and watching them. And then I saw some guys dancing behind Jessica, not with her, but they were -- she was dancing with Becky and then some guys would come up and make some dance moves behind her, kind of being disrespectful, which is having fun, and I went up and told them, Hey, we all have boyfriends. We're just out with girls' night; and they said, We're just having fun. I reiterated, I know, but we're still not interested. And they said okay and they just walked off.
- Q.** Those gentlemen that you're discussing were not part of the University of San Diego Law School program?
- A.** No. They were some other patrons.
- Q.** When you came in to the bar on that second occasion, did you have any opportunity to interact with Captain Wacker?
- A.** I don't recall, again, having a significant conversation with him. I just remember walking to one side of him. I don't remember talking to him.
- Q.** At any point, did he ask you whether you wanted a drink?
- A.** Yes, after, again, after telling the men to go away. I remember standing on the dance floor and Doug coming up and asking me if I wanted a drink. I said sure. I can't remember if I asked him for a vodka seven or a vodka cranberry. Again, my drink is a vodka seven with a splash of cran; but typically people have a hard time remembering this. So I just choose one or the other. It depends on my mood. And then he asked if Jessica wanted one and I told

him, yeah, she drinks vodka tonic.

Q. And did Captain Wacker then leave you and go to the bar?

A. Yeah. He then left and I just turned around and was talking to Becky and dancing. I wasn't paying attention.

Q. All right. Were you dancing with Jessica Brooder?

A. With Jessica and Becky and Susan, I believe.

Q. All right. What is Jessica Brooder's physical state at this point when you now got us to the second time that you've come into the dance club because you've just gone back and closed the tabs at the Funky Pirate. Can you explain -- Captain Wacker asked if you would like a drink, and your testimony was that he also asked about Ms. Brooder, and I'll let your testimony stand. I don't want to mischaracterize. So you then turned and participated in dancing with Becky Barker, Jessica Brooder, yourself, is Susan dancing with you?

A. I believe she is. I wasn't dancing right next to her, but I believe that she was dancing.

Q. Okay. First of all, describe Ms. Brooder's physical state. How do you see her at this point?

A. I see her about the same as in the Funky Pirate. She was dancing more exuberantly than maybe she may have been completely sober, but she was able to dance. She wasn't falling over, throwing up, nothing of that sort. Again, she might have been a little happy, buzzed.

Q. Did she ask you where you had been? Did she say anything to you?

A. I do recall telling people that I had to go get it; and then I gave her her card and telling her, you know, that she had forgotten it. I don't remember the exact conversation. That was just the substance of it.

Q. Yeah, I neglected to ask that too. When you say you gave her her card, when you had to go back to close out the tabs, they actually physically kept her credit card at the bar?

A. Yes.

- Q. So you retrieved your credit cards from the Funky Pirate?
- A. Mm-hm.
- Q. And you retrieved Ms. Brooder's whatever that was, credit card, debit card?
- A. Yes.
- Q. And you returned that to her at the dance club?
- A. Yes.
- Q. What did she say to you? Did she say anything when you returned it to her at the dance club?
- A. Just, you know, oh, I can't believe I forgot to close that. Thanks. You know. I can't remember her words verbatim, but that was just the substance, can't believe she forgot and thank you for bringing it back.
- Q. All right. At this point, you described that you started to dance. Has Captain Wacker returned with your drinks, as of yet?
- A. At that point -- I'm not quite sure which point you're referring to, but while --
- Q. Well, let me clear it up so we have a record. Okay. You describe a conversation where Captain Wacker, on the dance floor, asked you if you'd like a drink. He leaves. He also mentioned Ms. Brooder. You turned, started to dance a little bit?
- A. Yes.
- Q. How long do you dance before Captain Wacker returns with your drinks?
- A. Not long. Maybe the length of a song, probably less. It didn't take that long.
- Q. When he returned, did he give you a drink?
- A. Yes, he did.
- Q. Do you know if he gave a drink to Jessica Brooder?
- A. He had her drink in his hand and asked where Jess was, and said she's just over there. She was probably about where the podium is from me. Not too far, and then I didn't pay attention to if he actually delivered the drink to her or not. I just looked down and started drinking my drink.

Q. Okay. And now, did you drink your drink?
A. I just took a sip of it and decided that -- when I'm out drinking, there's always a point in the night where I have a very sensitive stomach, and I decided that that was my point. That if I didn't want to get too drunk, I needed to stop. I felt kind of sick, a little dizzy, and decided, you know, you need to stop. So I put it down on the table and got some water from the bar.

Q. And how much would you say you drank of that drink?
A. I took a good sip at the beginning, and that's probably what made my stomach hurt, about a fifth of it.

Q. Was this another standard bar drink? This is not some special size or anything like that?
A. No.

Q. All right. When you drank it, did it have alcohol in it?
A. Yes.

Q. Did you detect that?
A. Yes.

Q. That's wasn't pure cranberry or 7-Up?
A. No.

Q. How would you describe this drink? Strong, weak, medium, moderate?
A. I'm very sensitive to vodka, so I would say medium.

Q. All right. After you put down that drink, did you have any other alcohol that evening?
A. No. I just got water from the bar and just drank that.

Q. All right. How do you feel -- I know you're trying to do your best to explain to the investigating officer your level, how you're feeling, your physical reaction to the evening and the alcohol you've ingested.
A. I was feeling -- I wish there was a better term -- I would say buzzed. I was more talkative again. I wanted to dance more than I would have normally. But I wasn't feeling, you know, physically like I wanted to throw up and I wasn't stumbling, slurring

my words. Anything like that.

- Q.** And I have neglected to ask this, but I'll ask it: Now, approximately what time do you think it is, New Orleans time, when you're at this dance club and, as you related to the investigating officer, put the drink down?
- A.** At that point, I would probably say it was about two hours there and then about an hour there. I hadn't looked at my watch the entire night. It was probably about between one and two.
- Q.** In the morning?
- A.** Yes.
- Q.** Now, so far have you observed Jessica Brooder do anything that has caused you to have any concern with regard the her physical state, her level of intoxication, up to this point? The point I'm referring to in my questioning is you just explained you got the drink from Captain Wacker, you took a sip, approximately 20 percent of the drink, you know, you didn't want it anymore. So you put that drink down, and it's approximately somewhere one and two in the morning. So far, am I right?
- A.** Yes.
- Q.** So far, at this point, have you seen Ms. Brooder do anything physically that caused you to have concern with regard to her mental state, her level of intoxication?
- A.** No. Nothing. She was, again, just seemed slightly buzzed. That was about it.
- Q.** Do you have any personal knowledge as to whether she actually drank the drink that Captain Wacker had provided for her?
- A.** I believe she did because she -- I came up to her afterwards and she asked me to taste it to see if it was a vodka tonic, and I hate tonic so --
- Q.** Well, explain that to the investigating officer. How did we get to that? Explain, first of all, where is Ms. Brooder when you approach her, what exactly does she say and when?
- A.** I had gone to get water, and I came back and drank some and put it down; and I came back to dance with them. Jess walked over to me and kind of shouted in

my ear because the music was loud, Would you taste this, is this a vodka tonic. I said sure. And I went ahead and took a sip. Again, I am very sensitive to vodka and I hate tonic, so I knew it was a vodka tonic. I told her, yes, that's a vodka tonic, gave it back to her and she said thanks.

Q. How is she acting at this point?

A. Again, just still the same way, just still slightly buzzed.

Q. Okay. All right. Now, so far up to this point in the evening, have you seen her interact with Captain Wacker at all?

A. Not on an individual -- having a conversation or anything. We were all in groups.

Q. That was a bad question. I apologize. I mean, you've described already how people were out to dinner in a group, but had you seen any time up to this point where Captain Wacker had either approached Ms. Brooder and was alone with her, kind of an almost in a private type way or vice versa, where Ms. Brooder is now alone with Captain Wacker? Anything like that so far up to this point in the evening?

A. No.

Q. What about at the dance floor? Do you have any -- did you observe whether Captain Wacker at any point in the evening began to dance with Ms. Brooder?

A. I don't remember her and him dancing at all.

Q. Let me ask you this: At some point in the evening do you have a personal observation of Ms. Brooder in which you start to develop any sort of concern with regard to her level of intoxication?

A. Nothing that I remember. I mean, I have later on a flash of her throwing up in the bathroom. But at this point in the night, no. I hadn't felt anything.

Q. All right. Do you have, then -- let's progress then into the early morning hours while you're at the dance club. Do you recall observing as to whether Ms. Brooder vomited in the bar?

A. I don't remember her vomiting in the bar, no. I remember holding her hair back while she was

vomiting in the bathroom.

Q. So where was this bathroom?

A. It was at the bar, I believe. I mean --

Q. The dance club?

A. At the dance club, yes.

Q. Can you explain to the investigating officer what you recall with regard to Ms. Brooder's physical state? I mean, set the stage for us. Give us some factual matters with regard to who's in the bathroom, what is going on, what are you doing, are you saying anything, is Ms. Brooder saying anything? Just, you know, give us some factual matter?

A. Yes. Well, we were dancing, then my memory starts to slip and all that I kind of have is a flash of her being in the bathroom, and she's bending over the toilet and I'm holding her hair back. And she's throwing up into the toilet.

Q. Now, do you have a memory as to whether she actually vomited any liquid? You know, have you heard the term "dry heaves?"

A. Yes.

Q. And you also heard -- do you know what vomiting -- where people actually vomit substance. Do you know whether she actually vomited any liquid?

A. I don't remember. I just remember holding her hair back and her bending over the toilet. It's a very quick flash that I have.

Q. Okay. Do you have memory of leaving the bathroom with Ms. Brooder?

A. Yes. I remember looking at the bar, the dance club, and being confused because I thought it was full, but it was empty. Again, that's just a few seconds that I remember coming out of the bathroom and seeing that.

Q. And then for clarity for the record, I guess what I should ask in a better way is: When does your memory start to fail you with regard to the events of that evening? In other words, you've described coming back from the bar with a drink of water, Ms. Brooder coming up to you with that drink in her hand saying is this a vodka tonic and asking that

question while you're still at the dance club, am I correct?

A. Yes.

Q. What else happens chronologically that you recall before your memory starts to go from a chronological degradation and then what you describe it as flashes?

A. It was -- I remember dancing after Jess -- having tasted her drink. I remember dancing for a few songs and then that's when I remember just, like, in my memory, it seems like I just don't hear anything, and then I just don't remember anything until the bathroom. All of a sudden I'm just, poof, I'm in the bathroom holding back Jessica's hair.

Q. And then what is the next memory you have? From now, if I'm correct now, from now on when I ask you questions with regard to what happened next in the evening, is it fair to say that now we're getting to an area where there are flashes of memory sequentially? It's not chronological as like you talked to us earlier?

A. Yes.

Q. Okay. After the memory of being in the bathroom with Jessica Brooder, what is next memory you have of that evening?

A. I remember coming out of the bathroom and looking at the dance club and that it was empty and being confused, because I thought it was full.

Q. Do you have any memory as to whether anybody else from your law school student group is even there?

A. No, I don't remember. I just remember being next to Jess. I don't remember anyone else who was there.

Q. What's the next thing that you recall happened?

A. Then I remember sitting at a table. It was like this white circle table, and there was Jess sitting across from me. And on my right side there was what I refer to as Slurpee machines, but they were actually daiquiri machines. I know this because on the Monday that I did not work I went to a bar called The Big Easy, and they just had all these Icee-looking machines that were just daiquiris.

Q. So that would be Monday, 2 April?

- A. Yes. So I remember going to that place.
- Q. So it was the day before. This is now the evening of the 3rd, going into the morning of the 4th?
- A. Yes. So I believe that's where I was, another Big Easy. They have like three or four of these. So I don't know which one, but I believe that that's what it was. And that's why I believe that, because of all the Slurpee machines.
- Q. What else do you remember about that?
- A. I remember there being a TV up in the corner and the street was to my left. And then I remember Doug walking up to the table and putting two drinks down.
- Q. So you have a memory of Captain Wacker putting the drinks down on the table?
- A. Yes.
- Q. Do you have any memory of Ms. Brooder going up and buying drinks?
- A. No.
- Q. In your memory, does Captain Wacker say anything when he puts the drinks on the table?
- A. I don't remember. I can't hear anything in these memories. It's very --
- Q. I guess a better way for me to ask you to allow you -- what else do you remember about that table, that location, that we haven't discussed yet?
- A. Again, he put those drinks down. I also -- I don't know how long a time is this, but I have another flash of a man in a yellow shirt looking out from behind the pillar talking on his phone. That's -- I don't see the Slurpee machines, but I'm just assuming I'm in the same place because I know there's the same table, but I guess I could have been in another table. That's all I remember.
- Q. And you're -- do you have any memory of having any conversation with Ms. Brooder?
- A. No.
- Q. Do you have any memory of having any conversation at this white table, where you described for us, with Wacker?
- A. No.

- Q. What's the next memory you have?
A. Next memory I have is in the hotel lobby, the Royal St. Charles. I remember -- I know it's the Royal St. Charles because there's the hotel bar on my right and then there's the little living room seating area on my left. And then there's Jess in front of me, and I see the three elevators behind her. And there's, over here on the left, there is the counter. So I remember -- I just have a flash that I remember talking to her. I don't know if we were standing or sitting, but I can just see her face and see all that.
- Q. Do you have any memory of Captain Wacker being there?
A. Yes, I remember him. He was leaning up against the counter and he was talking to, I believe it was two people at the counter, a man and a woman.
- Q. Well, do you know, were they civilians?
A. No. Yeah. They looked like they were hotel employees. They were behind the counter.
- Q. Do you have any memory whatsoever of having any discussion with Captain Wacker in this hotel lobby, in this memory that you discuss, any memory of a discussion with Captain Wacker?
A. No. I don't remember having any discussions with anybody.
- Q. What do you recall next, chronologically?
A. Next, I have a flash of being in a dark hotel room, and I'm laying on a bed that's nearest the window. In the hotel room, when you walk in, on the left is the bathroom. And then there's two beds. One is near the window and one is near the bathroom. And I remember laying in the bed nearest the window. And I'm laying there and Jess is laying next to me, and there is a dark figure kneeling between us. I can tell it's a man from the build, but I don't see a face or anything.
- Q. Right. In this memory then, are you and Ms. Brooder on the same bed?
A. Yes.
- Q. When you say there's a figure of a male that is kneeling, is he on the bed kneeling or is he on the

floor kneeling?

A. No, he's -- I don't know. I mean, he could have been sitting in a weird way. But he's on the bed between the two of us, but he's upright. He's not standing, but he's upright.

Q. Do you have -- what else with regard to this memory, what other details do you have that you can relate to the investigating officer with regard to -- is the individual, the male, is he clothed or not clothed?

A. I really -- I really can't tell. I can tell that it's a male just because I don't see long hair and wider shoulders, a bigger figure. But I can't -- I can't make out a face or see clothes or anything.

Q. In your recollection, do you know, are the lights on within the room itself?

A. I don't remember there being any lights on at that point.

Q. What about Ms. Brooder? You said she's on the bed next to you. Do you have a recollection as to whether she's clothed or not?

A. I can just kind of see, like, the outline of her face; and if I didn't know Jess so well, I probably wouldn't be able to tell you. It was definitely Jess. But, no, I don't remember her if she was clothed or not at that point.

Q. The outline of the face. I mean, in this memory, is there any conscious movement by Jessica? Is there any talking? Is there anything to indicate that she is conscious and aware?

A. No.

Q. What else do you recall about this particular memory before I move on? I want to make sure that I have exhausted your memory, you have given all the details you can to the investigating officer before I start my next question.

A. Yeah. I believe that's all.

Q. All right. What happens next in your memory? Is there then a second flash of memory?

A. Yes. I have another flash, and I'm now in the bed nearest the bathroom, but I'm on the side of the bed near the aisle.

- Q. So if I understand then, this is a separate bed than the first bed that you related to us -- that you just finished relating to us where Ms. Brooder was also next?
- A. Yes.
- Q. All right. In this second flash of memory then -- first of all, again, could you describe as well as you can and in as much detail as you can to the investigating officer, does it appear to be the same room?
- A. Yes. It appears to be the same room. It's a hotel room, that's why I can't say for certain, but it appears to be the same room.
- Q. What about the lighting? Are there lights on or off?
- A. There are lights -- there is a light on, but it's either the hallway or the bathroom light with the door open, not in the actual bedroom area.
- Q. And physically for the hotel room, was the bathroom adjacent to the doorway to the room, the entry into the hotel room, when you come into the hotel room -- come into the hotel room, there's a bathroom to your right-hand side?
- A. Yeah. It was right to the -- well, I don't know about for this one, but it's typically right to the left was how our room was.
- Q. Okay. And then you go into -- the room opens and that's -- in your memory, is that where the two beds are?
- A. Yes.
- Q. Was this bedroom laid out, physically, in the manner as to the bedroom that you had been staying in with Ms. Barker and Jessica Brooder on Sunday evening, Monday evening?
- A. Yes, it was. The same layout.
- Q. Similar lay out?
- A. Yes.
- Q. It's not the same room, though. Ms. Barker is not here?
- A. I don't remember her being there. I guess with this flash, all I can see is a dark figure right in front

of me kind of straddling me. I'm assuming he was straddling me because I don't remember weight on me. But I just -- I can just see straight down. He's right in front of me and he's not standing.

Q. Well, let me flesh this out, then. First of all, where are you? Are you on the bed or are you on the floor?

A. I'm on the bed and I'm laying down.

Q. Is your head at the head of the bed?

A. Yes.

Q. The typical location where the pillow would be?

A. Yes.

Q. Do you have any memory as to whether you were clothed or not?

A. I know -- I don't believe I was ever naked at that point -- at any point of that night. But I can't tell you that I remember feeling clothes on me. I don't really have any physical sensations from this memory.

Q. All right. Now, you said it was a man that appeared to be straddling you. Describe in as much detail as you possibly can what you mean by that to the investigating officer? What you remember?

A. Well, the light was on behind -- you know, coming from the hallway. So I couldn't get a clear look at his face. It was like in shadows. But, again, it was short hair and wider shoulders, just seemed like a man.

Q. All right. As you're laying there on the bed, first of all, do you have any weight on your shoulders, elbow joints, wrists, anything like that? In other words, do you feel an application of any sort of weight or force to any part of your body?

A. No, I can't. I don't really have any feelings or sensations in this flash.

Q. Well, you described him as a man that's straddling you. Why do you use the term "straddle"?

A. Just because I know that I'm laying down. I know that he's right in front of me. I mean, there's no way he could have been kneeling beside me or, like, leaning over me. He just isn't in the right

position. He's right in front of me and he's not standing over me.

- Q. You say you're laying down, so would you physically, if there was no obstruction, would you be looking up to the ceiling?
- A. Yes. I mean, at this flash I'm more like lifting my head up, it seems. I'm looking forward, but if I just put my head back, yeah --
- Q. So your head is up to a little bit forward. So are you looking down the length of the bed towards the wall?
- A. Yes.
- Q. All right. Where is the man, then? Is he all the way at the end of the bed, or is he on the bed?
- A. No. He's on the bed.
- Q. When you look at -- I know that you've described the -- you can't see the facial features because the lighting is behind and it creates kind of a shadow. Am I accurate?
- A. Yes.
- Q. How far, though, physically, is the facial features from you, your nose, your eyes, how many feet would you say is that head of that individual from you?
- A. Enough. If I wanted to, I could have reached out and touched him. It doesn't seem like it was far.
- Q. And for the record, the witness used her left hand and pushed out forward.
- Would you say it's within 3 feet?
- A. Yeah. I would say 3 or 4 feet. I don't feel like it was. I don't feel like he was right on my stomach, but he wasn't, you know, down at my knees. He was somewhere in between.
- Q. Okay. Now, let me ask you this: You described the head and upper torso area. Do you know where the hands were?
- A. No. It's just like this, you know, form. I can't tell you where certain things are, where his legs are or anything.
- Q. Can you tell us whether the individual -- he's a

- male, in your opinion, based upon what you describe. Does the male have any upper clothing on in the upper torso? Is there a shirt or is he bare-chested? Can you tell us anything about that?
- A. No. I don't. I can't see that. It's just, like, this dark form.
- Q. All right. Have I exhausted your memory? In other words, can you tell us anything more? Is there clothing on the bottom? Any words spoken? Any mumbling? Anything?
- A. No. I don't remember there being any sounds. Again, it's like -- it's a silent movie. I don't remember any of that.
- Q. Have I exhausted your memory then?
- A. Yes.
- Q. Is there anything else about this memory, now? Do you see Ms. Brooder at all?
- A. No, I don't see Jessica.
- Q. What happens next? Is it now another flash?
- A. Yes. The next flash, I'm on the same position, on the same bed. But I have, like, more thoughts this time. I feel confused because I thought -- I was wondering where Becky is and also why I was in that bed because in our hotel room, I slept in the bed near the window. And then I remember getting up and looking over, and on my left I see Jess on the bed near the aisle and Doug completely naked lowering himself down on top of her.
- Q. Let me ask you this: If I understand correctly, this is the third flash of memory in the sequence we're discussing; correct?
- A. Yes.
- Q. When you looked -- first of all, you say, so I understand correctly, you become conscious and you're confused wondering where you're at; correct?
- A. Yes.
- Q. Do you know what draws your attention, why you looked to your left at this point?
- A. I was just looking around because I couldn't figure out where Becky was. I was just confused.

Q. So you looked to your left?

A. Mm-hm.

Q. When you see Ms. Brooder, is she on the other bed?

A. Yes.

Q. How many feet -- how much feet, in other words -- I'm not saying this the right way. How far were the two beds separated within this hotel room?

A. She wasn't far at all. I mean, it was like, again, maybe 4 or 5 feet. It was just a normal-size aisle.

Q. Let me ask you this. The investigating officer is to your left. Was Ms. Brooder farther away from the investigating officer from where you are sitting in that witness stand? When you looked to your left and saw her in the early morning hours of 4 April '07 that we're discussing?

A. No. I believe it was probably about that distance and maybe a little bit closer.

CC: I believe for the way the court-room is set up, I'd say that the investigating officer sitting in the judge's chair is approximately, I would say, 4 to 5 feet away from the witness sitting in the witness stand. Is that fair, Mr. Faraj?

Yes, it is.

Questions by the government counsel continued:

Q. So do you think that Ms. Brooder was actually closer to you than the investigating officer's chair?

A. Yeah. It's -- yeah, I mean, it seems a little too far but not by much.

Q. So she may have been within 4 feet?

A. Yeah.

Q. Now, in as much detail as you possibly can, first of all, I want you to concentrate on your memory of Ms. Brooder, as you see her, as you look to your left and she's 3 to 4 feet away. First of all, is she moving?

A. I don't remember seeing her move. No.

Q. Did you see -- what portion of her body do you see?

A. She is under, like, a sheet; and I can see from

about here, her actual body, up.

Q. Indicating in the witness stand, the upper chest area up?

A. Yeah. Right.

Q. Could you see her shoulders?

A. Yes. I could see her shoulders.

Q. Could you see her jaw?

A. Yes.

Q. Could you see her nose?

A. Yes.

Q. Could you see her eyes?

A. Well, yes and no.

Q. Eyelids?

A. I mean, I could see her face; but I can't see, like -- I don't remember if her eyes were open or closed.

Q. That's what I'm going to get to. First of all, let's talk about her face. First of all, do you see her lips move at all?

A. No.

Q. Do you see her upper shoulders moving at all?

A. No.

Q. Do you see her eyelids flutter at all?

A. I can't really make out her eyes. I can't tell if they were open or closed. I wasn't studying her face.

Q. Does she make a sound that you can hear?

A. No.

Q. Does she communicate any words to Captain Wacker?

A. No.

Q. Is -- do you see any hand movement from below her shoulder area? Do you see any hand movement from her under the sheet area?

A. No.

Q. You've heard the term "warm embrace." Do you see --

are her arms gathered around his upper torso in an embrace?

A. No.

Q. Is there anything you see from Ms. Brooder that you see, from 3 feet away, that indicates that she is physically moving at all at this point?

A. No. In this flash I don't see her moving at all.

Q. Is there anything else that you see in this flash of Ms. Brooder's physical condition that I have not asked you about at this point?

A. I do remember that she had bra straps on, so she had her bra on. But I can't see other portions of her. She's covered by a sheet. I think I can see these two tan bra straps on her.

Q. I may have asked this, and I apologize if I did, but I want to ask you also, any sounds coming from Ms. Brooder? Any vocalization of any sort of consensual interaction? Any sound at all?

A. No.

Q. Have you ever seen someone who's passed out?

A. Yes.

Q. In your history, you've seen somebody who's actually passed out?

A. Yeah. Well, I would say passed out in regards to after drinking, you know, they just, you know, fall on the couch and sleep.

Q. So you in your prior history, have you seen somebody like that?

A. Yes. I mean, I haven't seen anyone faint. But, yes, passed out in that regard.

Q. And this memory you discuss in the hotel room, if I'm clear, do you see any physical movement or even indicia from Ms. Brooder that she's physically conscious at this period of time when you look to your left?

A. No. I don't see her moving.

Q. Let me ask the same questions about Captain Wacker now. Describe --

IO: I'm sorry. At this time, I'm going to interrupt to

keep it moving.

You said -- could you see her arms?

WIT: I can see that her arms, they're like this. They're up like this, but I couldn't see -- they were outside of the sheet, but I couldn't see from below.

IO: So for the record, you're saying her palms were up, her arms were up?

WIT: And her head was to the side.

IO: Facing, which way is her head? Toward you or away from you?

WIT: It wasn't all the way, but like this. Away from me, facing towards the window a little bit.

IO: Okay. So could you -- if her eyes were wide open, do you think you would have seen them or you can't tell?

WIT: No. I can't tell.

IO: And her arms were back like this, but you clearly didn't see her arms or hands moving at all?

WIT: No.

IO: How about her legs, the position of her legs? Did you see them at all?

WIT: From this flash, it was just straight down. She was just laying kind of like a board, like the bottom half was going straight out. I couldn't tell, of course, because I wasn't up above. But I could just see, like, the outline under, like, the sheets.

IO: Of one leg or both?

WIT: In this position, I couldn't tell you. I can't -- I mean, it looks bigger, so I want to say two, but I don't want to say for certain.

IO: So you definitely saw both hands up in the air, so to speak, with her palms facing up. You saw the head turned away from you, and you saw at least one leg

lie still straight out?

WIT: Yes.

IO: Thank you. I'm sorry.

GC (LtCol Sullivan): Yes, Your Honor.

Questions by the government counsel continued:

Q. And I guess that's a way of saying -- as the investigating officer asked -- I mean, you know, we're trying to get to the, you know, as much factual matters as we could. In this bedroom do you see Ms. Brooder move any part of her body? Anything?

A. No. I don't see her moving.

Q. Tell us what you see from Captain Wacker.

A. I see that he is completely naked and he's doing -- it looks like, you know, a push-up leaning down towards her, like a reverse push-up, I guess you would say, going down towards her.

Q. Does he say anything?

A. I don't remember if he said anything.

Q. What else do you see? Describe -- the same question so I can move this along. As much detail as you possibly can. Explain to the investigating officer what you see from Captain Wacker?

A. Well he -- I remember his hands on either side of her. I can't remember where exactly. But they're on either side of her, and his legs are on either side of her. But he's doing like a reverse push-up down. He's completely naked. I can tell because, again, that light is still, either the hall or the bathroom light. And I can see his butt completely, all of his shoulder, his back, his legs.

Q. Well, you mentioned the sheet earlier. Where is the sheet?

A. It's on top of Jess, but not on him. He's on top of Jess.

Q. Does the sheet -- can you tell whether the sheet is covering her entire body?

A. Yeah. Pretty much. It looks like it's covering her

entire body.

Q. Can you -- looking at Captain Wacker, what can you -- does the sheet obstruct your view of any part of his body?

A. No, I don't -- no, I can just see him, like I said, doing a reverse push-up and the sheet is laying on top off Jess.

Q. Well, let me ask you: Can you see his upper shoulders?

A. Yes.

Q. Can you see his upper back?

A. Yes.

Q. Can you see his buttocks?

A. Yes.

Q. Can you see the front portion of his body, in other words, his penis?

A. No. I can't see that.

Q. Can you see the front portion of the chest?

A. I don't have a specific memory of that. I was just -- it seemed like I was just looking at like the bathroom where the light was, you know? This brought -- my eyes were -- the light was hitting him on his back.

Q. What about his upper -- his head area? Do you see whether -- you described him coming down in a reverse push-up. Those are your words. Do you see whether his lips are -- does he make any contact with Jessica Brooder's facial area?

A. I don't see that, no. While I saw him going down, then I turn away and look around some more. I didn't actually see them make contact, if she kissed him or he kissed her, any of that. I didn't see that.

Q. Okay. Well, I mean let me ask you that: So far at this point do you see Ms. Brooder even making a physical -- is she even moving?

A. No.

Q. What's the next thing that you can recall seeing?

A. Well, I saw him doing that and I realized that,

again, Becky wasn't there. And I said something that ended in this. I can't remember what. It was either, I'm not into this. I can't do this. Something of that nature. And then I get up and I realize that I had a -- I was in my underwear and my shirt and bra, but my pants were off. So I pulled those on and grabbed my purse and ran out of the room, holding onto my phone wanting to call my boyfriend. And I got out of the room. I turned around to see what the room number was because I didn't know where I was.

Q. How long did it take you to gather -- to put your pants on -- first of all, do you have any recollection as to how the pants came off?

A. No. I don't recall that at all.

Q. How long did it take you, do you think, when you were in that room to get -- actually put your pants on -- was your shirt on, still?

A. Yes.

Q. So the clothing that you did not have on were your pants?

A. Yes.

Q. Is there anything else that was missing?

A. At the time, I didn't realize, but I did have my shoes on. Now I know that because later I found them in the room.

Q. So you decide -- you said, I'm not into this or whatever?

A. I can't do this or something -- look at this.

Q. And you get up to gather yourself. How long, do you think, did it take you to put your pants on to ensure you had your phone and to actually exit the room? How long -- how many -- what are we talking about here?

A. I took a few seconds because I wasn't sure where my pants were. They were on the floor. They were on the floor, like, you know, near the end of the bed, in between the bed, I believe. And then as you were looking around I didn't find my purse. I remember where my purse was. I can't remember where I actually found it. I just remember mainly walking out and looking at my -- trying to find my phone

because I wanted to call my boyfriend and then looking at it as I was going through the door.

- Q. So for your best estimate, how many seconds are we talking about, does it take you to gather these things as you've explained to the investigating officer?
- A. I struggled with my pants for a little bit, so I would say probably about 8, 10 seconds.
- Q. During the 8 to 10 seconds, did you say anything else besides the first words that you already said about this?
- A. Not that I can remember.
- Q. All right. I want you to focus now on the 8 to 10 seconds. During any of that timeframe, did you hear Jessica Brooder say anything?
- A. I didn't hear her say anything. I didn't hear Doug say anything.
- Q. You're within feet now of Ms. Brooder; correct?
- A. Yes.
- Q. I mean, that room is not that big. I'm going to ask you do you see, during the 8 to 10 seconds that you're gathering your things to get out of there, do you ever see Ms. Brooder move?
- A. No. I didn't see her move at all.
- Q. What about Captain Wacker? When you said those things and you began to gather your stuff, does he say anything in response to you?
- A. Not that I can remember. Again, it's like that was, like, the only sound I remember hearing. I mean, sure, I made sounds when I put on my pants and everything, but I can't remember hearing anything else besides what I said.
- Q. Do you have any recollection of him moving or saying anything at all?
- A. No. I was really -- it's kind of like a tunnel vision at this point. I'm looking there at my pants -- when I'm looking for that, the rest of the room kind of gets out of my memory. I don't remember any of it.
- Q. Did you leave the room?

A. Yes.

Q. You looked up and you saw the room number?

A. Yes.

Q. Do you recall what the room number was?

A. Yeah. It was a 1008. I remembered it as 108, and it really stuck in my head because that's a code I've had to use numerous times before. And then I just remember thinking this is not my room.

Q. What did you do then?

A. I don't remember. I know that I wanted to call my boyfriend. But I don't remember actually calling him. My next flash is in the hotel room with Becky -- we had with Becky.

Q. Okay. Do you know what that room number was?

A. I -- like I said, thank God that number was 108 because I have a horrible memory when it comes to numbers. It was seven -- I know it was on the seventh floor.

Q. That was the room where yourself, Becky, and Jessica Brooder were staying and sharing at the hotel?

A. Yes.

Q. Did you go to that room?

A. I remember being in there talking to Becky. So I'm assuming I went there. I don't remember --

Q. Maybe I should have asked that.

IO: Before you get to the next flash, I just need something clarified with this whole sheet. You said the sheet was on Jess, but was not on Captain Wacker; is that correct?

WIT: Yes.

IO: Okay. Was it between them?

WIT: Yes. Jessica Brooder was laying down, and the sheet is covering her to here, but her arms are --

IO: Okay. I got it how high it was covering up. How high was it covering going down?

WIT: To me, it looks like the entire -- all the way down.

IO: Okay. So clearly, then, if he's doing this, as you call it, reverse push-up on him, the sheet is between the two of them?

WIT: Yes.

IO: To be more specific, the sheet is between his groin area and her groin area?

WIT: Yes, it is.

IO: Okay.

GC (LtCol Sullivan): Thank you.

Questions by the government counsel continued:

Q. Okay. You get to the room on the seventh floor. What happens? What can you tell us now with regard to what you recall doing?

A. All I remember is Becky leaning out of the bed and telling me, Go get her. I don't remember having the conversation with her or anything. But her saying go get her, I remember thinking, you know, like a light bulb went on, like, I should have gotten her and remembering that I wanted to rush back out of the room. That's the next flash.

Q. So do you have any recollection as to what you told Ms. Barker?

A. Mm-mm.

Q. What's the next memory you have, then?

A. I'm at, again, 1008; and I'm pounding on the door.

Q. So you go up to the 10th floor? You're going back to the room you just left with Captain Wacker and Jessica Brooder remaining behind?

A. Yes. I don't remember getting up there, but my next flash is at the door, and I'm pounding on the door.

Q. Do you say anything as you start to pound on the door?

A. I'm sure I did, but I don't remember, like, saying words. Again, I'm sure I did, but I don't remember saying anything. I just remember pounding on the

door for a good amount of time.

Q. All right. How long do you pound on the door?

A. It was a while. Like, 15, 20 seconds. It felt like forever, but I was pounding for a while.

Q. And what happens after the 15 to 20 seconds? Does the door eventually open?

A. Yes. Doug opens the door and he's in his boxers now. And then I push past him. I don't remember saying anything to him. It's like I don't hear that much, and Jess is laying on the bed, just laying -- on the bed with -- the sheets are off and she's naked.

Q. All right. If I understand your testimony, then, you go past Captain Wacker after he eventually opens the door and he's in his boxer shorts; correct?

A. Yes.

Q. Do you say anything to him as you go past him?

A. I don't remember saying anything. Again, I'm sure I did, but I don't remember.

Q. If you don't remember, you don't remember. You get into the room, and I want you to describe the exact position of Jessica Brooder. I want you to give as much detail as you possibly can. When you first get into the room, I want you to describe exactly what you see and whether she is moving, is she talking, is she doing anything?

A. When I came in, Jess was laying in the same place as I described before. And the lights are on, though, at this time in the room. And she is completely naked laying on the bed. The sheets are off of her. And, yeah, she was -- sorry. Yeah, she was completely naked. She was laying in that same position; and this time, it looked like she had, like, one leg kind of, like, out some, but the other leg was kind of straight. And she was still kind of looking in this direction. And her hands, one is over her stomach, and the other one is still up like that.

Q. Okay. Now, lights are on -- I understand your testimony. The lights are on, she's completely naked. There's no sheet covering her. You get into to room. How far away from her are you when you're

looking at this scene now?

A. Well, I was moving towards her. It wasn't like I stopped. I was moving towards her to get her.

Q. As you're moving towards her, does she raise her head and acknowledge you in any way?

A. No, she didn't -- it was like she was sleeping.

Q. Was her hand over her eyes?

A. No.

Q. So you say the lights were on; correct?

A. Yes.

Q. Is she doing anything -- is there any physical manifestation from her that you see in which her eyes -- she's responding to the lights that are now on?

A. No.

Q. Does she move -- I think you described one leg to the side? You know, and I'll let the record, you know -- we'll state what you described with regard to her legs. As you come in --

A. No, she --

Q. Does she move her legs?

A. No.

Q. Does she take any action whatsoever to cover up or what people may consider a normal reaction to -- for privacy or decorum?

A. No. She was completely naked, just laying there. She didn't move.

Q. Do you see any physical manifestations whatsoever of consciousness when you came into the room?

A. No. Not at all. I don't see her doing anything.

Q. What do you do?

A. I grab her. I don't remember exactly if I said, We're leaving; we're getting out of here.

Q. Do you go to [unintelligible].

A. Yes. I go and try to grab her arms to pull her up.

Q. Okay. Then let's go through this now. When you get to her, walk the investigating officer through it.

What physical acts do you take to now assist Ms. Brooder? What's the first portion of her body that you touch?

A. I grabbed at her wrists, her arm, and the other arm, the one that's over her and then the other one. And then I grab them and try to pull her up saying, Let's go, we're getting out of here or something of that nature.

Q. When you say those words to her, are you saying those words contemporaneously with physically pulling her arms as you describe?

A. That's what I recall, yes.

Q. What is she doing in order to respond to you, to acknowledge you, to assist you?

A. Nothing. She's not doing anything. It's like lifting up a rag doll.

Q. Let's talk about her eyes. Is there any cognitive reflection in her eyes? In other words, does she lock eyes with you and is there any acknowledgement that she recognizes who you are?

A. Her eyes are closed, and during some of the times, when I was getting her dressed, they were, like, half open. It was like she's, you know, trying to wake up and not quite getting there.

Q. Does she say anything to you? When you say the words to the effect of, We're going to get out of here, does she say anything in response to you?

A. No. I remember while I was trying to get her dressed, her mumbling; but I can't make out the words. I can't remember her actually saying anything.

Q. Well, walk us through, then, if you could, what you do to physically get Ms. Brooder off of that bed and out of the hotel room?

A. I remember pulling on her and finding her clothes. Her bra was on the floor next to the bed. I believe her clothes were on the end of the bed -- not the bed, on the floor, I think, near the end of the bed. And then so I put her bra on and I put -- I remember staring at it and trying to think of how that worked with the clasp, what kind of clasp it was, and putting the shirt over her. And then I found her pants, but I could not find her underwear. I

couldn't find them at all.

Q. Now, Ms. Brooder is approximately 5'8", in excess of 125 pounds. What was your physical size and strength at the time?

A. I was the same, you know, 5'9" and-a-half, 5'10". But she -- I was probably -- I was about 120 pounds at the time. Before my first baby I was very, just naturally, really skinny.

Q. Let me ask you this: Was it easy for you to get Ms. Brooder up and dressed?

A. No.

Q. How long did -- you know, could you explain to the investigating officer how long did it take you to get -- that's a bad question. Let me -- what is the first article of clothing that you put on Ms. Brooder after that, at this portion of the event we're discussing?

A. Her bra, because it was the one nearest her. It was right on the floor.

Q. Did you have to lift her upper torso to get the bra on?

A. Yeah. Well, once I put her up, she was kind of, like I said, like a rag doll, like swaying some, but she could hold herself up a little bit. So I was, you know, while I was putting her bra on, trying to use that to hold her in, like, the same place.

Q. How long, do you think, did it take you to actually get the bra completely on?

A. It took -- I believe it took a while probably, you know. Ten seconds trying to get her in the right position, and I remember looking again trying to figure out how to do the clasp. But now I can't remember exactly how the -- where the clasp even was, if it was even the front or the back. I just remember looking and trying to figure out.

Q. What was the next article of clothing after the bra that you put on?

A. I put on her shirt, black shirt. That one was easier.

Q. When you say it was easier, describe physically the steps you had to take to get that on.

- A.** Again, you know, just trying to tell her, you know, to get her arms through, trying to communicate with her and pulling it over her head.
- Q.** Now, let me ask you about that. When you said you're trying to communicate with her, did you tell her, you know, Jess, raise your arms? Walk us through, actually, step by step what you had to do?
- A.** I can't remember everything verbatim or exact. But it wasn't, like, you know raise your arms, pull it over. It was more I would move her arms if she wasn't doing it the right way. I was like, hey, you need to go a little more this way and stay like that and that type of thing. But it wasn't, you know, raise your arms and just pulled it on over her. I didn't do that. It was a complicated process.
- Q.** When you're putting the shirt on her, does she say anything to you? Does she start to talk to you where she's evidencing a cognitive ability, a level of consciousness where she's recognizing who you are and what you're doing? In other words, she starts saying, Hey, Liz, calm down?
- A.** No. No. She's just -- again, I remember at points kind of mumbling. I can't remember her saying any words. And, no, she doesn't say anything that, you know, don't worry or anything like that. It's just mumbling and she's like a rag doll. Like, she was going like this with her head and her eyes were kind of closed.
- Q.** After the talk that you discussed, what is the next article of clothing that you put on her?
- A.** I got her pants. I couldn't find her underwear. I got her pants and tried to put them on. It was just so difficult because I couldn't get my hands and everything to work and her to work. And I ended up putting them on backwards. I couldn't -- it was like I had never put on pants before. I couldn't figure out how to get them on.
- Q.** Now, pants go on the lower extremities. You've discussed her arms, bra, now you're dealing with the lower extremities. Did you give her any directions? Were you talking to her going, Jess, would you lift up your legs? Was there anything like that?
- A.** Again, it was just the same type of thing. I would, like, lift her foot and if it wasn't going in the

right direction I would, like, you know, straighten it or push or lift back --

Q. That's the point of my question. Did you have to lift her feet?

A. Yeah.

Q. And did you have to slide or shimmy, for better term, the pants up the leg?

A. Yeah. I remember, you know. And then once I got them there, I got her to stand up and was trying to get them up; and that's when I realized that they were on backwards.

IO: Do you have kids?

WIT: Yeah.

IO: How old is your youngest?

WIT: She's three months.

IO: So like dressing a three-month old? Is that what we're getting at?

WIT: Yeah. Pretty much like dressing a giant newborn.

Questions by the government counsel continued:

Q. When you said she finally got up, you got her to stand up and you realized the pants were on backwards, describe how she stands. Does she stand? Is she now well-balanced and does she -- could you describe for the --

A. No. She's, you know, she's swaying. I'm, like, having to, you know, hold her while, like, you know, I keep her there while I'm trying to pull the pants up.

Q. Now, Ms. Cook, you've been describing in detail, now, as the investigating officer said, trying to dress a child. How long is your best estimate, do you think -- and let's face it. It didn't take you five seconds to do the bra, then the shirt then the pants, did it?

A. No. It took a -- it took -- it felt like forever. I mean, I can't --

- Q.** Do you think it took more than one minute, 60 seconds?
- A.** I believe it did. I mean, like I said, I wasn't looking at the clock. I'm not sure. I just felt like every single thing was just taking -- I was having problems figuring out how to get -- where the holes were.
- Q.** Because I may be remiss, but I have not heard you mention Captain Wacker assisting you, so far, one occasion with the dressing of Ms. Brooder?
- A.** No.
- Q.** Because that's my next question: Where is Captain Wacker, the Marine officer in the room? What is he doing this entire time that you're trying to get Ms. Brooder dressed?
- A.** I wasn't paying attention to him, but I just remember that he was somewhere off to my right side. I don't know if he was sitting or he was standing or what. But I do remember that when I put on the pants, they were backwards, he laughed and said, "You have them on backwards." And that was -- that's all that I really remember of the interaction with him.
- Q.** Did you say anything to him?
- A.** I don't remember. I really don't. I don't remember if I said anything back. I mean, I'd like to think I would have, but I don't remember.
- Q.** Did he say anything to you? Did he say anything to you like, Hey, why are you freaking out? Call down, you know? You're getting the wrong impression here. Hey, you know, we were having a good time a couple of hours ago. What's going on now? What -- anything like that?
- A.** No. Not that I remember. I don't remember him saying anything -- saying anything besides that comment. It was just like, again, tunnel vision, just on Jess.
- Q.** Well, did you get Ms. Brooder out of the room?
- A.** Yes, I did. After I got her dressed, I was looking around for her shoes; I realized I had left my shoes. I didn't even know I didn't have shoes on. So I grabbed my shoes and her shoes and her purse and walked -- I don't remember how exactly we got

out.

- Q.** That's what -- I'm going to ask you that question: Can you describe the physical manner -- in other words, did you leave and Jess follow you? Was she now on her own motorlocution [sic]? Is she now walking with you? I mean, how -- can you -- best you can remember, how do you get her out of the room?
- A.** Yeah. She's walking with me. I remember having my arm around her, but I don't remember actually getting out of the room. This is while we're in the room. I still remember that and then wanting to get out of the room. I don't remember actually, physically leaving the room.
- Q.** Where was your arm around her? How did -- could you describe --
- A.** It was just around, like, her waist.
- Q.** Okay. Were you supporting her? Did you feel her weight?
- A.** I was trying to get her to move in the direction and walk and everything. Yes.
- Q.** Do you recall actually getting outside of the room and then getting into the elevator?
- A.** Mm-mm.
- Q.** What is the next memory that you recall? First of all, I guess I should finish with as you're leaving the room, at any time does Ms. Brooder say anything to you at all? I mean, so far, I may be remiss; but I don't -- do you have any memory of her saying anything to you that indicated a level of consciousness or understanding?
- A.** No. It's just that mumbling. I remember that she mumbled, but I don't remember hearing specific words or being a sentence or anything. She was just making sounds.
- Q.** Okay. Do you recall how you got from the 10th floor?
- A.** No.
- Q.** What's the next memory that you have?
- A.** I just remember being in the room with Bethany and Jess and Jess crying and saying that she had to call

up Justin and then --

Q. Well, let me ask you about this, when you get -- where are we now? What time is it when you get into this next memory?

A. I have no idea.

Q. Is Becky Barker there?

A. Yes.

Q. How is she dressed?

A. She's -- I wasn't paying attention to her. She was in her pajamas. I know that. But I believe it was maybe a white shirt.

Q. So in other words, she's not -- it's not -- she's not dressed and going to work?

A. No.

Q. Do you have any idea what time this is? Is it still dark out? Has the sun begun to rise yet?

A. I believe it was still dark out, but I have absolutely no sense of time for these flashes at all.

Q. Okay. Well, when you get into the room, you see Becky Barker in pajamas, describe what happened. What is your next memory? What -- tell -- explain to us what you recall now. What is going on and what are you doing?

A. I remember Jess crying and saying that she had to call Justin; and then I remember getting really upset. And I remember also being out in the hallway -- and this is just very convoluted -- being out in the hallway with Jess and Becky and just talking about, like, not wanting to, like, I don't know, there were too many people or something? And I just remember getting really angry that she didn't know what had happened and leaving.

Q. Okay. Well, explain what do you mean you get angry?

A. I got really, really angry because she was crying, saying, you know she didn't -- you know, crying and wanting to call Justin and I just --

Q. But you made a comment where you said you got angry because Jess didn't know what happened?

A. Yeah.

Q. I mean, what caused you to believe that she didn't know what happened?

A. Well, because she just was crying and -- I wish I could remember the exact words. I remember saying that, you know, she thought that she had slept with Doug and she was saying that she wanted to call Justin. But that's -- you know, she's saying, like, she was acting like she didn't. Didn't remember or didn't know. It was just, like, news to her; and she was just crazy.

Q. Are you okay?

A. Yeah.

Q. Do you need five?

CC: Can we take a recess?

GC (LtCol Sullivan): All right. Let's take -- Your Honor, with your permission, can we have five minutes?

IO: We're in recess.

[The Article 32 investigation recessed at 1750, 12 April 2010.]

[The Article 32 investigation was called to order at 0805, 13 April 2010.]

Questions by the government counsel continued:

- Q.** Yesterday, we left off in the, I believe, in your testimony after you had returned down and brought Jessica Brooder down to the seventh floor room in New Orleans in the early morning hours of 4 April 2007 to the seventh floor, I believe you completed one of your responses, one of my last questions, by saying, and you became angry.
- A.** Yes.
- Q.** Do you remember that question? Let's start there. Why did you become angry?
- A.** Well, as I said, I specifically remember being in the room, him standing and Jessica on the bed, and Becky sitting next to her and asking Jess, "What happened?" And Jess is crying, and I just got extremely angry. I was really angry because I remember thinking, you know, Jess has a right to know what happened, you know, and the thing is I don't remember -- I can't remember her saying anything that made me think that, that's just what I had, that she was crying. I remember thinking Jess has a right to know what happened.
- Q.** Now, let me ask you then, what is Ms. Brooder's state as Becky Barker Abdullah is asking her questions, right, on the seventh floor room now?
- A.** Uh-huh.
- Q.** Is Ms. Brooder responding? Is she saying anything? You know, explain -- you know, I've asked you a lot of questions earlier about her state in the room in the tenth floor. I want to ask you the same type of questions, you know. Could you explain to the investigating officer -- explain to the investigating officer your observations now of Ms. Brooder in the seventh floor room where we're at chronologically as Ms. Barker is asking these questions. I mean, is she responding? Is she conscious? What -- go into details, if you could.
- A.** She is sitting up and she's just -- has her -- she's just balling. She has like her hands -- her head in her hands and is just sobbing, like, uncontrollably. That's what I -- however, I can't see her face or

anything else. I just remember her crying.

Q. Do you remember her responding, saying anything in response to the question posed by Ms. Barker?

A. I don't remember her saying anything in response.

Q. How many questions did Ms. -- you know, Becky; I'm going to call her Becky instead of Becky Barker Abdullah. How many questions did Becky ask Ms. Brooder in your presence on the seventh floor room that we're talking about?

A. The only thing that I remember is just her asking me what happened, but, again, it's just a few seconds. Like I don't remember getting into the room, her sitting on the bed or anything. It's just a few seconds of her asking what happened.

Q. Okay. What is your next memory then, chronologically, with regard to this incident?

A. As I said, I remember -- I just remember getting really angry, thinking that Jessica has the right to know what happened. You know, again, I was trying to think of -- trying to think of what made me think that, but I just can't remember.

Q. What's the next thing you do remember? What happens next?

A. Well, the next thing that I definitely remember is pounding on 1008 again --

Q. So --

A. -- on the room 1008.

Q. So, you left the seventh floor and then returned to 1008?

A. Yeah. I don't remember exact -- remember doing it, but I just remember pounding on the door.

Q. Well, what happened after you -- first of all, how long did you pound on the door on this occasion?

A. It wasn't nearly as long as before; only a few seconds. Douglas opened the door. He was in his boxers and a little white shirt at that point. I mean, the lights were on.

Q. And then what happened?

A. I remember him turning around and walking and laying down on the bed nearest the bathroom on the aisle

side and me walking and sitting, I believe, in the chair in the room. I don't remember any sound; just, again, it's kind of like a silent movie at that point. I'm sure something had to have been said. It doesn't make, you know, sense, but I just don't remember anything.

Q. Well, what do you remember next?

A. Next, I remember asking Doug, you know, Jess has the right to know what happened, and Doug told me, "I'm not going to tell you. If Jess wants to know what happened, she needs to talk to me." So, I remember then --

Q. Did you say anything in response?

A. Well, I feel like there was space in between us. It wasn't like all -- like it wasn't like I just walked in and sat down and said that. I don't -- I think it's just another thing that I remember, and I also remember saying "I can't believe I stood up for you" and standing up and walking out of the room. I don't know why I said that. I don't know why I said "I can't believe I stood up for you." I don't recall saying that, but that's the last thing I remember.

Q. Did he say anything else to you when you said, "Jessica has" -- what were the exact words you said to Captain Wacker?

A. To the best of my recollection, I said, "Jess has the right to know what happened. She wants to know what happened."

Q. Now, to the best of your recollection, exactly what was his response?

A. To the best of my recollection, he said, "I'm not going to tell you. If Jess wants to know, she needs to talk to me."

Q. Now I want to ask you a question that I haven't asked really yet. As he's saying that to you, those words that you've just explained, how far away from him are you?

A. Like I said, I believe I was sitting in the chair. There's a bed by the bathroom, a bed by the window, and then the chair, so probably where the court reporter is sitting, possibly a little bit closer, but I think that would be about right.

Q. About 10 feet away then?

A. Yes.

Q. Ms. Cook, let me ask you: Based upon your observations of Captain Wacker when he responds to you, do you have any impression as to what his level of intoxication is?

A. He was just laying on the bed, had his legs crossed and his hands were folded on his stomach, and he was like folded and he was just staring straight ahead. He didn't seem like he was -- you know, he wasn't slurring his words or anything of the sort. He wasn't intoxicated.

Q. When he answered the door on this occasion, did he precede you into the room? Did he then turn and walk into the room or did he allow you to pass?

A. That's how I remember is him walking to the room first.

Q. All right. As you're seeing him walking into the room, does he sway? Does he fall down? Is there anything in his gait or the manner of his walking that causes you to think that he's severely intoxicated?

A. No. All I remember is him just walking in.

Q. Does he say anything else to you while he's laying on the bed that we haven't covered for the investigating officer?

A. Not that I can remember.

Q. Thank you.

When he concludes making that statement, what do you do?

A. Again, I'm not quite certain if there was any more conversation in between it. I just remember in that room I also said, "I can't believe I stood up for you." And then I stood up and walked out.

Q. When you -- did he say anything in response to that comment you made to him?

A. Not that I can recall.

Q. What about your shoes, did you --

A. I had already got --- I had gotten my shoes before when I got Jessica out of the room.

Q. Okay. All right. So, is there any other materials? Before you walk out, is there anything else you do in that room?

A. No.

Q. Is there any other conversation you have with him?

A. No.

Q. Does he say anything as you're walking out the door? Does he express any concern about Ms. Brooder's well-being? I mean, you testified earlier that you had to physically dress her and remove her from the room. So, now this is -- if I understand correctly, chronologically, Ms. Brooder's now down in the seventh floor and you've returned now for the second time.

A. Yes.

Q. Does he say anything? Does he ask any questions about how Ms. Brooder is doing, where she is, why you're angry? Does he question you? Does he say anything as to why are you acting this way? Does he talk to you about -- does he say anything to you about your conduct; "hey, you said earlier" --

CC: It's a compound question. One question at a time.

GC (LtCol Sullivan): All right. You're right. I withdraw that. Thank you, Mr. Faraj. I apologize.

Questions by the government counsel continued:

Q. Point being is: Does he question you at all about your conduct, why you're even there?

A. No. No, he didn't.

Q. At this point in the room, does he say anything with regard to the fact that there had been a pre -- alleged previous agreement in the conversation for mutual consensual interaction between yourself, himself, and Ms. Brooder?

A. No. No, he did not.

Q. So, he doesn't say anything else? Have I missed anything in this portion of my questions?

A. That's the only part that I remember is him saying, you know, she needs to talk to him.

- Q.** Does he walk you to the door?
A. No.
- Q.** What do you do after you leave?
A. The next thing that I remember is I'm back in the seventh floor room because Jess and Becky are there, and Jess is crying, so I'm laying next to her and I, you know, kind of rubbing her back, trying to sing to her, trying to get her to sleep. She was crying really loud. That's all I remember.
- Q.** Is there any other conversations then in the room on the seventh floor after your return besides what you've just related? I mean, she's crying. Any conversations either between yourself and Ms. Barker or between yourself and Ms. Brooder?
A. Not that I remember.
- Q.** Okay. What's the next thing that you remember?
A. I remember waking up in the morning. Jess and I had fallen asleep in the same bed and Becky had fallen asleep in the other bed, and I remember just feeling really, really sick. I felt icky. I was just sore everywhere, and I felt extremely nauseous. My head was just splitting. I mean, I've never felt that sick before. It felt like I had been hit by a truck with, like, the worst hangover in my life.
- Q.** All right. Well, and we've had testimony that you've -- you drank that evening prior to and we covered all that yesterday. Let me ask you: Prior to the -- this New Orleans trip -- first of all, how old were you when you were in New Orleans?
A. When I was in New Orleans, I was --
- Q.** April 2007.
A. Yeah, April 2007 --
- Q.** Three years ago. How old are you now?
A. I was 23, yeah.
- Q.** So you were 23?
A. Yes, I was 23.
- Q.** Okay. All right. So, by the time you go to New Orleans, you have been at least two years of post 21 years old, two years of legal drinking age. Had you drank before?

- A. Yes.
- Q. Had you gotten drunk before?
- A. Yes.
- Q. All right. And because I'm going to ask -- and after New Orleans, have you had opportunities to drink?
- A. Yes. Not as many since the kids. I was --
- Q. Yeah, you're married --
- A. -- not so much.
- Q. But what --
- A. But, yeah, I had drank afterwards.
- Q. Because what I'm going to ask you is in your general life experience, was this feeling that you had on the morning of the 4th of April different than previous times where you may have drank to excess and have what we call the typical hangover?
- A. Yes.
- Q. And if it was, I know it's difficult, but if it was, can you just do your best to try and explain to Lieutenant Colonel Sayegh, the investigating officer, what the differences were so we have a record of that?
- A. Yes. I've never felt like that before. Usually after drinking, you know, I'll get the headache, get the stomach ache and want some greasy McDonald's breakfast or potato chips, feel better with that. I just -- that next morning one of the things that really shocked me was I was achy everywhere. I never felt that achy. Also, the nausea was just -- it wasn't like I could eat something greasy and feel better. I just felt absolutely, completely nauseous, like I couldn't stand up from the nausea, and my head was just really hurting. Again, it was much more than any other hangover I had.
- Q. Do you leave that bed and go to the adjacent bed?
- A. No. At that point I remember Becky asking us if we were going to go to work, and I believe Jess responded yes. I remember thinking, No way, I'm not getting out of this bed.
- Q. And I had forgotten to ask that. So, when you first

wake up in the morning of the 4th of April, Ms. Barker is actually present in the room?

A. Yes. I don't know if she woke us up or not, but, yeah, she was in the room at that point.

Q. Okay. What else then? What else happens at this -- you know, I'm going to take you just chronologically. I just want you to do your best to explain to the investigating officer what else as you first wake up? Do you remember any other conversation with Ms. Barker?

A. No. It was just her asking if we're gonna go to work. I said -- I believe Jess said the statement yes, but she wasn't moving, and I just -- I didn't want to talk. I felt like I was going to throw up if I opened my mouth, and I just remember just burying my head in the pillow and trying to go back to sleep, and I just fell back asleep.

Q. Okay. When did you wake up next?

A. I don't know how much longer it was. I didn't look at the clock when we woke up, so I don't know when that was, but I woke up again and this time Jess was awake.

Q. Was Ms. Barker still in the room?

A. No. She had left.

Q. All right. Describe for us then, first of all, what happens.

A. I don't remember a lot of our conversation when we first woke up. I know that we started talking, her telling me that she doesn't remember anything after the dance club; me telling her about that I just had some flashes. We were talking it through. I don't remember exactly who said this and then I said this, but that was the substance. We were trying to talk through the night and figure out what had happened.

Q. All right. When she first starts to talk to you, what is her emotional state?

A. At that point she wasn't crying like she was the night before. She was just -- she seemed like kind of in shock. Her voice was kind of shaky. She was kind of shaken --

Q. Did she --

A. -- at that point.

Q. Did she -- did she talk to you about how she was feeling? In other words, did she say anything about her physical -- what she was feeling?

A. Yes, yeah. We were both talking about how we both felt like --

Q. Yeah. Could you --

A. (Inaudible.)

Q. -- I'd like you to relate the conversation then as well as you can. What are the words expressed by Ms. Brooder? What do you say in response? I mean, what -- can you fill those in for us if you can?

A. Yeah, I can't remember verbatim. It was just -- I don't remember who said it first. You know, someone -- one of us said, you know, feel really sick and it's -- you know, I feel like -- I was like I feel really sore and -- or she said it first and I said, "Yes, I feel the same way," and we both felt really nauseous and headache. I can't remember -- again, I was still feeling -- I wasn't nearly as bad as when I had woken up the first time, but I was still not feeling good and everything else. I don't remember exactly who said what.

Q. All right. What else happened?

A. I remember, you know, talking and that and saying I believe that Doug and her probably had sex because of -- I remember her grabbing on and then coming back and her being completely naked.

Q. Okay. So, let's -- how does that come up? I mean, explain to the investigating officer what causes you to say this to Ms. Brooder.

A. It was when we were trying to figure out the night and she -- I was saying that -- yeah, I don't remember this conversation completely, but she was saying that she didn't remember after the dance club. I was trying to tell her the flashes and told her that I believe that she probably had sex with Doug because when I was there, she -- her bra -- she had a bra on, but then when I came back, she was completely naked. I also remember --

Q. Well, how did she respond to that?

A. She was just devastated and she was, you know, confused because I remember her telling me I don't understand. I mean, I went across -- I backpacked

across Europe for a month and I never cheated on Justin, and I would never do that. Like why -- why in the world, you know, and she was just completely devastated.

Q. All right. What else happened?

A. I remember telling her that she needed -- that she should probably check her tampon because if they did have sex, it could be pushed up far in her and she might need help getting it removed. That was the thing that I remembered happening to a girl in my sorority, which was why I said that to her.

Then I remember she called Justin to tell him that she had slept with Doug the night before. I can't remember --

IO: I'm sorry. Did you say you told her to call Justin?

WIT: No, no, no. I remember her calling Justin.

Questions by the government counsel continued:

Q. In the hotel room?

A. Yes.

Q. What is her emotional state?

A. She's crying at that point and she was very shaking, very shakey, like, physically shaking, you know, and just I remember her saying, you know, if you want me to move out, you know, I will. I understand that. That's the thing I really remember because my -- I was -- I was devastated for her. It was just so horrible to see and so confusing. I don't remember everything that she told Justin. I kind of was trying not to listen as much. I thought it was a more private kind of thing too.

Q. Did you make any phone --

IO: I'm sorry to interrupt again.

Did you say that Jess -- you heard Jess tell Justin that she would move out, she offered to move out if he wanted her to? Is that what you said?

WIT: Yes.

IO: Okay. I'm sorry. I wanted to make sure I heard that correctly.

Q. Did you make any phone calls to Donald Cook?

A. I know that I talked to him that morning, but I don't remember -- for some reason, I just cannot remember this conversation. I can't remember exactly what was said. It was just again, you know, going over about how -- mainly how I was feeling, but I can't remember verbatim what we said back and forth.

Q. All right. What else happens in the morning of the 4th of April?

A. I remember -- I believe that Doug called Jess and Jess didn't answer the phone. She didn't want to talk to him. And then I remembered Doug showing up at our hotel room.

Q. Do you have any recollection as to whether Ms. Brooder called Captain Wacker and left a voice mail? Do you have any knowledge of that?

A. I don't remember. Again, I just -- for some reason, that morning, like, the conversations and everything, I just can't remember.

Q. When you had these conversations with Ms. Brooder, did she ever indicate to you that she had any memory whatsoever of ever having any interaction with Captain Wacker?

A. No, she didn't remember at all; but just from what I told her is what she believed that, you know, she had slept with him.

Q. Does eventually -- does Captain Wacker come to your room?

A. Yes, he did.

Q. Could you explain to the investigating officer what happens when Captain Wacker comes to your hotel room on the seventh floor on the morning of the 4th of April?

A. I believe that I was the one who got the door, looked through the peephole and saw it was him; and I warned Jess and told her that Doug was here, and I let him in. And I walked back and got into the bed by the window and Jess was sitting on the bed by the bathroom. I remember Doug pulling the chair and

sitting the chair in between the two beds, at the end of the two beds, and sitting there.

Q. What was he wearing?

A. He was wearing a suit.

Q. And what -- is that what the students had been wearing, the male students had been wearing when they were providing legal aid?

A. Yes.

Q. Do you know if he had gone to work that morning?

A. I don't have any personal knowledge of that. It was just he was wearing a suit, so I just assumed.

Q. And do you have -- can you tell us what time it is when he actually arrives at your hotel room?

A. No. I have no idea. I didn't look at the clock at all.

Q. All right. What does he say when he sits down?

A. I remember him saying, you know, first off, you know, nothing happened.

Q. I mean, does he initiate the conversation or does -- I mean, does he sit down and start talking or does somebody ask -- you know, pose a question to him?

A. I can't -- I can't remember.

Q. Okay. I'll tell you what, we'll do it this way. That'll make it easier for you. Just explain to the investigating officer what you remember with regard to the conversation that occurs in the room with Captain Wacker, yourself, and Ms. Brooder. Just do it in your own way in as much detail as you possibly can.

A. Okay. I remember him saying, first off, nothing happened. Then I remember, you know, Jess saying, you know, Are you sure? And I already told Justin that we had slept together. And he said, No, nothing happened. And we told him that we didn't remember the night, that Jess said she didn't remember past the dance club, and I said I only have, like, flashes past that point and asked him to tell us what happened.

He then told us that we were at the dance club and Jess threw up on the bar. I offered to take her to

the bathroom. While I was in the bathroom, Becky asked him to take care of us and get us home because she wanted to go back. She was not feeling good.

Then when we came out of the bathroom, we told him that we wanted to drink more, and so he took us to a bar and got us a couple drinks. While he was getting those, he came back and we were talking about that we wanted to have a threesome with him. At that point I remember just, you know, a feeling my mouth was just like dropping, like -- like completely and utter shock. I remember Jess saying what. I don't know if I voiced anything or not. I can't remember. I just remember sitting there in disbelief and shock. And then he said yeah. After that -- and Doug said that I had told him there was a guy in a yellow shirt that was following us.

After we had discussed threesomes, we decided to -- we were walking back to the hotel, that I had problems walking, and he was helping me, but then he thought I was faking it because we walked by some police and he told me that I should -- that I needed to walk better or something because we were walking by police and I was able to walk better.

Then we got to the hotel room and he rented a room for the three of us and we went up there and that we all started making out when we got into the room, that me and Jess were kissing, me and him were kissing, Jess and him were kissing. And at that point I just -- I felt absolutely devastated and confused because up until that point I hadn't thought anything had happened involving me and that's what I had told Becky and that's what I told Donald. And then when he said that, I realized, you know, this isn't making sense, but if he's saying that, then at least kissing had to have happened and I was just completely -- completely devastated.

I just turned over in the bed and pulled the sheet over my head and I was just laying there, so I tuned out the conversation after that. I was just trying to work it all through in my head because it wasn't making sense to me, just the fact that I would never want to do a threesome, I've never cheated on my boyfriend. But then here's Doug saying all this. Doug, I've know him for, you know, eight months, you

know --

- Q.** How does Jessica Brooder -- before you put your head under the covers, how is Ms. Brooder responding as Captain Wacker is reciting this version of events to both you and he in this room?
- A.** Again, when he said that we wanted to have a threesome, she said what, like, complete, you know, disbelief and just, you know, the same as me, complete shock and confusion.
- Q.** Well, any part of this initial conversation, does anybody ask him whether -- does Jessica ask him whether they had sex?
- A.** Yeah. Well, as I said, after he said the three of us were making out, I tuned out after that. I was kind of half listening, but I don't remember what was said, but I remember he said that nothing else happened. It was just kissing. And that's when I kind of popped my head out of the covers and said, "Are you sure because I know when I left, she had her bra on, and when I came back, she was completely naked?" And he said, "Oh, yeah, more clothes came off, but it was just kissing. Nothing else happened."
- Q.** When he said nothing else happened, it was only kissing, did Ms. Brooder interject and say anything about the fact that she had already had a conversation with Justin Nicholas?
- A.** Yeah. She told him, you know, I already told him that we slept -- that we had slept together, and Doug said, "No, no, nothing happened," and I remember him offering to talk to Justin and say that nothing happened, and I remember Jess just being really relieved and saying, Oh, you know, because I thought -- I already told him that, so -- that we had slept together. I remember her, you know, again expressing relief and Doug offering to talk to him and then Doug saying, you know, don't want to disrespect (inaudible) --
- Q.** He said what?
- A.** That he didn't -- let me go back because it's kind of -- it's really hard to say this all.
- Q.** Well, take your time and do your best to relate it to the investigating officer.

A. Okay. So, he offered again to talk to Justin and I can't remember if this is before or after he talked to Justin, but him saying something to the effect of, you know, I really respect you guys. I don't want to disrespect you. I'm more than willing to talk to your boyfriend and tell him, you know, that nothing happened. That's pretty much what I remember about that particular conversation.

I also remember at some point I must have gone, put my head back under the sheets because I remember him asking, "Hey, Liz, are you okay under there?" And me just kind of replying, "Yeah," but again, I don't remember when that was.

Q. Did you say anything -- when he said nothing happened, did you say anything to him in this conversation about the fact that when you came up to get Ms. Brooder the second time that she was completely naked?

A. Yes, yeah. As I stated, yeah, I told him that, and then he said, "Oh, yeah. Well, more clothes came off, but nothing else happened. We were just kissing."

Q. Is that the totality of that? Did you ask any other questions? Did you challenge him in any other way?

A. No, no, I didn't. Again, I was still feeling absolutely sick and I was confused and I was trying to reconcile. I was in my own mind at that point. I was trying to reconcile everything, what I knew about myself and about Jess, but then what Doug was saying, you know, he's our friend for eight months and, you know, he's a Marine Corps officer, and can't just (inaudible) and just trying to reconcile these two, so I just really went into my -- went into my own little, you know, mind, just trying to think everything through. I didn't feel like being challenging at that point.

Q. Did -- were there any other words that you recall, any other discussion between Ms. Brooder and Captain Wacker after you laid back down?

A. Like I said, I really -- I really screened out. I really did not listen to the rest of the conversation.

Q. All right. How does Captain Wacker leave the room?

- How does this portion end?
- A. You know, I just -- I remember him, you know, asking, so are you guys okay, and saying, you know, yes and him just saying that type of thing and then just walking out of the room. I don't remember --
- Q. Is there any conversation in his presence with regard to whether yourself or Ms. Brooder are going to elect to return early?
- A. Not that I remember.
- Q. Okay. All right. What's the next thing that you recall?
- A. I remember me and Jess talking and deciding that we both had to get out of there, that we both had to get home.
- Q. All right. Explain these conversations. This is after Captain Wacker has left the room?
- A. Yes.
- Q. Could you explain these conversations to the investigating officer, please?
- A. I just remember, you know, Jess saying, you know, that she didn't think she could say that she needed to go home and I remember her saying the same thing, but that also I felt concern because we had convinced Becky to come to New Orleans with us and I felt horrible about leaving her, but I just -- you know, and I knew that would happen to me again wasn't -- you know, I didn't -- you know, if anything happened between me and Douglas, the kissing, I thought at that point, but I still just felt like I couldn't stay there. I was -- I didn't know what had happened. I was still trying to figure everything out. I didn't want to see anybody. I just wanted to get home and have time to think through.
- Q. And let me ask so I'm clear on this: Captain Wacker's telling you there was kissing. Do you recall -- do you have any memory whatsoever of you ever kissing him?
- A. No.
- Q. So, this is a version -- when you're talking about this, this is his --
- A. Yes.

Q. -- version of events to you?
A. Yes.

Q. All right. You have no independent recollection of that?
A. No.

Q. What is Ms. Brooder's emotional state, describe that for us, after Captain Wacker leaves the room in the morning of the 4th?
A. She was relieved when he said that. You know, she was so pretty relieved, you know, that nothing else happened, that just, you know, more clothes came off, as he said; but she was just still really shaky, still wasn't feeling good, and still just felt like she really needed to get home.

Q. Did Captain Wacker ever use the specific phrase -- did he ever deny having any sex with Ms. Brooder? I mean, I know you've used the term "nothing happened," but did he ever say "we didn't have sex?"
A. I don't remember him -- again, I don't remember mainly that part of the conversation. I just came back for that point when he said nothing else happened; there was just kissing, so I wasn't paying attention to when --

Q. Well, did you have a memory of Ms. Brooder saying, "I've told Justin that we had sex?"
A. Yes -- well, or that we slept together.

Q. Okay. Do you recall what Captain Wacker's response was to that?
A. Yeah. He said, "No. It was just kissing. Nothing happened."

Q. Okay. So, that comment immediately followed Ms. Brooder's --
A. Yes.

Q. -- phrasing of the --

IO: May I ask a quick question?

GC (LtCol Sullivan): Yes, sir.

IO: Because it's in the flow.

You had said that when you were talking about going home, you felt that Jess had gotten where she had a rougher time.

WIT: Uh-huh.

IO: But you, at the same time in your own perception, had caught Captain Wacker in a lie about the, you know, whether or not they had sex.

WIT: Uh-huh.

IO: Why did you trust what he was telling you was the complete picture of what had happened to you? Why did you accept when it came to you that it was just --

WIT: Just because I remember that I had my underwear and my shirt and my bra on, and my boyfriend and I at that time had a long-distance relationship and we hadn't had sex for about a month. It's how it usually went. And I could always tell afterwards. I'm pretty sore the next morning --

IO: Okay.

WIT: -- afterwards, so that's why I never once thought that anything like that happened because I wasn't aching or sore down there.

IO: I'm sorry. Go ahead.

Questions by the government counsel continued:

Q. How did the discussions conclude? In other words, you eventually did leave New Orleans. Could you just walk us through that, you know, how you came to that determination, and then I'll finish my examination with some questions about your journal.

A. Yeah, I don't remember, you know, if I said it first or Jess said it first, but that we both agreed that we wanted to go home. I was going through the internal debate of how horrible about leaving Becky, but I just couldn't stay there.

Q. You couldn't stay there?

A. Yeah, that I couldn't just stay.

- Q.** Why?
- A.** I was just completely and utterly confused and devastated. I mean, I know that I would never cheat on my boyfriend, I would never want to have a threesome, and then I can't remember -- this is the first time I've ever had this type of memory loss, you know, and I can't imagine seeing anybody, that I just needed time to just figure everything out because I couldn't wrap my head around it. I couldn't reconcile my idea of who Doug was and everything that I know that I remembered. I couldn't get the two to fit and I needed to get time to work that out.
- Q.** All right. And so, you eventually did go to the airport with Ms. Brooder; she went to San Diego and you went to Tucson?
- A.** Yeah. We got on the computer and booked our flights right away. Becky did come back to the room. She was quite upset that I was leaving, wasn't upset that Jess was leaving, but we went ahead and booked. Me and Jess got into the cab and went to the airport.
- Q.** What do you mean by "she wasn't upset that Jess was leaving?"
- A.** She said that she'd understand why Jess would want to leave, but that she was upset that I wanted to go. She later told me that she was just really scared at that point because we had -- she had come here with the both of us and she was a very timid person and she was scared to death about being left there alone. And so, since Jess didn't have any memory of the night, she could see why, you know, that she might want to go, but that she wanted someone to stay with her and thought like that since I had got, like, the -- not the worst of it, that I should be the one to stay with her.
- Q.** All right. After this conversation with Captain Wacker on the morning of the 4th in that hotel room that you described for us, did you ever have a subsequent occasion at any time to talk to him about what happened?
- A.** No. No, I didn't.
- Q.** So, there's no other conversations, and I'm only asking that because I don't know the answer. I'm

asking did you ever at any time, in school or any other time, see him and say, I want to know what happened out there?

A. No. No, we didn't have any other conversations, but then I remember we got back and we didn't show up at school, that he'd call Jess a few times and I believe he called me once, but I never answered the phone.

Q. Okay. Did he ever leave a message?

A. I don't remember.

Q. Did he ever send you any e-mails wondering why you left? Did he ever ask why you left? Did he ever ask if you were okay? Anything?

A. I remember -- no, nothing that I recall, just from the texts that I had read, but I don't remember those that he's asking are you guys okay, but I don't have any recollection of it.

Q. Are there any other conversations you had with Captain Wacker, any other statements that were made in that hotel room that we haven't talked about?

A. Not that I can remember.

Q. All right. Do you keep a journal?

A. Yes. At that time I was going to the counseling center at the University of San Diego and that is what the therapist wanted me to do, was write down.

Q. All right. I want to ask you: You tendered your journal to Special Agent Burge, I think, as part of the investigative -- you know, the ongoing investigation, and that's been tendered in discovery to the defense counsel and the investigating officer has a copy of that. A couple of issues have come up within your journal.

First of all, can you explain -- there's an issue about insurance and there was statements made within your journal dealing with, I think it's health insurance; am I right?

A. No, I was -- well, at the appointment I was having issues with health insurance, but it was particularly with Progressive Insurance. I had been in a car accident.

Q. Yeah. Can you just explain what the journal entry

is with regard to that?

A. Okay. Well, the day before the USC hearing I had got into a car accident. A woman rear-ended me off the freeway, so I was dealing with Progressive about that. It was a few days after that, I found out I was pregnant, so they gave me to a special insurance woman who was a mother and so they always had all the pregnant car accidents work with her. And I remember them trying to get me and my other passenger -- she was also pregnant at the time, but she knew it; I didn't know it at the time -- to settle right away. And I kept telling her, no, I want to wait. I need to talk to a doctor. I didn't know I was pregnant at the time. I wanted to talk to a doctor first to make sure that everything's okay.

I had a lot of problems with health insurance, getting the right health insurance so I could go see a doctor. I finally did go see a doctor. It's a long story, but it was a horrible appointment. It was rushed. I felt like a number on an, you know, assembly line. It was horrible and didn't give me a chance to ask any questions. At the time I was done, I had completely forgotten to ask and I felt absolutely horrible. I was thinking this is like my first test as a mother and I'm already a horrible mother, you know, to forgot to ask him something like that.

Q. What did you forget to ask?

A. I forgot to ask about -- that I was in a car accident.

Q. Yeah, you forgot to ask him and say, Hey, I need to tell you I was recently in a car accident. Do you think this is going to have impact on or potential harm to --

A. To the baby, yeah. I just completely forgot to ask. Progressive had been calling me. The lady would call me, and since I told her when my appointment was, and so, you know, I called her back. And before I called her back, I called the doctor's office to try and ask them before I called Progressive back.

The lady I talked to was absolutely aghast that I had not addressed this at the appointment, but they

weren't calling me back, and I felt bad to make Progressive wait, so I called Progressive back and she asked me what the doctor said, and I told her the truth, just that I was getting an ultrasound at 16 weeks, that I got blood drawn, waiting for the test results, and then she said, "Oh, well, 16 weeks is normal, so he must not think everything's wrong." I didn't want her to think that I had asked and that everything was okay, so I said, "Well, I'm waiting for test results. We're just waiting." And she said, "Oh, okay."

Well, once the doctor called me back and told me that probably everything's okay because I was really on, it was only six weeks, that if I wanted to be certain, I could wait for the ultrasound; if I wanted to be completely certain, I could wait until the baby was born. So, I called Progressive and told her that; told her that the doctor said, okay, you know, that I just should wait until the ultrasound. If I wanted to, I can wait until the baby's born, which is what I think I want to do, just to be absolutely certain because you have a two-year statute of limitations anyway, and also, I was really sick during this pregnancy, like three to four times a day, morning sickness. And after that was done, I got sciatica, but I wanted to wait and make sure that my back and everything was okay once I resumed normal activity, so.

- Q.** All right. So, all that's going on and you have a journal entry that reflects your thoughts about this at times. Is that --
- A.** Yeah. Yeah, and I know in the journal entries that I felt bad about lying, but that was -- you know, I try extremely hard not to lie, and what it was, I didn't tell her that I didn't ask, because again, I mean, I felt like I was a horrible mother, when I talked to was a reaction, so I just didn't tell her I forgot to ask. But as soon as the doctor called me back, I called her and told her exactly what was said.
- Q.** A couple other things. When you were in New Orleans on 3 and 4 November 2007, prescription drugs?
- A.** Yes.
- Q.** What -- you were on --

A. Effexor.

Q. Effexor, which is an anti-depressant?

A. Yes.

Q. All right. Were you on that while you were in New Orleans?

A. Yes.

Q. All right. How long had you been on that?

A. I believe since September of my (inaudible) year.

Q. Okay. So, September 2006, so 9 or 10 months that you'd been on it?

A. Yes, (inaudible).

Q. Any other prescription medication besides that?

A. Well, I was on birth control (inaudible). That was everything.

Q. Were you also on birth control --

A. Yeah.

Q. -- from September through --

A. I've been on birth control since I was 16.

Q. All right. Let me ask you a couple questions then. You're on Effexor from September '06 through 3 to 4 April '07?

A. Yes.

Q. During that time frame, had you gone out and had drinks with Effexor?

A. Yes, I had. And when I was first prescribed it, I asked the psychiatrist if I could drink on it because I was just in law school and they had all these social events, and she said the occasional drink is okay. She wouldn't recommend doing it, you know, constantly, but that the occasional one is fine. It just probably would make me more tired than usual, so I should really make sure I don't drive, and I said okay. So, then I just had the few occasional drinks, like for the Halloween party, for St. Patrick's, those type of things, I drank.

Q. All right. So, prior to New Orleans, did you after drinking on Effexor prior to -- you know, from September '06 to 1 April 2007, had you ever had any

negative interactions or any type of resultant feelings as you've already described how you felt on the morning of the 4th of April?

A. Yeah. No, I didn't even notice anything. I was wary that she said I might get more tired, but I personally didn't notice it, but I still didn't even drink at all if I -- I mean drive at all if I even had a drink, but that was it.

Q. How about the memory loss symptoms that you've discussed that you had the early morning hours of 3 April? Had you ever had anything like that from September '06 to 1 April of '07 when you're using the Effexor?

A. No. I have never experienced anything like that.

Q. All right. And that's an antidepressant; is that what you said?

A. Yes.

Q. Were you on any other medications that you were taking besides birth control and Effexor?

A. No.

GC (LtCol Sullivan): Sir, may I have a moment just to consult with my co-counsel?

IO: While you're doing that, I just want to -- can you spell that, Effexor?

WIT: Yes. It's E-F-F-E-X-O-R.

IO: And do you remember how many milligrams you were taking until today?

WIT: I have no idea, no; but the counseling record has it.

IO: Are you still taking it?

WIT: Oh, no, I stopped. As soon as I learned I was pregnant, I stopped cold turkey, which increased my morning sickness problem. But then they took me over it.

IO: And were you taking it in the prescribed amounts exactly; a little less or a little more or just exactly?

WIT: Exactly, just once a day taking (inaudible).

GC (LtCol Sullivan): I had neglected -- I'm sorry, Your Honor.

IO: That's okay. I was done. I just wanted to --

Questions by the government counsel continued:

Q. All right. A couple things. I want to take you back to the conversation in the morning of 4 April 2007 when Captain Wacker's giving his version of the evening to both yourself and Ms. Brooder.

A. Uh-huh.

Q. During that conversation, is there any question or does it come up at all where he indicates that he rubbed stomachs or touched the stomach area?

A. Yes. Yes, he did say that. When we were -- that we were making out, me and him and me and Jess and him and Jess, and rubbing our stomachs. Yeah, he did say that, but I was -- again, I turned over and curled into a ball and put the sheet over my head.

Q. All right. I want to ask you also: You know what the term "demeanor" is obviously?

A. Uh-huh.

Q. You understand? I want to ask you about his demeanor when he's -- when he -- if I understand your testimony correctly, chronologically, he initially begins his explanation to you all in that hotel room by saying words to the effect of "nothing happened." You know, you've explained that. And then there comes a time where you heard something that didn't jive with your flashing memories and you said, "Well, wait a second. When I left that room, she had a bra on. When I came back, she was totally naked." Am I correct?

A. Yes.

Q. I want to ask you about his demeanor. Okay?

When you came back to him with that comment, did his demeanor change? Did his face -- you know, was there stuttering? Did he turn his eyes away? I mean, that's what I mean by "demeanor." Is there a change that you noticed when you made that comment

- to him after his initial version of the events?
- A.** You know, while he was telling us what happened, he was, you know, calm explaining, you know, very slow paced, but then when I told him that, he said -- he stuttered. He was, like, oh, yeah. Well, more clothes came off. But that was it, just kissing; nothing else happened.
- He -- you know, he stuttered. He seemed -- it wasn't like this little peaceful telling that he had been going. His -- he said it a little quicker, a little stuttering.
- Q.** Did he ever apologize in this conversation? I forgot to ask that. Did he ever say anything or words to the effect of -- you know, anything to indicate that he was expressing some concern for yourself and Ms. Brooder?
- A.** I don't -- I don't remember him apologizing. I remember when I was under the sheet again, him asking, "Liz, are you okay under there?" That's all I remember. I don't remember him --
- Q.** Before you were under the sheet, how far is Ms. Brooder away from you? Is she in the other bed?
- A.** Yeah, she's in the other bed.
- Q.** And is it similarly situated like you talked about yesterday in your testimony, this is two twin beds in a hotel room so --
- A.** Well, like queen beds, yeah.
- Q.** Okay. So, she's within feet of you?
- A.** Yeah, yes. She's in the -- I was on the aisle side. She was a little more center of the bed on the bed.
- Q.** And Captain Wacker is also within feet of both of you as he's giving this explanation?
- A.** Yeah. He was down towards the end of the bed on a chair (inaudible).
- Q.** Okay. I want to ask you about your observations of Ms. Brooder as Captain Wacker is giving this -- his version of the events that happened. Are there periods of time here in this room in the morning of the 4th of April 2007 that you observed that Ms. Brooder is crying in Captain Wacker's presence?
- A.** Yeah. I remember that she -- she had been crying

off and on that whole day, and I do remember --

Q. But my particular question is: While Captain Wacker is in the room talking to both of you --

A. Uh-huh.

Q. -- does Ms. Brooder cry at any time in his presence?

A. I remember her crying when she was saying that I told Justin that we slept together. I remember her having -- it wasn't like she was sobbing uncontrollably but just, you know, trying to hold back the tears and the tears falling.

Q. All right. Do you remember tears?

A. Yes.

Q. Because what I want to ask you is: Does Captain Wacker make any comment about that? Does he talk to her about -- does he say anything to her about her emotional state?

A. Not that I can remember.

GC (LtCol Sullivan): Okay. Yes, sir. One moment.

Thank you, sir. I have no further questions. And I'll tender the witness to Mr. Faraj for cross-examination.

CC: Can we have a five-minute break?

IO: Sure. We're in recess.

[The Article 32 investigation recessed at 0850, 13 April 2010.]

[The Article 32 investigation was called to order at 0859, 13 April 2010.]

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

I remind you you're still under oath.

Mr. Faraj?

CROSS-EXAMINATION

Questions by the civilian counsel:

- Q. Good morning, Ms. Easley -- Ms. Cook. What do you prefer?
- A. Either is fine.
- Q. Okay.
- A. Whatever you remember most.
- Q. I'm probably going to -- I've been reading all your statements as Easley, so forgive me if I keep calling you Easley.
- A. How do you feel today?
I feel fine, a little nervous, but, you know.
- Q. Okay. How do you feel about this case?
- A. Angry, angry, upset. Right now really angry. At the beginning I was mainly confused.
- Q. All right.
- A. Now it's more hurt, I mean --
- Q. Is it fair to say that as time has gone by, you've become more firm in what you believe happened on the night of April 3rd and April 4th?
- A. Yes.
- Q. Now, I want you to think back to the morning of April 4th and I want you to tell us at that time how certain you were about the facts you discussed here this morning and yesterday.
- A. About which?
- Q. All the facts. I mean, did you have the certitude at that time that you do testifying here today?
- A. As to what I remembered from that night, yes.
- Q. Okay. What about as far as culpability of a crime? Did you believe on April 4th that there was a crime committed?
- A. At that point I was just confused. No, I wasn't certain. I thought there might have been, but it wasn't a firm belief like I have now.

Q. Okay. And on April 4th, your memory of the facts, the facts that you've told us about today, were the same as they are today? Some things may have become lost or, you know, maybe need to be recalled, but there were no additional facts that came out after April 4th?

A. No. There were additional facts that came out.

Q. What were the additional facts?

A. That Jess found out that her tampon had been pushed up.

Q. Okay.

A. At that time I -- all that I knew about memory loss in regards to being (inaudible) or anything of that was that people just blacked out. That's all I ever thought happened. I had these flashes and I could not figure out where this came from because I've never happened -- I was drinking, but I didn't know -- never heard about that ever happening with Rufine.

After talking to a deputy district attorney at the San Diego District Attorney's Office, he told me that what I had was actually a common reaction called cameos, and that was like a weight lifted off my shoulders. It was finally like an explanation. I could figure out why my memory was like that. So, that cleared up that for me. And then also learning that Doug's semen was found in her pajama pants. Those were the additional facts that really made it more firm.

Q. Okay. Just so I understand this, on April -- on the morning of April 4th, you had the same -- essentially the same facts you have today, but you had some additional facts that came to light and those are the tampon, a discussion you had with the Deputy DA in San Diego --

A. Uh-huh.

Q. -- and the semen on her pajamas --

A. Yes.

Q. -- on the boxers or pajamas?

A. Whatever it was. I don't remember. (Inaudible.)

Q. Okay. What exactly did the Deputy DA in San Diego

tell you?

A. Just that -- well, we told him about the case because we were having all the jurisdictional problems with New Orleans and everything else, and he told us that he would file it if he could have here just because logically it's inconsistent and then, you know, he said that -- we believed we were drugged and he actually said -- and especially because, you know, Liz, you had the common reaction of the cameos and I said, "What?" You know, he's like, that's the flashes. That's a common reaction. We call them cameos."

Q. Cameo, C-A-M-E-O?

A. I have no idea.

Q. Did you look that up or research it?

A. No.

Q. Okay. And those are the facts that brought you to the conclusion that there must have been a crime?

A. That and -- it was the same facts that I'd remembered, but I had more time to think about -- the main hurdle at that point of April 4th that I had to get over was the fact that -- one, a little bit of pride. I mean, I want to be a prosecutor, and I had never in my wildest dreams imagined, you know, that someone I was friends with would be capable of doing anything bad.

Also the fact that it -- in relation to that, that it was Doug. I had know him since August. So, what I knew about him, it just -- it didn't quite make sense and that he was a Marine Corps officer. I mean, as I said, if you can't trust a Marine Corps officer, who can you trust?

So, I had to get over that, but after thinking through all the facts that I already knew and just knowing that logic kind of beat me down, that I needed to get over those.

Q. Okay. I'm going to go through the facts with you and I'd like you to tell me where I go wrong or if I don't have something right. And I'm going to begin at the evening dinner on April 3.

A. Uh-huh.

Q. You had two glasses of wine?
A. I believe so, yes.

Q. Okay. Could you have had more?
A. No, because that bottle of wine was already opened and it was less than half full.

Q. Okay. The only reason I ask you could you have more, is you said, "I believe so," so I just want to get --
A. Yeah, well, because I don't know honestly if it was exactly a glass. Do you want -- I want to be as specific as possible, but it was already opened and they split it between the three of us.

Q. Okay. Was it wine glasses?
A. Yes.

Q. That they were served in?
A. Yes, but they were the big ones --

Q. And they were served --
A. -- you know, so.

Q. And you were served two wine glasses?
A. Yes.

Q. You then left the restaurant?
A. Uh-huh.

Q. And you went to -- you grabbed something on the way called a hand grenade?
A. Uh-huh.

Q. Okay. Who purchased that?
A. I purchased my own.

Q. Okay. Now, we heard testimony yesterday that Doug purchased the two hand grenades, but I believe that you're right, that you purchased your own and he purchased one for him and Forest and Jess; is that right?
A. Yes.

Q. Okay. And you remember that?
A. Yes.

Q. Okay. So, you purchased your own hand grenade?

A. Yeah.

Q. He didn't purchase it?

A. I purchased my own and then Bobby purchased his own, so.

Q. And you believe, you have some reason to believe that in a hand grenade, they use Everclear?

A. I just -- I believe that's what Forest might have told me. I just -- you know, I've never looked up what the ingredients were. I just have that distinct --

Q. Okay.

A. -- belief.

Q. Have you ever had Everclear?

A. Yes.

Q. What is Everclear?

A. It's alcohol. It's a higher proof than, you know, other ones; mainly, like in Jungle Juice at parties, people usually get that.

Q. What is -- when you say "higher proof," what does that mean?

A. As in, you know, it's not -- you know, it wasn't like the, you know, 8 percent or even like 40 percent of some other alcohols. It's higher. I don't know the exact amount.

Q. Fair to say it's a stronger alcohol?

A. Yes.

Q. Okay. Do you know how much they put in a hand grenade?

A. Oh, no.

Q. Okay. And you said it has a -- remind me -- a sour and sweeter --

A. Sweet and sour.

Q. Sweet and sour.

A. It's a, you know, mixer that you add --

Q. Okay.

A. -- to drinks. It's what it tasted like. It had a lot of that.

Q. Did you taste any other alcohol?
A. It was -- it was really hard to get around between sour taste for me that's really strong, so --

Q. Okay. Having been a bartender, I'd like you to estimate to the best of your ability the size of a hand grenade in ounces.
A. I really can't because one of those glasses that, you know, they try and -- it's tall. It's -- was had -- you know, like it had a little like grenade looking thing at the bottom and then it was taller, so I'm really bad especially with those tall ones, like when they serve like those pilsner glasses and it looks much bigger than it actually is.

Q. Okay.
A. I don't feel comfortable making estimates.

Q. Now, you brought your two hands together almost touching your fingers.
A. Uh-huh, yeah.

Q. Both sides of your hands. Is that about what it is?
A. Oh, no. I'm just doing that as a visual. It has a little bulb on the bottom. It looks like --

Q. Could you try to estimate what the bulb size is with your hands?
A. It's --

IO: Baseball, softball?
WIT: Yeah, it was probably --

Questions by the government counsel continued:

Q. Softball size?
A. Between -- yeah, a little less than softball I possibly believe. I mean, I can't -- I was holding on to the stem of it.

Q. Okay. You consumed, I believe you said, two-thirds of that.
A. A half to two-thirds. It's --

Q. Okay.
A. I can't remember exactly because I was giving it back and forth to Forrest towards the end because we

were trying to get in the Funky Pirate and I couldn't finish it.

Q. All right. So, and is this the time when some photos get taken?

A. When we're outside the Funky Pirate, yes.

Q. Okay. Now, we saw about 24 photos, I think, or thereabouts. Do you know if there were more photos taken?

A. I remember Becky just telling -- I don't have personal knowledge, but Becky telling me that there were more photos, that she deleted them because she thought it was weird that there so many photos.

Q. Okay. So, the photos we have are just some of the photos?

A. Yes.

Q. Do you know who took these photos?

A. From outside the Funky Pirate, I remember Doug having the camera. I don't recall -- eventually he gave it to Becky or to somebody else, but I remember him taking the pictures of me and of Jess and of the group and of Bourbon Street down looking at people.

Q. Okay. So, he didn't just take pictures of you; he took a picture of just about everybody in the group?

A. I don't know if he got Bobby or Forrest at that point, but, yeah, he wasn't just taking pictures of me and Jess.

Q. Just random pictures?

A. Yeah, he was taking pictures.

Q. Okay. And pictures of the street?

A. I believe so.

Q. All right. The next place you go is a place called Funky Pirate?

A. Yeah, the Funky Pirate.

Q. Is that right?

A. Yeah.

Q. Okay. And you consumed how many drinks at the Funky Pirate?

A. I bought myself a vodka seven and a splash of cran.

I finished about half of that and then I got the shot -- that little test tube shot of the Kamikaze.

Q. Okay. You said a vodka seven?

A. Yeah, with a splash of cran, but vodka, yeah.

Q. Is it fair to say that New Orleans mixes a pretty strong drink, in general?

A. I don't know. That was my first time there. I don't know what exactly was in the hand grenade. Again, it was sour; but the ones that I had at the bar didn't taste any stronger than normal.

Q. The ones you mix?

A. Yeah, what I would --

Q. Did you have -- when you had a shot, you said two shots?

A. Yeah, that test tube shot of the kamikaze, I believe it was, is their dollar shot special.

Q. Do you know what was in them?

A. You know, they -- (inaudible) was a kamikaze, vodka, sweet and sour, I believe some lime, but again, it was about my finger, both length and width. It wasn't that big as in too strong, but it wasn't that much either, so I can't tell exactly if it was really strong.

Q. You don't know what was in it?

A. Not exactly, no.

Q. That's where you're watching Big Al, the show Big Al Show?

A. Yes.

Q. You then move on to the next location and that's Razzoo?

A. I didn't know the name of the club at the time, but --

Q. That's the dance club?

A. Yeah, the dance club.

Q. Did you drink anything between the Funky Pirate and Razzoo?

A. No.

Q. At Razzoo you purchased another drink?
A. I didn't purchase another drink, no.

Q. Who purchased a drink?
A. Doug asked if I wanted another drink and then -- and if Jess did and I told him what she would drink. I didn't actually see him purchase them, but he asked them and then he brought them back.

Q. Okay. How full was the bar?
A. At that point it wasn't, you know, jam packed like you were trying to fight your way through, but it was -- there were people everywhere. There wasn't really a lot of empty space.

Q. Were there people at the bar?
A. Yes.

Q. Quite a few people at the bar?
A. Uh-huh, yeah. I mean, it wasn't like, you know, three people deep or anything, but there were people by the bar.

Q. Is it one deep?
A. Probably.

Q. Two deep?
A. No, I don't think it was that much.

Q. Okay. So, one deep all around the bar?
A. Yeah.

Q. Would you describe the bar?
A. Well, actually there were two bars. When you walked in, there's the dance floor and there was a little stage here that I assume they had bands. They didn't have any that night. And there was a bar over here and then there was a bar on the other side of the dance floor as well.

Q. Okay. So, we have a dance floor in the middle and then a bar on either side of the dance floor?
A. Yes.

Q. Okay. And both bars were one deep?
A. Yeah, I believe so.

Q. Okay.

- A. I mean, I wasn't, you know, looking at them constantly; but from when I glanced at them, yeah, they were about one deep.
- Q. Now, you said in the previous session that Jess threw up at a bar. Did you mean at the location of the bar or on a bar, on a physical bar?
- A. I never saw her throw up at a bar.
- Q. Okay.
- A. I just saw -- I just have a flash of being in the back and holding her hair back and she's leaning over a toilet.
- Q. As a bar tender, if someone threw up on your bar, what would you do?
- A. I would yell -- I would get really mad, of course, but I would yell. Security told me to get him out and then get a busboy to clean that up.
- Q. Fair to say that that's standard practice by most facility -- local --
- A. Yeah, you can't have anyone who's --
- Q. Throwing up, you escort them out?
- A. Yeah.
- Q. That becomes a liability issue?
- A. Uh-huh.
- Q. Okay. So to the best of your recollection, the vomiting happened in the women's bathroom?
- A. It's what -- I remember, again, holding her hair back, her leaning over the bar. I don't see, like, vomit coming out of her mouth or anything, but I just -- from that position, I'm assuming she's vomiting in the toilet.
- Q. Could anyone see into the women's bathroom?
- A. I can't see that. All I can see is just forward, Jess bending over, me holding her hair, and there's the wall in front of us, and there's the toilet.
- Q. That was a bad question. I'm going to ask -- I'm going to try to rephrase it. To your recollection of your location, could anyone outside of the women's bathroom see into the women's bathroom?
- A. Not that I can remember. I mean, when you -- I

mean, here's the dance floor and you go out through these doors and there's the courtyard and they had a fountain there; and on one side was the women's and one side was the men's and there was -- I remember brick. I never went in there, but I don't believe they could see in.

Q. Well, where did she throw up? Where was she trying to throw up?

A. I remember, again, holding her hair back in a bathroom stall with her over the toilet.

Q. Did the stall have a door?

A. I'm not looking at that direction. I'm looking in this direction. But there's two walls on the side, so it's a fair inference it probably had a door.

Q. I guess what I'm trying to ask you: Do you know if it was possible for Captain Wacker to see into the bathroom?

A. I don't have knowledge of that. I don't -- I would assume they wouldn't have walls free standing and no door on the stall.

Q. Okay. You've said you have flashes of memory. At which point does your memory, continuous memory, stop or end and begins to become flashes?

A. I'm dancing on the dance floor, and it's after Doug gave me my drink and after I got water and after I tested Jess' drink, probably another few minutes of dancing; and then I just remember the bathroom.

Q. Okay. I want to back up a little bit. If you are a bar tender -- excuse me. I'm not going to ask that question.

You begin to have flashes of memory and we've heard several flashes during your direct examination.

A. Uh-huh.

Q. I'm going to continue to narrate some of the facts and you tell me if I have it right or wrong. Okay?

A. Uh-huh.

Q. All right. You left the bar on your own.

A. I don't remember --

Q. You physically walked out.

- A. I don't remember exactly what -- I mean, it's fair to infer that I -- I don't think that I -- I mean, assuming I walked out, but I don't remember. I just have a flash of looking at the bar and wondering why it's empty.
- Q. Okay. So, you walk into the bathroom, you come back, and the bar's emptied out?
- A. I have a flash in the bathroom and then a flash outside the bathroom and the bar's empty.
- Q. Okay. So, there may have been some time between the time you were in the bathroom and the time the bar's empty?
- A. Yes.
- Q. You could have come back and danced for a while and then you have a flash of memory?
- A. I have no idea. I don't remember anything between.
- Q. Okay. Do you remember being carried?
- A. No, I --
- Q. Dragged, pulled?
- A. No.
- Q. Okay. So, fair to say then you probably walked on your own?
- A. It's a fair inference, but again, I don't have a specific memory.
- Q. Okay. And you walked to a daiquiri stand or Big Easy; is that what it's called, Big Easy?
- A. I don't remember getting to the daiquiri stand. Yeah, it's -- I believe it was the Big Easy just because it has the Slurpee machine.
- Q. Okay.
- A. But I just remember being -- sitting at the table and there being a Slurpee machine in the wall.
- Q. All right. And how full was that place; do you recall?
- A. I'm looking forward and see Jess and the T up there. I don't see anybody else behind her, but I don't see behind me. I don't know how much bigger it was behind me or anything else.

Q. Do you remember the conversation you had at the Big Easy with Jess and Doug?

A. I don't remember having any conversation.

Q. When you say you don't remember having conversation, are you saying you remember the Big Easy, but don't remember conversations, or do you just not have --

A. No. Again, it's just nothing in between the flashes. I just don't --

Q. Okay. So, you could have had conversation, you just don't recall?

A. Yeah.

Q. Okay. So, you don't have a memory that would allow you to answer that question?

A. That would be able to say that I did or did not. I just don't remember.

Q. Very good.

A. You somehow left the Big Easy.

A. Yes, at some point.

Q. Right. Because you got to the hotel.

A. Yes. I remember looking -- again, it's just flashes, and then I remembered looking at flashes, looking at Jess and we're in the lobby.

Q. Okay. Now, please estimate the distance for me, and I know you can't -- not from that night, but the distance between the area where you were hanging out and the hotel, the St. Charles Hotel.

A. Well, the Funky Pirate was much further down Bourbon Street from where it was and then we walked to the dance club. After that though, I don't know where the Big Easy is that we were at or anything, but --

Q. Well, not the Big Easy --

A. Yeah --

Q. I'm sorry. Not the Big Easy, but the area you were hanging out, the Razzoo, Funky Pirate, to the hotel.

A. We had to walk a few blocks to the main street and then you had to cross the street and then go down another block and the hotel was on that corner, so -- and it was a pretty big street. It was like another block, so I don't know. I'd have to -- it

would be a real guess, six to eight blocks.

Q. Okay.

A. I don't know exactly.

Q. And when you say "a block," do you have an ability to estimate distances in meters or yards? Do you know what a block consists of?

A. No. I'm actually horrible about that --

Q. Would you say 100 meters maybe?

A. I'm horrible with that. I can't estimate.

Q. Okay. Six to eight blocks, maybe taking -- would it take you maybe six to eight minutes to walk, maybe longer?

A. Yeah, probably, I would assume. I mean, to where the dance club was, to where Bourbon Street was, it would take us about that amount of time.

Q. And you got to the hotel?

A. Uh-huh.

Q. Right?

A. Yeah. I remember, had the flash of being in the lobby.

Q. Okay. Now, when -- I'm going to fast forward and I'm going to come back to this scene.

When you left 1008 --

A. Uh-huh.

Q. -- you knew where your room was on the seventh floor?

A. I don't personally remember having that thought, but, I mean, I had to have. I got back there.

Q. You got back there. And no one took you there, right?

A. I don't remember anyone -- again, it's just a flash and then, flash, I'm in the room, so I don't remember anyone taking me.

Q. Well, when you left 1008 after you decided to leave the room and you put on your pants and your top, you don't remember --

A. The top was on.

Q. I'm sorry. You put on your pants. You don't remember anyone taking you down there?

A. I don't have any recollection in between at all. It's just nothing.

Q. Okay. Is it fair to say that you knew where the room was? Will you give me that?

A. Yeah, I believe so. I mean --

Q. Because you came back up to 1008 and then you went back to your room.

A. I don't remember any of that; but, yeah, it's a fair thing that I knew where my room was. I had stayed there before.

Q. Okay. So, also fair to assume that when you're in the hotel lobby standing by the elevator, you know how to get to your room?

A. If I was completely sober, then I would know how to get to my room from the hotel lobby, but at that point I don't know if I was or not. I can't answer that.

Q. Well, do you know why you would not have known?

A. Same reason why I couldn't figure out how to put on pants.

Q. Well, you knew what your room number was?

A. I got there, but again, I just don't remember. I don't want to speculate. I --

Q. I'm not asking about that night, but when you checked into the hotel, you knew what your room number was?

A. Yes.

Q. You knew it was on the seventh floor?

A. Uh-huh.

Q. You knew that when you get into the elevator, you press seven and it gets you to the seventh floor, right?

A. Yes.

Q. And you knew how to read the placards on the walls?

A. Yeah.

Q. Right?

A. Uh-huh.

Q. Because you did that later. Somehow you got to the room.

A. Yeah. I remember being -- again, being in the room and being in that room, yes.

Q. Okay. Your flash of memory, however, has you in the hotel lobby waiting for Doug who's at the reception desk?

A. I don't know what we were doing. I can't say that I was waiting or not. It was just there's Jess, there's the elevators, and there's Doug at the counter.

Q. Okay. And that's what I just said. You're at the elevator with Jess and Doug's at the counter.

A. Yeah -- well, I'm not at elevator. I'm looking at Jess and the elevator's behind her, but, yes.

Q. Okay. Now, when you'd gone into the hotel before when you came back the day before, I'm assuming you came back previously as a group or some group?

A. You mean after running or just --

Q. Running, whenever.

A. -- in general some time, yes.

Q. Okay. When you guys get there, you -- each goes to their own separate rooms, right?

A. Yeah.

Q. So, not necessarily to wait for anybody that has to do something else once you get to the hotel?

A. I mean, I -- that's a very broad ceiling. I don't feel comfortable agreeing. I mean --

Q. It's a broad ceiling --

A. -- if someone's on your -- on your same floor, then I'm sure I would just wait for them to go up, yeah, but --

Q. Okay. That's --

A. -- if you were talking to somebody, I mean --

Q. Thanks for clarifying. Let's assume the room -- you would wait for a roommate, you may even wait for someone on the same floor.

A. Yeah.

Q. The boys were on the 12th floor, right?

A. I don't remember.

Q. They weren't on your floor?

A. I don't remember where they were.

Q. Now, the next memory you have is in the room, that you come to find out later it's 1008?

A. Yeah, it was 1008.

Q. At the time you don't know that it's 1008?

A. No.

Q. Okay. And your recollection is you're on a bed and Jess was on another bed?

A. No. The first flash is we're both in the same bed.

Q. Same bed. Okay. Now, are you side to side? I know you said you're laying lengthwise.

A. Uh-huh.

Q. Are you side to side lengthwise or could you have been laying across the bed?

A. No. Because I remember, you know, it kind of seemed -- it's dark, but I can tell, you know, there's Jess' profile and there's, like, dark curtains, so I believe we were both laying this way, both laying lengthwise.

Q. Okay. And you testified earlier that Doug was straddling you.

A. That was a different flash in that it's a dark figure. I can't tell -- I just -- I can tell it's a man, but I can't see his face.

Q. Okay. You testified earlier that a man was straddling you.

A. I believe he was, yes.

Q. Okay. You also believe that he may have been in between you.

A. That was a different flash. The first flash is we're on the same bed and there's a dark figure in between us and then stop time, and then another flash. I'm in the bed by the bathroom now and there's a man who I believe is straddling me.

- Q. Okay. Can you tell me how sure you are that these flashes were real flashes or maybe just dreams?
- A. I'm completely positive that these were for real flashes. I have -- I don't remember auditory things as well, but I'm very good with visual memories. If I look at it, I remember it pretty well.
- Q. Which flash happened first?
- A. I believe the first one did, me and Jess in the same bed --
- Q. But you're not sure?
- A. -- (inaudible) between us. I can't say absolutely positive.
- Q. It could have been the one on the bed by yourself first and the other one second?
- A. I mean, I know that I remember these specific flashes; but I mean, I can't say with absolute certainty that, yeah, this one was first and this one was second.
- Q. So, we can agree then that we don't know which one came first and which one was second; we believe the two together was first, but you can't be sure?
- A. Yeah, I'm not going to say 100 percent --
- Q. Okay.
- A. -- (inaudible).
- Q. If the first one -- I'm sorry. If you and Jess were on different beds first, then it would stand to reason that you both ended up on the same bed second?
- A. If it was (unintelligible), I mean, yeah.
- Q. Okay. Now, when do you recall lifting your head up and saying "I'm not into this?"
- A. After the -- you know, again, the flash with the man that I believe was -- I believe a man was straddling me, then another flash where I wake up and I look around the room. I remember when Becky is and I look over and I see Jess and then Doug lowering himself on top of her, and then that's when I kind of sit up and say "I'm not into this" or "I can't do this," (inaudible).
- Q. Do you actually see Doug lowering himself onto Jess?

A. Yes.

Q. Okay. Now, are we talking about three different flashes at this point?

A. No. This was a continuous -- it was, like, more like a waking up type of thing that I --

Q. Are --

A. -- I'm sorry. Which, you know, I should clarify --

Q. We're talking about two flashes; we're not sure which one came first.

A. Yeah.

Q. Is this a beginning of a third memory or is --

A. Yes.

Q. -- this a continuation of one of the ones before?

A. Oh, no, yeah. This is a completely different one.

Q. So, this isn't a flash; this begins a series of memories?

A. Yeah.

Q. And it begins with you raising your head up, looking over, seeing Jess, Doug lowering himself onto her, or is this a man and then you realize it's Doug?

A. No. It was clearly Doug.

Q. Doug. And this is where we have the sheet in between; Doug, you believe, is naked?

A. Yes.

Q. Okay. And you get up and you say "I'm not into this" or some words to that effect?

A. Something like that. It ended with a "this."

Q. Now, what were you trying to communicate at that time when you say "I'm not into this?"

A. You know, I said, you know, I -- like I said, it was something with a "this." I can't -- all I remember thinking was that I didn't want to, you know, be there, any part of that when that happened; and I was confused because I thought I was in my room and Becky wasn't there and I just -- all I remember is I wanted to get out of there and figure out what was going on.

- Q. Now, we heard testimony earlier that there was -- Doug shared with you that you guys talked about a threesome. Could it be that you're referring "I'm not into this" what we already discussed, but you just don't remember that conversation?
- A. I do not want to speculate because I don't remember anything. I remember having a conversation with them. I don't remember.
- Q. At the time you make that statement, and I want you to talk about your personality --
- A. Uh-huh.
- Q. Okay? The "I'm not into this," your frame of mind at the time, even though you don't really remember, is it consistent with what you would do if you had that conversation, say "I'm not into this," and then leave?
- A. Again, I'm not even positive that I said, "I'm not into this." It was ending with a "this." I can't do this --
- Q. Well --
- A. -- something to that effect, but, yeah, I would never want to be a part of a threesome, so I would --
- Q. Well, you've actually said that before also, "I'm not into this" or "I can't do this"?
- A. Uh-huh.
- Q. So, you weren't sure about exactly what you said, but it was one of the two; either "I'm not into this" or "I can't do this," and you made that in several statements; right?
- A. Yeah, that's what I believe. I know it ended with a "this," but I can't remember.
- Q. Okay. So, again, my question is: Based on who you are, today or back then, is that statement not consistent with you, Liz Easley Cook, after you had made an agreement to perhaps do a threesome to say "I'm not into this right now"?
- A. I would never make an agreement to do a threesome, but if I thought --
- Q. I understand.
- A. -- it was going to happen, I would get out of there,

yes. I would never be a part of a threesome.

Q. Yeah. My question isn't whether you remember saying a threesome. My question to you is: The statement "I'm not into this" or "I can't do this," it's consistent with who you are; that you wouldn't --

A. I would never do that, yes.

Q. Okay. So, had that conversation happened and you were intoxicated and, you know, you were going through some memory loss, when you realized what was going on, it's consistent with who you are to say "I'm not into this" or "I can't do this"?

A. You know, again, that's a lot of speculation. I mean, I just --

Q. Well, I'm not asking you to speculate and I think you already answered it, but I just want to be clear. You saying "I'm not into this" or "I can't do this" could very well have been to a reference of an earlier conversation about a threesome?

A. I don't believe that. I don't have any memory of that. I don't feel comfortable speculating and saying that because I don't have any memory of having that conversation.

Q. I understand. I'm not asking you about that. I'm saying the statement --

GC (LtCol Sullivan): All right. I'm just -- respectfully, I think I'm going to raise an objection now to the point where I think we've asked her four times. I think the record's clear. We've gotten somewhat argumentative. That's all.

IO: She has agreed with you that, yes, she would not ever agree to do a threesome; that if she did say "I'm not into this," I heard her say that that is consistent, and I wrote down "with her beliefs" with regarding herself and how she would handle that.

CC: I understand, sir.

IO: She said that, so is there another point you want to make?

CC: Well --

IO: Okay.

CC: -- I'm imagining myself reading this transcript and trying to find that statement, being all over the place --

IO: Right.

CC: -- in trial.

Questions by the civilian counsel continued:

Q. Would you agree with what the investigating officer just said?

A. Yes.

Q. Okay. So you get up, you put on your pants and leave?

A. Yeah. Somehow I grab -- I had my purse too because I had my phone, but I don't remember grabbing it, but, yes.

Q. Okay. Now, at the time -- at the time you recall having the wherewithal to grab your purse?

A. Yeah. I mean, I know that I grabbed it. I just don't remember where it was or remember actually grabbing it, but I know I had it.

Q. You remember grabbing your purse?

A. I don't remember actually grabbing it. I just know that I had it. I don't know where it was. I just know I had it.

Q. You testified yesterday that you grabbed your purse.

A. Yeah. I had to have it because I had my phone and everything, so --

Q. Okay. Were you concerned about your friend at that time?

A. At that time I was just -- I was just utterly confused and again just thought, you know, I just didn't -- didn't want to be somewhere where, you know, people were going to be having sex.

Q. Okay. My question to you is: Were you concerned about your friend at the time?

A. No. At the time it was just trying to just get out of there, figure things out.

Q. Okay. You were concerned enough to grab your purse, but you weren't concerned about your friend?

A. No, I wasn't concerned about grabbing my purse. It's just -- I just, you know, I grabbed it. It wasn't that I was worried about it.

Q. Well, why do girls normally grab their purses?

A. Because you take it with you. It has my phone.

Q. It has money, phone, credit cards?

A. Uh-huh.

Q. ID cards?

A. Yeah.

Q. So, fair to say that if you leave it, you'd be concerned about where you left it?

A. Like I said, I mean, I don't even remember grabbing my purse. You know, I don't know if it was an automatic thing or not.

Q. I understand. We already established that you had your purse.

A. Yes.

Q. And at the time you had enough thought to grab your purse?

A. Yeah, I grabbed the purse.

Q. And I know we're digging into it, but normally you grab your purse because you don't want to leave things behind, and your friend was being left behind. Is it fair to say that at the time you didn't have any outright concern for your friend?

A. At the time, no, I wasn't --

Q. Okay.

A. -- I wasn't thinking about her.

Q. And you just told me that you did not want to be where people were having sex.

A. Yeah.

Q. Is that based on the response -- that statement, is that based on the response you got from them when you said, "I'm not into this?"

A. No. It was just because Doug was naked and when Jess was, you know, in the bed and under the sheets.

Q. Okay. Well, do you remember what they told you when you said, "I'm not into this?"

A. I don't remember anyone saying anything.

Q. Could they have said, "Hey, it's okay, stay," or anything like that?

A. I don't remember them saying anything.

Q. Okay. But you do remember thinking I don't want to be where people are having sex?

A. And I just remember, again, being confused and I just didn't want to be there when anything happened, yeah.

Q. What is your next memory?

GC (LtCol Sullivan): Do you need a break, Ms. Cook?

WIT: Sorry. It's okay. I remember being in the room with Becky and Becky leaning on the bed and saying "go get her."

Questions by the civilian counsel continued:

Q. Do you know how long after you arrived in the room that happened?

A. No. I have no idea.

Q. Is that the next flash of memory?

A. Yeah, Becky saying "go get her."

Q. Do you know why Becky said that to you?

A. I remember her saying "go get her" and me having like a lightbulb, like, Oh, I should go get her; but I don't remember any conversation before or anything.

Q. Before you arrive in the room, you call Donald; right?

A. I remember leaving the room and looking at my phone, wanting to call Donald and seeing that the room's 1008, but I don't remember actually calling him.

IO: You do or you don't remember?

WIT: I don't remember. From later conversations, he said that I did call him, but I don't remember.

Questions by the civilian counsel continued:

- Q. You stated in this statement to NCIS that you had called him. Is that based on what Donald told you --
- A. Yeah.
- Q. -- or was that an independent memory that you had at the time?
- A. No. That was just based on, you know, by that point, everyone trying to get the night figured out. That was just based on what Donald told me, that I had talked to him.
- Q. Did Donald tell you what you told -- did Donald tell you what you told him?
- A. I'm sure the next day he did, but I don't really remember. He just mainly said that I was talking nonsense and that he had never heard me talk like that. He's dealt with me when I was quite drunk before, but that I was just not making sense.
- Q. Could you have told him when you called him that Jess was having sex with Wacker?
- A. I don't remember at all.
- Q. That's when you go back up and you knock on the door. You remember knocking for maybe as long as 20 seconds?
- A. Yeah. I just remember -- I don't remember actually going back up. I just remember being at 1008 and pounding on the door, yeah.
- Q. Okay. Do you have -- are you able to recollect the amount of time you knocked on the door? You said 20 seconds. Was that just a --
- A. It was just a guesstimate. It's like -- you know, I'm guessing between 20 seconds. I just remember it felt like forever.
- Q. And when Doug answers the door, you recall him being in boxers?
- A. Yes.
- Q. Could he have been in jeans?
- A. No. He was in boxers.
- Q. Okay. You go to the bed and see Jess naked; you

- begin to lift her up.
- A.** Uh-huh.
- Q.** Now, I want you to think about times when you've been really tired, having had quite a bit to drink; you know, I want you to think about that when I'm asking you the next few questions.
- You begin to lift her up?
- A.** Uh-huh.
- Q.** And she's not a total deadweight. She's kind of, like you said, a rag doll? She's semi-cooperating, but not quite?
- A.** Yeah. She's, yeah, like a, you know, investigating officer hit it on the nail; like, you know, a three-month old, that they can kind of do some things, but they can't really support themselves.
- Q.** Okay. Her state at that time, you can't tell right now or at the time whether she was asleep or passed out?
- A.** At the time she's on the bed, her eyes are closed, you know, she's completely naked in that position. I --
- Q.** Okay. But as you begin to move her, her eyes kind of half open and --
- A.** When I first lifted her up, I don't remember her eyes open. I just remember when I'm trying to pull her shirt on, that she's kind of like rolling her head around and her eyes kind of open a little bit.
- Q.** Okay. But that's what you said yesterday, so kind of half opened?
- A.** Yeah, at some point; not the entire time. They were closed when I first lifted her up.
- Q.** Okay. Consistent with someone who's had a lot to drink, maybe tired, and doesn't want to wake up?
- A.** In all honesty, I've dealt with, you know, my share of drunk people and usually they -- you know, they kind of wake up and they don't really focus, but they're more cooperative than that. That was like -- it was like she was like still asleep at the beginning, and then she just kind of got a little more like -- would cooperate, but like -- it was like I couldn't even -- it was like I was speaking a

foreign language.

- Q. Okay. So, we're going through a period here, a sequence. You first lift her up, she's completely uncooperative, and then she begins to rustle --
- A. Yeah, a little bit.
- Q. -- and move?
- A. Yeah. Then she begins to kind of help --
- Q. Consistent with someone who's waking up?
- A. Yeah. I mean, she's -- she never completely got there, it felt like. Again, it was just like a -- you know, I felt like she couldn't understand what I was saying to her. She was just -- I was trying to get her to help me.
- Q. Have you ever felt the effect of an anesthetic?
- A. Yes, uh-huh. Yeah, I had a wisdom tooth out.
- Q. Well, besides that, the one that you had in the back or -- what's that called?
- A. Oh, the epidural?
- Q. Epidural.
- A. Oh, yes. That's wonderful. Yes, I've had two of those.
- Q. Are you still conscious during that when they do that?
- A. Yes.
- Q. Okay. But you can't do certain things?
- A. Just -- well, with my first born actually, I could still move all my legs and everything and that one didn't take effect. With my second one, yeah, towards the end, after a few hours, I couldn't quite move my legs that well, but my entire upper body is completely --
- Q. No matter how much people want to move you, you're just a dead weight?
- A. My legs were, but not the rest of you.
- Q. Yeah. That's because it's below a certain part of your body?
- A. Yeah.

Q. But that body is not -- that part is just dead weight?

A. Yeah, pretty much.

Q. And the part I'm referring to is the one that's been --

A. Yeah, the legs.

Q. Okay. That's not how Jess was that day. She was semi-cooperative? Well, let me make it easier for you --

A. I say -- yeah --

Q. You didn't lift her and take her down to her room; she walked?

A. Oh, yeah, no. Yeah. I couldn't carry her.

Q. And you're aware that most of the drugs, the date-rape drugs, people have a sensation of an out-of-body experience. They recall things, they have a memory, but they're not able to move?

A. No, I don't.

Q. You don't know that?

A. I don't have any memory. All that -- all that I knew was that people blacked out.

Q. Okay. Well, alcohol causes blackouts too; right?

A. Yeah --

Q. You know that from your experience as a bar tender; people --

A. Yeah. I mean, I know and I've drank in excess before. What I -- I know what I experienced. It's completely different --

Q. Okay.

A. -- completely different than any black out I've ever -- not a black out, but any memory loss I had associated with drinking is --

Q. Okay. So, eventually you get her up and you get her dressed. Is it fair to describe your state at that point as almost hysterical, when you're in the room, trying to get Jess up?

A. I don't really -- I don't recall me really feeling hysterical. It was -- I mean, yeah, I was panicky, but I wasn't, you know, like I was sobbing or

anything like that. It was more like I had a mission, like, you know, I was panicky. I had to get her out of there.

- Q. Please tell me how -- what -- to the best of your recollection, how you were, your state at that time?
- A. I was just, you know -- again, that I just kept on thinking I had to get her out of there, had to get her dressed, had to get her out.
- Q. You felt defensive for your friend?
- A. Yes.
- Q. You felt protective?
- A. Yes.
- Q. You didn't want anybody near you; you just wanted her out of there?
- A. No, it wasn't that I didn't want anybody near me. It was just that, yeah, she was my mission, like, I had to get her and get her out.
- Q. You didn't want him near?
- A. Obviously I had -- I don't have any recollection of having an interaction with him or anything. It was just, again, like the tunnel vision, like the clothes, Jess -- get Jess out, that type of thing.
- Q. Sometimes we communicate without actually saying anything verbally. Is it fair to say that based on the way you were acting, you didn't want him near you?
- A. I don't want to speculate on that. I don't -- I can't say exactly what my movements were or anything. I don't know how he took them.
- Q. We've already established that you felt defensive and protective for her; right?
- A. Yes, that I wanted to just get her out.
- Q. And he didn't do anything to you to interfere with that?
- A. Not that I can remember.
- Q. We heard a lot of testimony from Lieutenant Colonel Sullivan about his standing back. You wouldn't have wanted him to come near you or try to interfere with you?

A. I don't have that -- that sense at that time. It was just we wanted to get her out. Again, I wasn't focused on him at all.

Q. Okay.

A. He wasn't even in my radar.

Q. All right. And you get her out; you get her to the room. Is this a continuous memory?

A. Just of me getting her out, but I don't remember getting her down to the room.

Q. Okay. What is the next -- when is the next time your memory picks up?

A. It's when Jess sat on the bed. Becky's next to her, and Becky asked her what happened, and Jess is crying.

Q. Okay. At this point do you remember having a conversation, either when you grabbed her from the room or in your room, when you grabbed her from 1008 or in your room, where you asked Jess, "Did you have sex" or "were you having sex," and she says no?

A. I have no recollection of --

Q. Okay. Do you recall telling Ms. Cook at some point that you asked her whether she was having sex and she said no --

A. No.

Q. -- then began to cry?

A. Uh-uh.

Q. I'm sorry. Your question would have been "why were you having sex with Wacker?" And her answer would have been "I wasn't having sex with him." Do you recall any kind of -- do you recall telling Agent Burge that?

A. What I specifically remember is --

Q. I'm sorry. This is a -- let me be clear.

A. Okay.

Q. What I just asked you would have been a conversation you had with Ms. Cook, that you asked her why she was having sex and she said no.

A. Oh, with -- I don't remember telling him that and I don't remember -- I don't remember that

conversation. I just remember again that she's on the bed, sitting on the bed with Becky and she's crying, and Becky asked what happened.

Q. I know you don't have the recollection of actually doing it. What I'm asking you is: Do you remember telling Agent Burge that you had a conversation or a phone call with Ms. Cook where you had a conversation with Jess -- I know this is a lot of laying on top of each other -- you had a conversation with Jess where you asked her -- not a conversation, but you ask her, "Why were you having sex with Wacker?" And she said, "I wasn't having sex." Do you recall communicating that to Agent Burge?

A. That I -- yeah, sorry. This is a little -- little laying on top of each other, as you said.

I don't remember communicating those words, that I remember that. I know that after that point I had talked to Donald a lot and he told me what I had said. Right now I can't remember at all what he told me I said.

Q. Okay. That's -- sorry. It's actually not in your statement. It's in an Agent Burge statement, but I just wanted to make -- find out.

A. Yeah. I mean, I guess -- I mean, I don't remember. I don't remember most of the conversation with Agent Burge either --

Q. Okay.

A. -- (inaudible) conversation.

Q. At that point after you bring Jess down and she's crying, I think you said you rubbed her shoulders.

A. That was after. I had went back up and then I came back and I was trying to -- like, I wasn't -- that was something my mom and grandma always did, you know, you rub the kid's back and sing to them to get them to sleep, that type of thing because she was crying; so I remember doing that. That's my last memory of the night.

Q. And you also have another memory of you rubbing someone's shoulders and that is Doug's; right?

A. No, I don't have -- I don't actually remember that.

- Q. It's in your journal.
- A. No. What I -- I don't remember actually doing that. What I remember Jess telling me that is what I told her. I told her that I don't refute that, but I don't actually remember that.
- Q. Well, please tell me how you came to put that information in your journal? Who told you about it and --
- A. Jess told me -- Jess told me about that. My journal's -- those aren't an exact -- what I remember. It was -- especially the first one. It was me trying to tell the entire story to the therapist. It was a combination of what Becky had told me and Don had told me, and it was just trying to lay out the story. But again, like I don't actually remember doing that, but that's what Jess said I told her the next morning. I don't -- again, I said that I don't refute that because that is what I would do in that situation. I don't know if I told her that that is what I would do and she took it as that's what I did or if I told her that's what I did. I don't --
- Q. So, tell me if this is right. Jessica's actually having a memory of her being in that room?
- A. No, no, no, no. Jess doesn't have a memory. This is -- she told me when we woke up the next morning I told her that when I had the vision of the person straddling her that I freaked out and offered to give him a back massage to get him off me, and then I looked around to figure out what to do. She said that I told her that. I don't actually remember that, but again, I don't refute it because that is exactly what I would do --
- Q. Okay.
- A. -- in that situation.
- Q. I'm going to take this piece by piece.
- A. Okay.
- Q. Okay? My question was: Jess had a memory of you in the room --
- GC (LtCol Sullivan):** I'm going to object. That's a mischaracterization. She testified that Jess said, You told me in the morning this.

IO: Hold on. I got a little confused too.

CC: I'm confused.

IO: The way I think I understand it, and you correct me if I'm wrong, is what you're saying is that Jess said to you --

WIT: Uh-huh.

IO: -- that she observed -- that -- see, now I'm lost.

GC (LtCol Sullivan): Yeah. Let's --

CC: Let me -- let me do this because we're all confused. I'm trying to do it. And I would appreciate -- I did not interrupt once. These are questions that, you know, we're cutting through the facts. We're all confused. So we're going to get there, but --

GC (LtCol Sullivan): Yeah.

IO: Allow --

GC (LtCol Sullivan): But, defense, for the record too, I've tried to limit objections. I respect Haytham Faraj. He's a friend of mine and I respect him as a lawyer --

IO: Well, the object --

GC (LtCol Sullivan): -- so I'm trying to limit it too.

IO: What I'd like --

GC (LtCol Sullivan): I'm sorry, Your Honor.

IO: That's all right. Have a seat. What I'd like to do is, if you don't mind, focus me on the -- go back to the journal entry for a second and focus me on what the impetus of your questioning was because that would help me understand. I have the journal entry in front of me, but I don't know where exactly the phrase you're referring to --

CC: I'm referring to page 6 of 33. It's actually the -- also an e-mail to Lieutenant Callahara.

IO: 6, let's see. 2 of 33.

CC: And it's also IE exhibit --

GC (LtCol Sullivan): 41, IE Exhibit 41.

IO: All right. So, if I understand -- and I'm interjecting on your question here, but if I understand, we're talking about the sentence in your journal where you wrote "Jess also told me that I told her on the morning of the 4th that when I woke up and saw the guy straddling me," and then you have in brackets "I'm assuming that is the flash of memory I have from the night where I see a guy straddling or sitting up top of me. I freaked out and didn't know how to get him off of me, so I offered to give him a back massage. Then when he laid down on his stomach, I massaged his shoulders while looking around and trying to figure out what was going on."

If I understand your testimony, you're saying you do not recollect that; however, that is consistent with something you would have done if you were in that situation?

WIT: Yes.

Questions by the civilian counsel continued:

Q. Okay. How did you come to find out that information?

A. Jess -- after we had talked to -- make the report to USD, we were in the car, and Jeff said that I told her that. And I said, "Why didn't you tell me this before?" And she said, "Well, I just thought maybe you didn't want to tell them." I said, "No. I want to tell them everything." So, that's when I decided to write the e-mail and tell everything.

Q. Okay. Jess told you what?

A. Jess told me that the morning when we woke up, that I told her when the guy was straddling me, that I freaked out, and to get him off of me, I offered to give him a back massage --

Q. Now I understand.

A. -- and looked around.

Q. Okay. So Jess is recollecting something that you told her on the morning of April 4th --

A. Yes.

Q. -- not an independent recollection from Jess?

A. No. This is what she's saying that I told her.

IO: And when did that happen? When did Jess reveal to you what you had said to her?

WIT: In the car after we had made the report to USD.

IO: Can I have a date? Do you have an approximate date?

WIT: I have no idea. I believe it was the day before that journal though.

IO: Okay.

WIT: Or the day of. I don't remember. I wrote that e-mail as soon as I --

IO: Somewhere in the area of April 12?

WIT: Yes.

IO: Sorry. Go ahead.

Questions by the civilian counsel continued:

Q. Okay. You have no independent recollection of that?

A. No.

Q. On the morning of April 4 when you wake up, are you still having loss of memory?

A. I just don't remember much, as I stated before, of those conversations on April 4. I don't know why. I just don't. It's not -- it's not like the black out where it's, you know, I have a flash and then, poof, time passes and there's this. It's just more that I just don't remember exactly what was said.

Q. And today, you don't have -- you still don't have a memory of you massaging the man or Doug's back on that evening?

A. No.

Q. But -- and you were just asked this question. I

want to clear up.

A. Uh-huh.

Q. You believe that that is something consistent with what you would do if you had woken up in a situation where you were not familiar or where you saw a strange person and you would try to get out of it?

A. Yes. It's actually something that I had done before to -- at a fraternity party. You know, you see all these defense courses and you're in a sorority and that was what they said, try and visualize what you would do in certain situations and that was one of the things that we discussed was, you know, get your own position of power, relate to them, relax them; but you get to look around and get your hands away from you and it gives you a chance to associate. So I've done it before, and I would assume I would do it again.

IO: Let me interject real quickly.

Do you believe you ever relayed that information about the training you had to Jess prior to going to New Orleans? Did you ever have a discussion with her about that training you had?

WIT: I don't -- I don't believe so. I know I had discussions with her about certain trainings I had, but I don't know if I relayed that to Jess or not.

IO: Is it possible you may have?

WIT: It's definitely possible I may have. I also may have that morning, you know, quoted that's what I would have done. I don't -- I don't know. I had told her a lot of things like about victim/witness and the defense courses I took in college.

IO: Okay. I'm sorry.

Questions by the civilian counsel continued:

Q. I want to go back a little bit inside room 1008 about your state of mind and as you were leaving. At the time you begin to decide to leave, you look over and you believe that Jess and Doug may be kissing.

A. It's not so much that they're kissing. It's just

that I see him going down in that general -- in that direction. I don't see them actually kiss. Her head's turned a little bit, so I don't actually see them kiss, but that's just -- again, it's like what -- I believe that they were going to be kissing.

- Q.** Okay. You're not sure they were kissing. They were in a position where someone could have assumed they were kissing?
- A.** Well, he was going down, his mouth going towards hers, so.
- Q.** I understand he was going down, but at the time you could infer that they were kissing --
- A.** It's not --
- Q.** -- I emphasize they were kissing.
- A.** Well, it takes -- I say "they" because it takes two people to kiss, but Jess wasn't moving. She was still in the same position, but --
- Q.** You relayed in your journal though that at the time you believed that they -- they and, again, emphasize they -- may have been kissing or that he was kissing her.
- A.** Yeah, again, you know, as I said, that was just me trying to relay everything I was. I wasn't picking my words carefully enough, but that, yes, you know, that he was going down towards her, and I didn't see her turn and kiss him or him kiss her.
- Q.** I'm referring to page 2 of 33 for the IO, about halfway down the page, that really big paragraph, about halfway down that paragraph. You said you don't pick your words carefully, but you were careful enough in your journal to say something to the effect that they were either kissing or he was kissing her.
- A.** Yeah. It was just -- as I said -- I mean, I couldn't tell what was going to happen. It was just like he was going down and that's what I assumed was going to be happening.
- Q.** Okay. My question is: You were careful enough in your journal to select "they" or "he."
- A.** I wasn't -- as I said, I actually wasn't being careful with my words. I was typing extremely

quickly. I was --

Q. Okay. They or he.

A. That's what I put in there, yes.

Q. Okay. Thank you for answering. You're definitely a law student.

A. Sorry. Just, you know, you want to make sure you don't --

Q. Do you have trial practice?

A. -- mischaracterize and stuff, so.

Q. I'm also going to refer to your journal in the next question.

A. Uh-huh.

Q. Is it fair to say that in your journal, at the time you began to write about this event, that you had some doubts about whether there was a crime committed or not?

A. Yes. I was confused.

Q. And the journal was written after you found out about the tampon?

A. Yes, uh-huh.

Q. And even then, you still had some doubts? I'm not saying you had --

A. Yeah, I mean --

Q. -- total doubt. I'm saying you had some doubts; you were questioning yourself?

A. Yeah. It wasn't so much -- I wasn't questioning what happened. I view the tampon and I pretty much assumed that they had sex. It was more questioning as to if Doug, you know, had done this totally on purpose or if it was that he just didn't want to admit to it because he was scared or what it was. That's what my doubt was about, but I believed at that time that they had sex.

Q. Okay. So, I just want to be clear --

A. So, yeah, I was doubtful about Doug's intentions, I guess you would say.

Q. You were doubtful about a crime having been committed?

A. Yeah, and that -- I don't know which -- I don't want to say a crime because I'm not quite sure.

Q. Rape is a crime.

A. Well, because, I mean, if she didn't consent to it, of course. You know, I'm not trying to be the difficult law student. I'm just saying it depends. I don't know if his intent matters or not. That's what I'm getting at. I just wasn't sure of his intent and I don't know if for it to be a crime that his intent matters.

Q. My question is as to your state of mind --

A. Uh-huh.

Q. -- you had doubts --

A. Yes.

Q. -- as to whether a crime had been committed?

A. As to what Doug's intentions were.

CC: At page 7 of 33, the big paragraph right in the middle of the page.

May I approach the witness?

IO: Yes.

CC: I'm referring to Investigative Exhibit 41, page 7 of 33. I'm showing it -- I'm handing it to the witness. Please read this paragraph.

GC (LtCol Sullivan): I'm sorry, Haytham. Which page was it?

CC: 7 of 33.

GC (LtCol Sullivan): Thank you. Our numbers are just cut off at the bottom.

CC: Yeah, they are cut off.

IO: It starts --

GC (LtCol Sullivan): I gotcha. Got it. Thank you.

CC: Are you done?

WIT: Uh-huh.

CC: I'm retrieving the exhibit.

IO: Okay.

Questions by the civilian counsel continued:

Q. Now, in that paragraph, you're having a discussion -- part of the paragraph, you're having a discussion with Jess about some text messages you sent.

A. Yes.

Q. And you question your ability to send those messages. You're basically saying I must have been aware, but I don't remember them.

A. Yeah. I was -- you know, I was doing the whole -- I was trying to work it out because, you know, for someone to read it and text back and everything, you know, to me, (inaudible) coherent, but I know I don't remember any of that. You know, A equals B equals C usually, but it doesn't add up in an instant and that's what I was trying to talk through.

Q. Great word, coherent. The text message, reading it later, suggests that you were coherent at the time you sent it, but you have no independent recollection of it?

A. Yeah, I don't remember it at all and --

Q. And you couldn't even believe that you could have been coherent?

A. Yeah. I --

Q. Okay.

A. -- have no recollection of it.

Q. And then -- and then in that paragraph, you actually begin to doubt yourself based on that, but then you say, no, I'm not doubting myself.

A. Yeah. I mean, again, like I said this is my little ramblings working out (inaudible).

Q. So, when you read that, you're not doubting Doug, as you say, you're not doubting his intention; you're doubting yourself?

A. I'm doubting, yeah, that -- I was just -- like I said, in the journal, it was just if someone could do this, you know, but I know I don't remember, so

it was just I was just working through it.

- Q.** Now, you said you've had some training with these types of events, sexual type --
- A.** Yeah. I was in a sorority undergrad, and every year they had a, you know, self-defense thing that they would hold at a different sorority house and all the other sororities would go.
- Q.** And you also told me that you are planning to be a prosecutor.
- A.** Yes.
- Q.** You began to prosecute this case.
- A.** I'm sorry.
- Q.** You began to prosecute this case.
- A.** I -- I don't understand the question.
- Q.** You began to marshal evidence, collect evidence and assist in the investigation?
- A.** No, I never collected any evidence.
- Q.** You collected statements.
- A.** No. We asked people to give statements because that's what we were told that we should do, is have Becky and Donald because they talked to us the night of, have them submit a statement to the USC hearing.
- Q.** You passed on information on what you wished people would put in their statements?
- A.** Yeah. Becky asked me, you know, if that was okay and I just told her, you know, that's good except make sure to mention as much as you can about my demeanor because I know that they're going to want to ask that because that's the whole reason why we were asking for her and Donald to give a statement to the USC hearing.
- Q.** You actually edited her statement --
- A.** No, I didn't edit it.
- Q.** Becky --
- A.** I didn't tell her to take something out or anything like that.
- Q.** She sent it to you?
- A.** Yeah.

Q. What did you do with it?
A. I just -- I didn't do anything with it. I just replied to her saying that looks good, but that if you could add in anything that you noticed about me, if I seemed okay, if I didn't seem okay, to (inaudible) --

Q. You read it over?
A. -- that's what they're doing.

Q. You read it over?
A. Yes.

Q. You commented on it?
A. Uh-huh.

Q. And you told her what to -- suggested what she should put in there.
A. I didn't tell her say this specifically, just could you please mention me more, whether I was okay, if I wasn't okay, anything because that was the whole purpose of us getting her statement, was for her to describe my demeanor and Jess's demeanor.

Q. What exactly did you tell her?
A. Oh, what -- I can't remember exact -- whatever's in the -- the e-mail, I put the e-mail in the journal.

Q. Okay.
A. That's the only conversation I had with her about it.

Q. I'm showing the investigating officer.
A. Did you help anybody else write statements?
No.

Q. What about Donald Cook?
A. No, I didn't. I made sure not to talk to him about it.

Q. You assisted Jess?
A. Huh?

Q. She had no recollection on what happened that night.
A. But I didn't -- she didn't submit a statement. We went to testify at the hearing. We didn't submit any statements. We submitted impact -- victim

impact statements. She did that on her own.

Q. Okay. How many conversations between -- oh, that's not a good question. It's been a long time. Is it fair to say you've had a lot of conversations with Jess about the facts of this case?

A. Oh, yes.

Q. And you tried to help her with her facts?

A. I wasn't -- I tried to help her understand to know what happened as to what I remembered of that night because she didn't have any of those facts.

Q. Okay. But it's also fair to say that your memory fails you?

A. Yeah. In between my flashes, I have nothing, but I just told her what I remembered.

Q. Okay. And it was you who suggested that if the tampon was pushed up, then she --

A. Yes.

Q. -- was probably raped?

A. Then they probably did have sex. If it was pushed up and -- mainly, I was just -- again, that happened to a girl in my sorority. She wasn't raped. She just forgot about it and then she had to go to the hospital to get it removed.

Q. So, it went up pretty far up the vaginal canal on its own?

A. No. She had sex, but she wasn't raped.

Q. She forgot about it?

A. She just forgot about it.

Q. Okay. Got it. Got it. I want to talk about that a little bit. That morning you actually told her to check her tampon.

A. Uh-huh.

Q. She did?

A. I believe that she checked it at the airport. Yeah, she had checked it that morning.

Q. At the airport at about 6:00 o'clock that day in North Carolina?

A. I don't know the time, but, yeah, she -- in North --

whatever time she was there, yes.

Q. Okay. But in the morning you actually told her to check it?

A. Yes.

Q. What did she do when you told her that?

A. That was -- I believe that that was either right before or right after she had talked -- she was going to talk to Justin and then that's when -- and then Doug came to the hotel room and then after he left, we decided we had to get out of there and then we left. It was in that sequence of things. I can't remember exactly in the conversation when, but it was before he came and then before we left.

Q. Her response suggests that she wasn't really concerned about the issue whether she had sex or not?

A. No, it wasn't -- I mean, at that time she thought that she had. She told him that we slept together, so she already had made the assumption that she had had sex.

Q. When you told her that, what did she do?

A. I'm trying to remember. I remember telling her. I can't remember. I really don't.

Q. (Inaudible) to do it?

A. I don't remember.

Q. Could she have checked it that day? Could she have checked it in the bathroom?

A. Yeah, she could have.

Q. Do you know?

A. Do I know if she did?

Q. Do you know if she checked it?

A. I don't -- she didn't tell me she did. The first time she told me she checked it was in the airport.

Q. Okay. But when you tell her that, she doesn't go to the bathroom and check it?

A. No, she didn't.

Q. And you don't recollect any conversation about that at the time?

- A. I just don't remember what she said in response to me. I can't -- can't remember.
- Q. Now, at some point Doug Wacker comes down to the room?
- A. Uh-huh.
- Q. And that's when the exchange happens, and when I say "at some point," on April 4, (inaudible).
- A. Yeah, at some point on April 4, yeah, he came.
- Q. You begin to get his side of the story --
- A. Uh-huh.
- Q. -- or the only side of the story where you guys don't have a memory?
- A. Yeah, he -- yeah, he told us what -- he said this is what happened.
- Q. Okay. And as he's telling this story, he says "I respect you guys and I disrespected your boyfriends" or words to that effect?
- A. Yeah, he said something like, you know, I didn't -- you know, I respect you, didn't want to disrespect you or -- I don't remember him saying disrespect in regards to the boyfriend, but, yeah, words to that --
- Q. But he said, "I respect you guys."
- A. Something like that.
- Q. He didn't say, I disrespected you?
- A. I don't -- I believe that he said, you know, "I respect you guys, didn't mean to disrespect you at all."
- Q. Okay. At that time what is his demeanor?
- A. He's calm. He didn't seem -- he just seems calm.
- Q. The word "respect" suggests to you that this was a consensual act that you guys shouldn't have engaged in or a criminal act that I'm now sorry for?
- A. I have never thought of that question before. Could you repeat that?
- Q. When he says, "I respect you guys and I didn't mean to disrespect you," he's referring to a consensual act that you all as friends and he knows your

- boyfriends, you shouldn't have engaged in.
- A. As to his story that morning, he said that it was a consensual act, and so I'm assuming he was referring to --
- Q. I'm asking how you received it, not him. I don't want you to speculate on what he said. I'm asking you the way he communicated to you --
- A. Uh-huh.
- Q. -- suggests more of I'm sorry we had to do this, or by doing it, I think I just -- it was disrespectful.
- A. I didn't -- I didn't -- at the time I didn't think of anything in regards to that. I was just -- I guess I just took the words at their value. You know, he respected us, he didn't want to disrespect us. I didn't think any deeper than that.
- Q. You never hear him say, I took advantage of you or I took advantage of --
- A. Uh-uh. I don't recall him saying that.
- Q. And at some point as he's communicating his narrative, Jess says, "I don't blame you; it takes two to tango." Do you remember that conversation?
- A. I don't remember that.
- Q. Do you remember anything that she said?
- A. I remember her saying that I already told Justin that we slept together, and I remember her -- I can't remember her exact words, but her conveying her relief that nothing else happened, that it was just kissing.
- Q. When he says "I respect you and I didn't want to disrespect you," she responded, "It's okay, it takes two to tango," or words to that effect?
- A. I -- I honestly -- I'm not -- I don't remember. I really don't.
- Q. Could it have happened and you don't remember, or you just don't remember it happened?
- A. Yeah, I --
- Q. Again, the question is --
- A. I --
- Q. -- do you not have a memory or you have recollection

A. and you don't remember that conversation?
Oh, okay, I understand the question. Yeah, no, I just don't remember that conversation, so I just don't -- not that she did not say that. It's just that I just don't remember the conversation.

Q. Okay. So, she could have said it, but you don't remember?

A. Yes.

Q. Okay. Thank you.

When he described what's happening -- good trial techniques -- do you remember him saying there was kissing and heavy petting?

A. I just remember the kissing and the rubbing of the stomachs. That's --

Q. Okay. Do you remember the word "heavy petting"? Do you have any recollection of that?

A. No, I don't.

Q. As I say it now, do you possibly remember it?

A. I don't remember that.

IO: And if I may, this is all under the context of at some point you retreat to under the sheets and tune it out?

WIT: Yeah.

IO: As you've testified, so you're asking her the same questions and every one of your questions is it may have been said, but you didn't hear it?

WIT: Yeah. I tuned it all out.

IO: All right.

CC: There was quite a bit of testimony on direct from Lieutenant Colonel Sullivan about what --

GC (LtCol Sullivan): You know, that's -- Lieutenant Colonel Sullivan didn't testify on direct, you know, because if I testified on direct, then you're doing a great job as a witness right now.

CC: This is cross.

GC (LtCol Sullivan): So, I'll just -- well, I'm going to object to that referral.

IO: All right. From now on, refer to the government.

Questions by the civilian counsel continued:

Q. Ms. Easley -- I will.

Ms. Easley, you were asked some questions on direct about Captain Wacker's demeanor before he left the room.

A. Uh-huh.

Q. You remember him saying are you guys okay or you guys okay?

A. I remember -- again, I was under the sheet and him saying "Liz, are you okay under there?" But I don't remember the "you guys." I do remember --

Q. He asked some question about your -- are you okay or words to that effect?

A. Yeah, because I was under the sheets.

Q. Okay. Do you specifically remember either the conversation between Jess and Justin Micklish or a conversation that she related to you about I told Justin that -- I already told Justin that we had sex?

A. I remember her --

Q. Or I'm sorry. That we slept together?

A. Yeah.

Q. I told Justin we slept together, do you specifically remember that?

A. It was, yes, "slept together." I don't remember much of her actual conversation, just that she offered to -- you know, saying "I understand, you know, if you want me to move out or anything like that," but afterwards, I know we talked about it and I remember her telling me that he wasn't upset. He said that, no, this doesn't sound like you. We're going to work through his.

Q. Okay.

A. That's what she told me.

- Q.** So, you remember the I told Justin we slept together, and then she says, "If you want, I'll move out"?
- A.** Yeah, just saying, you know, I understand, you know, if you're upset and you want me to move out.
- Q.** Okay. You closed -- I'm jumping around. I apologize, but I'm almost done. You closed Jess's tab at the Funky Pirate; right?
- A.** Yes.
- Q.** You grabbed her credit card?
- A.** Uh-huh.
- Q.** Do you recall what the credit card looked like?
- A.** No.
- Q.** You don't remember if it was a Visa, Master Card, American Express, or Check Card?
- A.** No, I don't.
- Q.** Do you recall what the tab was?
- A.** No. Like I said, I mean, I know that it wasn't much. I believe it was similar to mine, somewhere, you know, under \$20. I just remember focusing on wanting to get the bartender over 20 percent.
- Q.** Did you have a normal dose of Effexor? Were you on a normal dose of Effexor at the time?
- A.** Uh-huh.
- Q.** And what, if anything, did your doctor tell you about the side effects of alcohol?
- A.** Well, when she first prescribed it to me in September, the psychiatrist, I had asked her. She said, "One thing, there's no drinking," and I said, "So no drinking at all, because there's a social event coming up?" And she said -- she doesn't recommend drinking, but once in awhile, it's okay. It just would make you more tired, so you probably shouldn't drive.
- Q.** Okay. So, to understand right, it's not the frequency, but the amount that could have an impact?
- A.** Of the alcohol, I don't -- what I took away from it was that it was the frequency, that I shouldn't drink on it consistently, but that once in awhile it was okay as long as I didn't drive.

Q. What about heavy drinking once in awhile?
A. Yeah. I -- well, I conveyed to her that there was, you know, social events. She didn't say -- she didn't warn me at all about, you know, heavy drinking --

Q. Okay.
A. -- or anything to the effect. Just that, again, would get more tired quicker than I would normally.

Q. All right. Once you came back, you reported to the school, and then you went to New Orleans to report this incident as well?
A. Uh-huh.

Q. All right. And you also gave some -- you testified at the USC hearing?
A. Yes.

Q. Have you had a chance to review that testimony?
A. Yeah. I received a transcript of my statements and some of the questioner's statements from the USC hearing.

Q. Is there anything in there that you, just when you were reading, jumped out at you as being incorrect?
A. Yeah. One thing was that Jess -- I was quoted as saying that Jess threw up and I walked by her table or something to that effect. I don't have any recollection of Jess' table or the only thing I remember is being in the bathroom. I -- either they couldn't understand me or something like that. And also, there was a quote attributed to me that was actually Jess talking about the test results of the drug test that she got done.

Q. Okay. I'm specifically referring to things that you testified about that you think were inaccurate.
A. Yeah. It's just that -- that part of the line about Jess's table --

Q. Okay.
A. -- I really don't --

Q. You testified that way and you don't remember it that way?
A. Yeah. I don't -- I -- maybe I just might have been inarticulate, was, you know, not talking clearly or

something; but I just don't see why I would ever say that because I have no memory of Jess's table.

Q. Now, you recall getting an invitation to testify at an Article 32 earlier in 2009?

A. Yes.

Q. Did you have a conversation with Agent Burge about testifying or not testifying?

GC (LtCol Sullivan): I'm just going to object on the relevance of this for this proceeding.

IO: Sure. What is the relevance of the whether she --

GC (LtCol Sullivan): I mean, I understand he's trying to lay a foundation for motions down the road, UCI motions, if there is a --

CC: There you go.

GC (LtCol Sullivan): So, I mean, how is that relevant to this proceeding?

IO: It's not.

CC: It will be relevant.

IO: In this proceeding?

CC: Well, as we go forward.

IO: Well, okay, but for this proceeding, what is the relevance of any UCI motion?

CC: This may be the only opportunity I get to talk to this witness --

GC (LtCol Sullivan): No. That's --

CC: -- and it is relevant because this has to do with this case going forward, and if there's evidence that she can provide, then we should be allowed to get it.

IO: Well, if it's evidence that she can provide to the purposes of this hearing, I'm with you, but this is not the grounds to question her regarding a motion relating to the case, should there even be a case in

the future.

CC: Well, let's put it another way. You're going to hear from John Burge and the credibility of that witness is always going to be -- of any witness is always subject to attack, and I'd like for you to hear from her on what John Burge's actions were and what he's going to testify about.

GC (LtCol Sullivan): Well, if he's calling John Burge to ask him, Did you tell witnesses not to show up at a 32 that was scheduled in May of 2009, I'm going to object to that too as irrelevant for this proceeding.

If there's a referral, there's motion practice on UCI, Ms. Cook has assured me she'd make herself available to testify at the motion practice and to all counsel's questions there. I mean, that's my objection.

IO: I'm not inclined to take this testimony regarding the interaction with the NCIS agent as it pertains to her testifying previously or not. So, let's move on --

CC: My -- I'm going to make a proffer.

IO: Okay.

CC: I'm proffering that the NCIS agent has tried to interfere with this hearing, has tried to interfere --

IO: I'm sorry. You mean the previous hearing?

CC: With this hearing.

IO: With this hearing?

CC: With this hearing and --

IO: Your question is -- you're going to ask her a question about her appearance here today?

CC: I'm going to ask her a question about John Burge's interference with the government's and the defense's ability to collect evidence in this case.

IO: For today?

CC: For this -- for these charges. I mean, today is just today, but we're investigating the charges and it's my position that you should hear everything related to these charges, including the credibility of witnesses and if there were people that tried to interfere with the collection of evidence.

IO: Let me hear your proffer.

CC: Burge communicated to every one of these wit -- before Colonel Sullivan came on this case, we were not able to get a single witness.

IO: And --

CC: They did not appear or they did not cooperate because Burge instructed them not to cooperate or suggested that they not cooperate.

IO: Okay. Even if that's true and if I accept that as true, that is going to have no bearing on my determination whether there's reasonable grounds to bring these charges forward. So, can we move past that?

CC: I understand. My position is: In addition, this is almost a deposition-like proceeding. In addition to you collecting facts on whether charges should go forward or not, I think the evidence should have -- or the defense should have an opportunity to depose witnesses and collect -- even though it may not be relevant to trial, it may lead to information that may be relevant later.

IO: I will state for the record I am denying you the ability to depose this witness for matters not related to --

CC: Very well.

IO: -- reasonable grounds. But I did take your proffer and you're free to make your objection in writing as part of the post-hearing matters you can submit. So, please move on.

Questions by the civilian counsel continued:

Q. When was the last time you spoke to Agent Burge?
A. Oh, geez, before -- before I talked to Lieutenant Colonel Sullivan when he came on the case, so that it was going to be more the prosecutors. Now that we've talked, I --

Q. So, it was before Lieutenant Colonel Sullivan began to contact you?
A. Yeah.

Q. Okay. Probably early '09, is that about right? Mid to early -- early to mid '09?
A. I honestly do not remember. I just --

Q. Okay. That's fine.
A. -- it was a while ago.

CC: Ms. Cook, I have no further questions for you. Thank you.

GC (LtCol Sullivan): Did you want to go?

IO: Yeah, let me go, just --

GC (LtCol Sullivan): And then I'll follow you, sir.

IO: Are you okay?

WIT: Yeah.

IO: Okay. I just have some brief questions. And again, I apologize. My questions are going to jump all over the place because I try and let the counsel go. I know I interjected a little bit.

EXAMINATION BY THE INVESTIGATING OFFICER

Questions by the investigating officer:

Q. First of all, with regard to your availability, do you anticipate being available and willing to come back should a trial ensue from this?
A. Yes. The only thing is I am moving to Oregon in a month, but I would be more than willing to come back.

Q. Okay. During the first Monday of your trip in New

Orleans, you said you walked around because you didn't have an assignment yet. Was Captain Wacker with you or did he have an assignment?

A. I don't -- I don't believe his assignment fell through, but, no, he wasn't with me. The only -- I didn't know any of the students before the trip to go with me. I only remember one girl because she told me she played Jasmine at (inaudible).

Q. Okay. So, you had no interaction with him during the day as you were walking around?

A. No, I didn't.

Q. And did you drink at all while you were walking around that day?

A. I had got a pina colada drink from that Big Easy place. I didn't finish it because it was a decent size.

Q. And this is the same spot that you later believed may have been -- the recollection you had of this other Big Easy place?

A. Yeah. The Big Easy is like a franchise and there's like three or four downtown, so I went to one near the river. I have no idea where the other one from that night that I have that flash of. I don't know if that was the same one or a different one or -- actually, I know it wasn't the same one because the one I went to had tall tables. You had to climb up on the stools, so I know it wasn't that one --

Q. Okay.

A. -- but (inaudible).

Q. You had made -- with regard to your drinking habits, you had the comment, testified to the effect of that when you want to get drunk, you do shots.

A. Yes.

Q. All right. And in that particular area, you actually went and bought a kamikaze shot?

A. Yes.

Q. So, do you believe it was your intent that evening to get drunk?

A. No. It was because it was a dollar shot and it was one of those test tube shots. I didn't think it would do anything. It was more camaraderie. It was

a dollar.

- Q.** Would you -- now, there's been previous testimony that this was the designated night to go out and have a good time. Was that in your mind? Was this the night that you all were going to go out and --
- A.** No. This was the middle of the day and we had to work the next day. To me, I thought the night we would all go out and go crazy would be the last night we were there, but we had to work in the morning and I didn't sleep. I (inaudible) go out.
- Q.** Now, I want to talk about the gentleman dancing behind Jess at the bar, the Razzoo, I guess. Did it appear to you that Jess knew these guys were dancing behind her?
- A.** No. I didn't -- I didn't think they -- because she was -- you know, I'm kind of standing like this, and Jess is on the dance floor and she's kind of dancing back and forth with Becky, and they were behind them -- behind Jess and just purposely, you know, kind of doing this little stupid dance, just being jerks.
- Q.** Now, do you think her level of intoxication impaired her ability to realize what was going on right behind her?
- A.** No. It was just because they never got close to her or anything. They were just a few feet -- you know, not a few feet; probably a couple feet behind her, but like there was music and there's no reason for her to think that they were dancing with her.
- Q.** Was there intent to mock her or to actually hope that she would turn around and engage with them?
- A.** No, it wasn't -- it didn't look like that they'd hope that she would. It was more like they were, you know, laughing at each other, and I guess it wasn't kind of mocking her. It was just they were -- I remember them doing this little fist pump move and --
- Q.** And do you think she was dancing with Becky on the stage at the time?
- A.** No, not on the stage.
- Q.** I'm sorry. On the dance floor?
- A.** Yeah.

- Q. Do you think Becky noticed them?
A. I don't -- I don't think she did either. She was kind of, you know, twirling and turned away, but then I'm looking at Jess and stuff, but I don't think that she noticed them.
- Q. Was there anything about their dancing, Becky and Jess on the dance floor, that kind of invited that type of attention in your opinion?
A. Between Jess and Becky?
- Q. Right.
A. No. I think they were -- there wasn't that many people on the dance floor at the time. I think it was just some drunk guys just, you know, trying to have fun, just being silly.
- Q. Now, I want to get to the point about you said that Captain Wacker offers to buy you and Jess a drink and you give him both orders.
A. Yeah. Well, he said, "Do you want a drink?" And I said, "Sure, I'll have" -- I don't remember if I said vodka seven or vodka cranberry, because, you know, my drink is too complicated, but I know I told him and then he asked, "Do you think Jess would want one?" And I said, "Yes, get her a vodka tonic."
- Q. And then he comes back and hands you your drink?
A. Yes.
- Q. Did you see what he did with the other drink?
A. He has the other drink in his hand and he walked in the direction because Jess was dancing to my right, and he was walking in that direction; but I didn't see him actually deliver it to her. I just took a sip of my drink and I started (inaudible).
- Q. Do you recollect the drinks themselves? Did you constantly have your drink in your hand?
A. Yeah. Well, yeah, I just took that one, you know, kind of a long sip and decided, you know, I have to work in the morning and I put it down; and I didn't drink from that the rest of the night.
- Q. Did you put it down next to Jess' drink?
A. No. She -- no. She hadn't been over by that table at that time. This was, like, right away. I got the drink, took that sip, and put it down, and I

hadn't seen her at that point.

Q. When she was on the dance floor, after you took your sip, she continued to dance. Did you at any time see her holding her drink?

A. Yeah, because she -- when I got my water and then I put that down and came back to dance, and she asked me, "Would you taste this? It's a vodka tonic."

Q. Right.

A. So, she was holding it then.

Q. I guess my point is: Do you have any recollection whether you can conclude whether Captain Wacker gave her a drink and she held onto it the rest of the time or possibly she put it down somewhere and then she eventually went back and got it? Do you have any idea how that transpired?

A. No. I just saw him walk in the direction of -- like, to her with the drink, but I didn't see them actually meet. I didn't see her holding the drink. I didn't pay attention to any of that.

Q. Okay. And so, he very well could have put it down for her, said, Your drink's over there and you can get it when you want it?

A. I mean, well -- I mean, of course, it's possible. The way he was walking, there was no tables or anything. Those are on the side. And he was walking through the middle of the dance floor and she was right there. I mean --

Q. But do you ever remember seeing her holding it while she was dancing?

A. Yeah, when I came to taste it.

Q. Right. Okay. And as far as you know, when you tasted the drink, it tasted like it was supposed to taste?

A. Well, I just tasted the tonic water. I hate tonic water, so.

Q. But other than that --

A. I didn't notice anything --

Q. -- anything else?

A. -- awful.

- Q.** Okay. And when she asked you about the drink, did she mention that it tasted different than what she wanted or did she just say is this really what it --
- A.** Yeah. She just asked, Is this a vodka tonic.
- Q.** Okay. So, she didn't make any comment that it tastes weird or --
- A.** No. It was just that question.
- Q.** Okay. This man in the yellow shirt on his phone --
- A.** Uh-huh.
- Q.** -- any idea why that sticks out in the head?
- A.** I don't know. You know, he leans around the pillar and he has a yellow shirt, a button up yellow shirt, and he's on the phone and just looking right at us. I just know that I -- you know, I always wanted to (inaudible) sophisticated girl. I always try and notice those type of things. That's in my manner. That's what I try to do, is the only thing I can say as to why it stuck out because he didn't do anything. He wasn't like shouting or waving his arms or anything crazy. That's all I remember, just him looking over at us from the pillar.
- Q.** Did you feel he was looking at you or in your direction?
- A.** No. At us.
- Q.** And this would have been when you were at the --
- A.** The Big -- yeah, what I believe was the Big Easy. I mean, because it was the same table. I can't see the Slurpee machines in that flash, but I'm assuming it's the same.
- Q.** And you said the TV was right behind you. Was he looking in the direction of the TV?
- A.** No. There was a TV up in the corner.
- Q.** Okay.
- A.** The right corner and he was over there from -- that's what I remember.
- Q.** For the record, she pointed basically to her 12:00 o'clock, maybe to 1:00 o'clock where the TV would be and the gentleman in the yellow shirt would have been at 9:00 o'clock.

- Is it possible he was looking at the TV, right through you right to the TV?
- A.** No, no, because he would have been having to look over there instead of -- he was just looking -- I remember looking at his eyes.
- Q.** Did he make any type of facial expression, like hello or anything?
- A.** No. He was on the phone.
- Q.** Okay. Now, we talked about what you saw. Now I'm talking about the flash where you look over and you see Captain Wacker, as you referred, doing a reverse push-up.
- A.** Uh-huh.
- Q.** But you say the sheets are between -- there's a sheet between him and her?
- A.** Yes.
- Q.** So, clearly, at that point there could have been no intercourse going on?
- A.** At that point, no. I didn't see his penis either, like it was -- so, I don't --
- Q.** Okay. So, you don't believe at that point intercourse occurred?
- A.** I don't believe so.
- Q.** Okay. If it occurred at all. Did you notice anything else though? Was it just the one time down or was it, you know, did he continue --
- A.** No, no, no. He was -- it was like he was just lowering. From what -- I mean, I don't obviously know what he was doing. From what I was inferring was that he was lowering himself down to kiss her.
- Q.** Okay. Was to kiss her?
- A.** Yeah.
- Q.** Okay.
- A.** It wasn't to engage in sex at that point. It was he was lowering himself down, so that's why I put in my journal that they were kissing or he was kissing. That's what I got from what I remembered.
- Q.** Now, I know you have flashes of memory, but I want you to try, if you can, from the time you wake up

and say something to the effect of, you know, I'm not into this, and that's my words, you leave, you get dressed and you go back up to your room, and then you come back down and you're pounding on the door. Any idea what the timeframe was?

A. No, I really -- I really don't. Like these -- my memory is just like, you know, like I said, it's a memory and then I just don't remember going back there or -- I had to have said something to Becky because she said go get her, but I don't remember saying that. I can't tell you at all how long the conversation lasted.

Q. Based on your knowledge, just your general knowledge when you're not under the influence of anything, in the hotel and how the floors and how the elevators work, if it would have been one continuous motion with no interruptions where you got out of bed, found your pants, got on an elevator, went up, walked to your room, back down, what would have been at least the minimal amount of time that you were out of that room?

A. The problem is I don't --

Q. And I'm not asking you to base it on that night, just --

A. Yeah.

Q. -- based on, you know, you were in that hotel for a couple days.

A. I don't -- because I don't remember walking to the elevators from 1008, but I know that I'm pounding on the door and the number's to the right, so I think it was opposite from where the elevators were, so I had to probably walk around, use the elevator, and our room was opposite of the elevators. We had to walk around --

Q. Okay.

A. So, I mean, it really depends on what I said to Becky or if I stopped and had a conversation with Donald or anything.

Q. But I'm suggesting --

A. Yes --

Q. -- I'm suggesting you basically go to the room and Becky says -- you give a brief description and she

says, Well, go back and get her; and you immediately go back and get her. Would you say about five minutes?

A. I would say that that would be the absolute, yeah, quickest, if she was walking and then waiting for the elevator and going in and then walking, taking that route back.

Q. Okay. So, at a minimum you were out of that room for five minutes and that would have been the time when the conditions changed from her bra coming off to the sheet coming off and to him putting on his -- well, we've got the knocking on the door, so if we add six minutes for him to answer the door, that would have been the time for all that condition to change?

A. That was the actual minimum, yeah.

Q. All right. And the knocking on the door, I know you said it felt like forever or 20 seconds, was the -- when you think about it in terms if Captain Wacker was asleep and you needed to wake him up, do you think it was an unusual amount of time to knock on a door, for someone to wake up and come to the door still?

A. Yeah, it's still -- I mean, I know that I was, you know, a little panicky and had the mission to get her out, but I still felt like that was a long -- really long time. Considering how big the hotel rooms are --

Q. Okay.

A. -- it definitely seemed like longer than it would take to wake somebody.

Q. Now, you don't remember what you said to Becky, but you remember Becky telling you to go back and get her?

A. Yeah. She leaned out of the bed and said, "Go get her."

Q. Any idea why Becky didn't go get her?

A. (No audible response.)

Q. And when you get to the room, you say you pushed past -- you pushed past --

A. I don't remember if I ever really pushed past or walked past, but, yeah, I went past.

Q. And do you think by knocking on the door, did you announce who you were?
A. I don't remember.

Q. You don't remember. But you would agree that when you got into the room, there was clearly no attempt by Captain Wacker to cover -- literally cover up or even, you know --
A. Well, he was --

Q. -- cover up anything that had happened?
A. He was in his boxers and Jess was just sleeping on the bed; but, no, I don't remember him doing anything. I just remember, again, focusing on Jess.

Q. But it wouldn't have been difficult for him to throw a sheet over her or something like that?
A. I don't know where the sheets were on the bed, but I don't believe so. I mean, (inaudible).

Q. Okay. Do you recollect making the statement, "I can't believe I stood up for you?"
A. I remember saying that. I don't know why.

Q. You don't know why you said that?
A. I remember saying that.

Q. Okay. Do you recall throwing up at all that night?
A. I don't remember throwing up at all.

Q. Okay. Did you shower before you went to the airport?
A. I don't remember. I mean, I would think I would have, but like I said, I just don't remember if I showered.

Q. Okay. Do you remember if Jess showered?
A. I don't remember. I want to say, no, I don't think she did; but again, I can't remember.

Q. Do you remember if you had time to shower?
A. In the morning, it was -- feeling really sick and talking, trying to figure it out, and then her talking to Justin, and, you know, things kind of just seemed to happen in sequence, like talking to Justin, Doug showing up, a sign to leave, getting yelled at by Becky, and getting in the cab. It was just a really quick thing. The only times we had

were in the morning, but again, at that point we were just still feeling really sick.

Q. And would you agree that you found it unusual that the issue of whether or not they had intercourse was still inconclusive and the tampon issue may have resolved it and she didn't make any effort to check it when you brought it up to her; did you find -- do you find that unusual?

A. I find that unusual now. At the time, you know, even when she told me that she (inaudible). I think just because I know I was in the same mindset, you know, that -- confused, feeling really sick, and just everything was just happening so quickly, that it -- you know, listening to it now objectively, it sounds unusual. But at the time, you know, knowing how I felt and what happened that day, it just seems fine. It doesn't seem unusual then.

Q. Do you have any recollection of seeing any blood on her from her menstrual cycle or anything like that on any of her clothes while she's getting changed over or anything?

A. No, I don't remember there being blood.

Q. Do you remember how much make-up you wore that night, specifically regarding your lipstick?

A. No. I mean, I usually just have a lip gloss type thing and --

Q. And how about --

A. -- Chapstick.

Q. -- Jess, do you recollect her wearing lip --

A. No idea. I don't -- she usually doesn't wear that much lipstick.

Q. Do you recollect after being told that you had been kissing with Jess, do you recollect when -- I mean, I assume at some point you at least washed your face or checked yourself in the mirror at some point that morning?

A. Uh-huh.

Q. Do you recollect seeing any evidence of kissing with -- or anything like that?

A. No, I didn't see anything.

Q. Okay.
A. I didn't see anything on my face.

Q. And how about her face?
A. Uh-uh.

Q. Okay. And the first time in your mind this whole issue of, you called it roofies, coming up or being drugged isn't until you talk to the DA, the assistant DA in San Diego?
A. No. It entered my mind, but I didn't want to think that could be it because it was -- it was Doug, you know. He was our friend, but so, I mean, it was there, but it was just like, no, you know, come in; it has to be something else even though logically there wasn't. And then that had been what we had been thinking the entire time; but for me personally, I was having problems completely grasping that and saying that that is what happened to me because I never heard of these flashes happening to anybody else. So, to me, it was like I know there's just blackouts, but I had these flashes. But then when he told me no, cameos is a common reaction, like I said, it was like a weight lifted off of me. I felt so much better this was finally explained.

Q. With regard to Jess throwing up in the bathroom --
A. Uh-huh.

Q. -- do you have any reason to believe that Captain Wacker would have been aware of that happening?
A. There's nothing from that flash that I was -- you know, it's just a flash of her in the bathroom.

Q. Okay. So, as far as you know based on your memory, it's quite possible he has no idea that she threw up in the bathroom?
A. Yeah. I mean, I don't have anything else, just that flash in the bathroom.

Q. Now, when you left, I want to get that statement where you said, "I'm not into this" or something to that effect. I think your exact testimony is that the only thing you remember is it ended with "this"?
A. Yeah.

Q. Is the "this" you don't want to be there while

- they're having sex?
- A.** Yeah. That's what -- in my thought processes at the time was, you know, that I don't want to be, you know, part of it, I don't want to see this going on, I just -- you know, I don't want to be in the room. That's what I got.
- Q.** Okay. So, at that time there was -- nothing in your mind clicked about a threesome?
- A.** No.
- IO:** That's all the questions I have.
- Any redirect?
- GC (LtCol Sullivan):** Yeah. I just want to be clear on one point.

REDIRECT EXAMINATION

Questions by the government:

- Q.** Mr. Faraj spent a lot of time asking a particular question about whether it was possible that Jessica Brooder, on the morning of the 4th of April, 2007, in the hotel room, looked at Captain Wacker and said words to the effect, "Hey, it's okay; it takes two to tango." Do you remember those questions?
- A.** Yes.
- Q.** What I want to be clear for this record is: Do you have any recollection of Jessica Brooder ever saying those words in your presence ever to this officer?
- A.** No, I don't have any recollection of that.
- Q.** More importantly, and I also want to be clear because the tone and tenor of his question -- Jessica Brooder's demeanor, when Captain Wacker is in that hotel room the morning of 4 April 2007, was there anytime where you ever saw her smile, laugh, or indicate that there was anything funny or non serious about this conversation?
- A.** No. She was very, very upset, you know, like, started to cry some. She was very shaky. No, not at all.
- Q.** One last point: Some questions about the timing of

-- in the morning after Captain Wacker leaves the hotel room the morning of 4 April, timing of what you did to make flight arrangements to leave, shower, and things like that.

A.

Uh-huh.

Q.

Were you in a rush to get to the airport?

A.

Yes. We almost didn't make our flight.

Q.

That's what I wanted to ask you. You actually -- when you got to the airport -- do you know what time you got to the airport?

A.

I really don't remember. I just remember looking at the flights, seeing that the last one that I could get was within really soon, like an hour and a half, an hour, or something. We just had to --

Q.

Yeah.

A.

-- throw everything together and get out.

Q.

And I regret not covering this enough in my direct examination. Talk about the packing and getting ready to go to the airport. I mean, is this a leisurely -- you know, you know what I'm trying to say?

A.

Yeah.

Q.

How did you get out of that hotel room and get to the airport? And once you get to the airport, is this a long good-bye or are you rushing? I mean, set -- give us a little facts on this.

A.

Yeah. Once we made the decision to leave, we, you know, got on the computer and figured out and saw how close we had to get, so then we just started -- you know, I kept on telling her, again talking about Becky, like I feel bad, I don't want to leave her, and she said it's okay. But while I was talking to her, she was packing because I still hadn't decided, and then I made my decision about the ticket and then just were throwing things in the suitcase.

Becky came back though while we're trying to finish packing and, you know, kind of yelled at me and said how sorry she felt for Jess and everything, so we were trying to talk to her and make her feel okay. And then we got all of and stuff together, we got into the cab; and when we got to the airport, it was a very quick -- we had to go to our separate planes

because she was going to San Diego. I was going to Tucson. We just parted ways.

Q. So, when you're packing, is there even any conversations about taking showers, putting on the make-up, that type of thing?

A. No. It was just trying to get everything in the suitcases.

GC (LtCol Sullivan): And that was my fault for not asking earlier. I appreciate your patience, sir, and I'm going to tender -- see if Mr. Faraj has any further questions.

RE-CROSS-EXAMINATION

Questions by the civilian counsel:

Q. If Donald Cook had said that you called him initially after you left the room and then about 20 minutes later and then you went back to the room, would he have that timeline correct?

A. I don't know.

Q. Did you read his statement?

A. No. I haven't read any statements.

Q. You don't actually remember calling Donald --

A. Ever that night, no.

Q. But if he relates that, would that -- do you think that would be accurate; that he would have a recollection of what happened that night?

A. I mean, it's possible because, again, I just -- I don't -- there's no sense of time in between these flashes, so --

Q. Okay. You were asked some questions by Colonel Sayegh, and you brought it down to five minutes, but you really don't know how long it was?

A. Yeah, I have no sense of time in between these.

Q. There was some other evidence that suggested it was more like 15 or 20 minutes or even 45 minutes that could just as well be accurate?

A. Yeah. I mean, again, I have no sense of time between these.

Q. Okay. On the morning of, before you take off for the airport while Wacker is there and you're having a conversation, do you remember Jess -- during the conversation, rubbing her stomach and saying, "It doesn't feel like I had sex" or rubbing her tummy and saying anything like that, like, "It doesn't feel like sex"?

A. No.

Q. You don't remember anything like that?

A. No, I don't.

Q. When she says nothing happened, she says, "It doesn't feel like sex"?

A. No.

Q. No?

A. That's --

Q. No recollection?

A. No. That's really weird. Sorry. Just the rubbing with that statement, just --

Q. I'm sorry?

A. -- but, no, I don't remember.

Q. I communicate with my hands a lot.

A. Yeah.

Q. And the last one and I apologize. This wasn't on -- this wasn't covered. When you get up to leave, when you say, "I can't do this," does he try to stop you?

A. I don't have any recollection of him trying to stop me.

Q. Okay. So, no one tries to say -- to grab you or stop you or anything like that?

A. No, not that I recall.

Q. So, when you decide to leave, you leave on -- no one prevents you from doing anything that you want to do?

A. No, not at that point.

CC: Okay. Thank you.

GC (LtCol Sullivan): Just a second.

IO: Are you done?

CC: I'm sorry. I'm done.

IO: Okay. Government?

GC (LtCol Sullivan): Nothing.

[The witness was warned, excused, and withdrew from the courtroom.]